

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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or structure is or is proposed to be erected, constructed, reconstructed, altered or used or any land is or is proposed to be used in violation of this act or of any regulation or provision enacted or adopted by the board of supervisors of any town under the authority granted by this act and such election, such board, the attorney of the county wherein such town is situated, the town attorney, the town building commissioner or any adjacent or neighboring property owner may institute an injunction, mandamus, abatement or any appropriate actions to prevent or enjoin, abate or remove such unlawful erection, constructions, reconstruction, alteration, maintenance or use. (Act Apr. 10, 1939, c. 187, §7.) [366.16]

1108-70. May establish planning and zoning commission.—For the purpose of carrying out the provisions of this act, the board of supervisors of any such town where the majority of legal voters voting thereon have voted "Yes" at such election, may appoint a planning and zoning commission, all of whom shall be

freeholders; the number of such commissioners to be determined by the board. Such planning and zoning commission shall act as an adviser to such town board, and such commission may be empowered to employ a civil engineer or city planner as may be required for establishing the districts or zones of any parts of such towns. (Act Apr. 10, 1939, c. 187, §8.) [366.17]

1108-71. May not change existing buildings.—The zoning resolution as adopted by the board of supervisors of any such town or as subsequently amended shall not prohibit the continuance of the use of a building for any trade or industry for which such building was used at the time such resolution took effect or the alteration of or addition to any existing building or structure for the purpose of carrying on any prohibited trade or industry within the zone where such structures are located. (Act Apr. 10, 1939, c. 187, §9.) [366.18]

CHAPTER 9

Villages and Cities

1109. Villages and boroughs. [Repealed.]

Op. Atty. Gen. (396g-16), Apr. 1, 1942; note under §1201. Laws 1885, c. 145, has been repealed, but is still applicable to all villages which continue to operate under it. Op. Atty. Gen. (234b), May 27, 1941.

1110. Relinquishment of charter—Procedure—Reincorporation.—Any borough organized under special charter may relinquish the same, and thenceforth be governed as herein provided. The council or other governing body may propose such relinquishment by a resolution ordering a special election thereon, or ordering such proposition to be submitted at the annual borough election. Notice of such special election, and the conduct thereof, shall be as prescribed by law for other special borough elections. If submitted at the annual borough election, the notice of such election shall contain a notice of the submission of such proposition. The ballots used shall bear the printed words, "For reincorporation—Yes—No" with a square after each of the last two words, in one of which the voter may insert a cross to express his choice. If a majority of the votes cast upon such proposition be in the affirmative, said governing body shall declare the result by resolution, a certified copy of which shall be filed with the county auditor, and another with the secretary of state. Thereupon the former charter shall cease, and the applicable provisions of this chapter be substituted therefor. But until after the election next ensuing, as herein provided, the officers of such former organization shall continue in the discharge of their official duties, being governed therein, so far as practicable, by this chapter. (As amended Mar. 15, 1943, c. 117, §2.)

Laws 1943, c. 117, §4, provides that any proceedings or action in any village affected by this section shall be completed under the laws begun.

Laws 1943, c. 117, §5, repealing certain special laws, does not operate as dissolution of any village incorporated under such special laws.

Village of Madelia first incorporated under Special Laws 1873, c. 3 and reincorporated under Laws 1883, c. 73, which was held unconstitutional, and validated by Laws 1885, c. 231, and therefor then being governed by Laws 1885, c. 145, is now governed by provisions applicable to villages incorporated under revised Laws of 1905, in view of Laws 1943, c. 117. Op. Atty. Gen. (471I), June 1, 1943.

Villages may not hold primary elections. Op. Atty. Gen. (472t), Oct. 21, 1943.

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.)

Where 396 inhabitants of a 40 acre platted townsite, in expectation of future return of mining industry to locality, have incorporated into village 14 other forties containing deserted mineral lands unlikely to be developed for many years, and it is a certainty that unbenefited mineral lands will stand substantially all costs of municipal improvement, village has not complied with requirement that includable unplatted areas be "so conditioned as properly to be subjected to village government". State v. Village of Leetonia, 210M404, 298NW717. See Dun. Dig. 6527.

Basically, whether particular village incorporation measures up to statutory test is one of fact for people concerned and their judgment is not likely to be ignored, but when facts clearly demonstrate that civic pride of incorporators has exceeded all bounds of practicable reason, it is duty of court to interfere. Id.

It is a fundamental requirement that the territory incorporated into a village be so conditioned as to be subjected properly to municipal government, and when this question is presented it is for the court to speak, and the facts appearing, no presumptions are to be indulged in favor of propriety of incorporation. State v. Village of North Pole, 213M297, 6NW(2d)458, following State ex rel. Hilton v. So-called "Village of Minnewashta," 165 M369, 373, 206NW455. See Dun. Dig. 6526, 8072.

In quo warranto instituted by attorney general evidence held to sustain finding that purported organization and incorporation of a village was null and void because territory incorporated was not so conditioned as to be subjected properly to municipal government, a matter which court may determine in quo warranto. Id. See Dun. Dig. 6526.

In quo warranto instituted by attorney general to test corporate existence of a newly organized village, pro-

ceedings are governed by common law rules in the absence of any legislation or any controlling consideration to the contrary. *Id.* See Dun. Dig. 6526.

In quo warranto by attorney general to test corporate existence of a newly organized village under claim that area sought to be incorporated has no adaptability for village purposes and is not so conditioned as to be subject to village government, burden of proof rests upon respondent. *Id.* See Dun. Dig. 8072, (82, 83).

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.

Village of Madelia first incorporated under Special Laws 1873, c. 3 and reincorporated under Laws 1883, c. 73, which was held unconstitutional, and validated by Laws 1885, c. 231, and thereafter then being governed by Laws 1885, c. 145, is now governed by provisions applicable to villages incorporated under revised Laws of 1905, in view of Laws 1943, c. 117. *Op. Atty. Gen.* (471I), June 1, 1943.

Construction and application of Laws 1885, c. 145.

§1. Village of Madelia first incorporated under Special Laws 1873, c. 3 and reincorporated under Laws 1883, c. 73, which was held unconstitutional, and validated by Laws 1885, c. 231, and thereafter then being governed by Laws 1885, c. 145, is now governed by provisions applicable to villages incorporated under revised Laws of 1905, in view of Laws 1943, c. 117. *Op. Atty. Gen.* (471I), June 1, 1943.

Act is repealed so far as it is inconsistent with Laws 1943, c. 117, §1, which provides that all villages organized under general laws shall hereafter be governed by the 1905 village laws. *Op. Atty. Gen.* (472t), Oct. 21, 1943.

§5. Councilman holding liquor license is ineligible to vote on establishment of municipal liquor store. *Op. Atty. Gen.* (218G-13), Mar. 6, 1942.

§9. Certificates filed in office of register of deeds need not give all powers and duties of village. *Op. Atty. Gen.* (484E-4), Jan. 14, 1942.

§16. A primary election should be held in advance of village election in Nashauk. *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. 3, 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 participate 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.

President is a member of governing body and may vote on a resolution creating a police civil service commission. *Op. Atty. Gen.* (785e-1), Apr. 3, 1941.

Whether or not president of council may make or second a motion while occupying the chair is dependent upon provisions of rules of procedure which council has adopted for its own government, and in absence of any rules, proper procedure would be for him to temporarily vacate the chair and turn it over to a temporary chairman until after action on motion had been completed. *Op. Atty. Gen.* (471H), Oct. 20, 1941.

Recorder is a member of council and entitled to make motions and vote. *Op. Atty. Gen.* (470i), Dec. 12, 1941.

Where at annual election in village mayor was defeated and a councilman resigned, old council, including mayor, had power to meet and fill vacancy in office of councilman, but mayor was ineligible for appointment, even though appointment was not to become effective until after expiration of his term of office or after resignation as mayor. *Op. Atty. Gen.* (471H), Jan. 20, 1942.

There is no authority for an ordinance which would prohibit sale of land by metes and bounds, intended to force platting of land and sale by block and lot. *Op. Atty. Gen.* (18D), Feb. 28, 1942.

Village council has no power to regulate rates of power company whose franchise has expired, and right to charge license fee for use of street is doubtful, in absence of a contract. *Op. Atty. Gen.* (624A-5), Mar. 25, 1942.

Village may not invest sinking fund in certificates of village issued for special improvement. *Op. Atty. Gen.* (476a-9), Apr. 30, 1942.

It requires the concurrence of both the commission and council to transfer surplus funds out of water and light fund. *Op. Atty. Gen.* (624a-6), July 24, 1942.

§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.

Surplus utility earnings may be transferred to general fund. *Op. Atty. Gen.* (624A-6), Feb. 21, 1942.

Any village may exercise power of eminent domain for purpose of acquiring a site for a municipal liquor store building, and without a vote of electors unless bonds are to be issued. *Op. Atty. Gen.* (218r), Apr. 10, 1942.

While village owning diesel equipment, wheat cutters, tractors, graders, and the like, which it uses in municipal work, may be authorized to loan or rent it to private individuals, it would not be a good policy to do so. *Op. Atty. Gen.* (469a-9), May 18, 1942.

§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.

Any village assessor may be reimbursed for expenses incurred in attending school for assessors at the University. *Op. Atty. Gen.* (12b-1), Nov. 13, 1941.

Salary of village treasurer is discretionary with council. *Op. Atty. Gen.* (456f), Nov. 9, 1942.

§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(8). Nelson v. De Long, 213M425, 7NW(2d)342; note under subds. 26.

§21(10). A village ordinance declaring it to be unlawful to "build, erect or construct or cause to be built, erected or constructed any wooden or other combustible building" within certain designated fire limits, and further requiring anyone "desiring to build, erect or construct any building or desiring to repair any building already built" to obtain a permit therefor from the village council, but not making it unlawful to repair such buildings, was valid so far as it prohibited construction of building, but was ineffective and unenforceable so far as it required a permit for the "repair" of a building. *Julius v. Lenz*, 9NW(2d)255. See Dun. Dig. 6525.

Remodeling of a building held to constitute "repair" and not "construction". *Id.*

Title to fire truck, whatever funds are used for purchase, should be vested in village and not in relief association. *Op. Atty. Gen.* (688C-1), Aug. 22, 1941.

Village may expend money levied for fire department and premium tax and general funds for equipment and maintenance of fire department. *Id.*

It is legal to pay a salary or other form of compensation to chief of volunteer fire department. *Op. Atty. Gen.* (688j), Dec. 28, 1942.

§21(11). Nelson v. De Long, 213M425, 7NW(2d)342; note under subds. 26.

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.

Village may not pave streets in absence of special assessment against property specially benefited, though council is not required to find that property abutting improvement is benefited to full cost of improvement, but if it determines that amount of improvement is less than cost of improvement it may not assess more against abutting property than it determines special benefit to be, and where council finds that benefit to abutting property is less than cost of improvement, difference in

cost may be paid from general revenue fund or profits of municipally owned liquor store transferred to that fund. Op. Atty. Gen. (218R), Aug. 1, 1941.

Land within village limits becomes available for use as a public road or alley only after a dedication to the public for that purpose, and if an alley is to be established on division line of platted portion of village, usual proceedings must be taken. Op. Atty. Gen. (396G-1), Oct. 21, 1941.

Village may pave streets and pay therefor out of general fund. Op. Atty. Gen. (396g-10), May 23, 1942.

§21(12).

Ordinances aimed at preventing maintenance of dog pound in village, rather than running of dogs at large, were invalid. Op. Atty. Gen. (477b-7), Aug. 22, 1942.

§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(15).

Village council has power to license electrically operated nickel-in-the-slot phonographs. Op. Atty. Gen. (477B-23), Jan. 20, 1942.

§21(17).

Village may adopt an ordinance licensing sale of soft drinks for consumption on or off premises. Op. Atty. Gen. (477B-24), Aug. 20, 1941.

§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.

Village may build, own and operate a hospital, to be paid for out of general fund, and may issue bonds, and county may assist. Op. Atty. Gen. (1001h), Jan. 14, 1943.

§21(25).

Village council may not enter into contract for a period of ten years for purchase of electric energy for street lighting purposes when there is not sufficient moneys in treasury or in process of collection from taxes which have been previously levied to meet liability incurred by contract and payable during ten year period. Op. Atty. Gen. (396c-7), Apr. 1, 1941.

Village may extend power lines outside limits to serve municipally owned airport. Op. Atty. Gen. (624c-12), Dec. 15, 1941.

§21(26).

Village may establish and maintain a public dock on park property adjacent to a navigable lake, require all watercraft using waters adjacent to park to use public dock to exclusion of other shore lands of the park, notwithstanding fact that owners of such watercraft may have riparian rights in such shore lands, to charge a fee for a permit to use a space on dock, and set apart for bathing purposes a part of such waters to exclusion of all other uses of which waters are susceptible. Nelson v. De Long, 213M425, 7NW(2d)342. See Dun. Dig. 6950.

§21(28).

Nelson v. De Long, 213M425, 7NW(2d)342; note under subds. 26.

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.

In issuing certificates of indebtedness for fire equipment, village is governed by 10 per cent limitation of general public indebtedness statute and not 5 per cent limit herein. Op. Atty. Gen. (476a-4), Nov. 19, 1941.

§23.

Village condemning property for a municipal airport should proceed under this and following sections. Op. Atty. Gen. (234b), May 27, 1941.

A village operating under 1885 laws can acquire a right-of-way for a new street as provided by that law, or by exercise of power of eminent domain under general statutes. Op. Atty. Gen. (396g), Aug. 7, 1942.

§20.

It is suggested that vacation proceedings should comply with Mason's St., §1201, as well as this section. Op. Atty. Gen. (396g-16), Apr. 1, 1942.

Partial vacation of a street is probably permissible. Id. In determining whether to grant or deny a petition for vacation, village council should be governed solely by considerations of public welfare, officially having no concern with effect of proceedings on interest of private individuals. Id.

Statute providing for vacation proceedings in district court is applicable to plats and streets in villages operating under the 1885 law. Id.

§30.

As to gutters and curbs, village may also proceed either under §1815 or §§1918-15, etc., and in constructing sidewalks village may also proceed under §§1918-35, etc. Op. Atty. Gen., July 30, 1941.

Several streets may be improved in one proceeding. Id.

Village may not pave streets in absence of special assessment against property specially benefited, though council is not required to find that property abutting improvement is benefited to full cost of improvement, but if it determines that amount of improvement is less than cost of improvement it may not assess more against abutting property than it determines special benefit to be, and where council finds that benefit to abutting property is less than cost of improvement, difference in cost may be paid from general revenue fund or profits of municipally owned liquor store transferred to that fund. Op. Atty. Gen. (218R), Aug. 1, 1941.

Procedure for levying of special assessments for sidewalk repairs in Village of Heron Lake. Op. Atty. Gen. (480A), Jan. 23, 1942.

§38.

Fines for violation of village ordinance should be paid by justice to village treasurer. Op. Atty. Gen. (199b-4), July 20, 1943.

§41.

Special police officers appointed by judges of election are to receive \$.20 per hour of service rendered by direction of judges, and regular peace officer who attends to keep quiet and order at a polling place during a general election should be paid such compensation as may be fixed by village council, and this applies to village constables as special services, including 1885 villages, and compensation of township constables attending at an election should be fixed by town board, and there is no requirement that compensation allowed peace officers at elections shall be uniform throughout county. Op. Atty. Gen. (185a-5), Dec. 14, 1942.

§42.

A member who has resigned and his resignation has been accepted has no vote on question of who shall be his successor. Op. Atty. Gen. (471m), Jan. 9, 1943.

§44.

There does not appear to be any provision requiring publication of all council proceedings. Op. Atty. Gen. (277B-4), Oct. 13, 1941.

Ordinances and proceedings of council may be published jointly. Id.

§46.

When village has fixed recorder's salary it is without authority to increase or diminish that salary for balance of year, but at beginning of year following council may fix salary for balance of his term, and may then increase or diminish compensation being received by him. Op. Atty. Gen. (470b), May 12, 1942.

§40.

Ordinances and proceedings of council may be published jointly. Op. Atty. Gen. (277B-4), Oct. 13, 1941.

§50.

Ordinance is not void because of failure to include in title words "and repealing ordinances inconsistent therewith" or the words "and providing penalties for the violation thereof." Op. Atty. Gen. (218g-13), Apr. 7, 1942.

Provision that "all ordinances shall be suitably entitled" has same meaning as constitutional provision does as to state laws. Id.

§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.

Village may purchase a fire truck without advertising for bids. Op. Atty. Gen. (688C-1), Aug. 22, 1941.

Village may enter into a supervisory agreement for engineering and supervision on a flat fee basis for installation of a municipal power and light plant without first advertising for bids. Op. Atty. Gen. (707A-15), Feb. 11, 1942.

Purchase of a fire truck does not constitute a "village improvement". Op. Atty. Gen. (688C-1), Mar. 26, 1942.

Leasing of a building for a liquor store is not an "improvement," and an advertisement for bids is not required. Op. Atty. Gen. (218g-13), Apr. 7, 1942.

§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.

1117-10 to 1117-24.

Repealed in part. See Laws 1943, c. 526.

1120. Extending boundaries.

Mortgagor and not mortgagee is "owner", and vendee and not vendor in contract for deed is "owner", who may petition. Op. Atty. Gen. (484e-1), Apr. 29, 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.

It is not necessary that unplatted lands be located more than twenty rods from platted portion of village before petition for detachment may be filed. Op. Atty. Gen. (484E-2), Sept. 4, 1941.

Section applies to a village such as St. Vincent which was granted a charter under a special act of the legislature, fixing its boundaries. Op. Atty. Gen. (484-e-2), June 10, 1942.

A village with a population of more than 350 and less than 700 and containing more than 320 acres of land may detach land, though there will only be 216 left within the village. Op. Atty. Gen. (469a-3), May 10, 1943.

1121. Detaching unplatted lands from villages.

Gun Club owning lots in platted part of incorporated village, in order to remove lots from village to avoid heavy taxes, should have plat vacated insofar as it covers land in question, and then apply for detachment upon petition and special election of voters. Op. Atty. Gen. (484E-2), Mar. 9, 1942.

1126. Separate election and assessment district.

Provision in home rule charter retaining unseparated status of village from township for election and assessment purposes would be valid. Op. Atty. Gen. (580), Aug. 14, 1941.

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 en-

titled 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.

This section was superseded by Mason's St. §601-11(2)f. Op. Atty. Gen. (471h), Apr. 8, 1941.

Compensation of a village assessor in a village organized under the 1905 Act is governed by §1089 and compensation of town assessors governs. Op. Atty. Gen. (12b-1), July 16, 1941.

Village constable appointed to fill vacancy created by failure of person elected holds office for full term and not merely for remainder of year. Op. Atty. Gen. (847a-3), Nov. 25, 1941.

Where a quorum of council is present it is not necessary that a majority of those present should vote in affirmative in order for a proposition to carry, and refusal of members present to vote will not defeat acts of majority of those actually voting. Op. Atty. Gen. (471E), Feb. 7, 1942.

Council may fix recorder's salary at beginning of his term, but this does not mean before his term begins, and his salary for his full two-year term is to be fixed at first meeting at beginning of term. Op. Atty. Gen. (470B), Feb. 24, 1942.

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 Brownville 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.

Clerk in village of Sauk Rapids is to be elected and not appointed. Op. Atty. Gen. (470E), Sept. 10, 1941.

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 popula-

tion 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.

Laws 1941, c. 243, amending this section, changes salary schedule of village officers already in office as well as future officials. Op. Atty. Gen. (469a-1), July 18, 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.

Officers are entitled to full statutory compensation for the years 1939 and 1940 although they paid themselves and accepted less. Op. Atty. Gen. (471k), Dec. 15, 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.

Special election for purpose of voting on sale of stub lines constituting part of water and light plant of village. Op. Atty. Gen. (624C-10), Jan. 10, 1942.

1173. Assessor—Town taxes; etc.

Any village assessor may be reimbursed for expenses incurred in attending school for assessors at the university. Op. Atty. Gen. (12b-1), Nov. 13, 1941.

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.

There is no discrepancy between Laws 1941, c. 70, §1, Subd. 23, and Laws 1941, c. 244, and only change made is to change date for preparation and publication of annual financial statement in villages from November to January. Op. Atty. Gen. (469a-5), June 4, 1941.

A member of village council who is owner and publisher of a newspaper cannot do the village printing or sell supplies to it, but may publish matter which statute requires a village to publish in a newspaper printed and published in the village, his paper being the only one in the village. Op. Atty. Gen. Jan. 21, 1943, Jan. 25, 1943.

1177. Clerk—Bond—Deputy.—The clerk shall give bond to the village, conditioned for the faithful discharge of his official duties, in such sum as the council shall approve. With the consent and approved by resolution of the council, he may appoint a deputy, for whose acts he shall be responsible, and whom he may remove at pleasure. Such deputy may discharge any and all of the duties of the clerk, except that he shall not be a member of the council. The village council shall fix the salary of such deputy clerk and he shall be paid by the village. Such appointment of deputy shall be permissible in all villages of this state, however organized. (As amended Act Feb. 25, 1943, c. 71, §1.)

1177-1. Deputy Treasurer in villages.—The treasurer of any village may appoint a deputy treasurer who shall serve as treasurer during the treasurer's disability or absence from the village. The deputy treasurer shall receive such compensation and shall furnish such bond as the council determines. The premium on his bond may be paid from the general fund of the village. (Act Mar. 2, 1943, c. 93.) [418.025]

1178. Same—Duties—Compensation.

Council may fix recorder's salary at beginning of his term, but this does not mean before his term begins, and his salary for his full two-year term is to be fixed at first meeting at beginning of term. Op. Atty. Gen. (470B), Feb. 24, 1942.

Section has no application to villages operating under 1885 law. Op. Atty. Gen. (470b), May 12, 1942.

1179. Constables—Duties—Compensation.

Authority of village constable to serve civil or criminal process outside village is doubtful. Op. Atty. Gen. (347a-8), Dec. 12, 1941; Dec. 18, 1941.

Special police officers appointed by judges of election are to receive \$.20 per hour of service rendered by direction of judges, and regular peace officer who attends to keep quiet and order at a polling place during a general election should be paid such compensation as may be fixed by village council, and this applies to village constables as special services, including 1885 villages, and compensation of township constables attending at an election should be fixed by town board, and there is no requirement that compensation allowed peace officers at elections shall be uniform throughout county. Op. Atty. Gen. (185a-5), Dec. 14, 1942.

Constable may not charge fees when making arrest in private capacity. Op. Atty. Gen. (347a-4), Oct. 8, 1943.

Where person is convicted of violating a city ordinance and commitment to county jail is executed by a village officer, county is not liable for transporting prisoner to jail. Op. Atty. Gen. (91b), Oct. 19, 1943.

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.

1182-1. Contingent fund for suppression of crime; etc.

Appropriation should be set up in a village fund to be known as the "Village President's Contingent Fund," and should not be delivered to the president. Op. Atty. Gen. (476a-7), May 14, 1942.

Since president of council does not have custody of fund, he cannot be required to account for purposes for which it is expended. Id.

Court might not sustain an expenditure for civilian defense purposes. Op. Atty. Gen. (835), June 15, 1942.

1182-3. Same—Payments.

Auditing of claims against contingent funds is largely confined to determining that money has been actually spent, and if claim is properly verified, and the purpose is not something farcical, it is allowed. Op. Atty. Gen. (476a-7), May 14, 1942.

A verified claim for any expenditure from the contingent fund must be allowed by council before it can be paid. Id.

1184. Appeals.

On appeal from conviction under municipal ordinance of village of Golden Valley, clerk of district court may not accept a cash deposit in lieu of a bond but may accept a bond signed by appellant himself with a cash deposit as security, and failure of appellant to file a bond and to deposit two dollars with the clerk is fatal to jurisdiction. Op. Atty. Gen. (266b-1), June 30, 1943.

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 encumbering 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 owners 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.)

Laws 1921, c. 417. See Laws 1943, c. 526.

Laws 1943, c. 223, provides that village council may obligate owners of property to which garbage collection service has been rendered to pay their proportionate share of cost of such collection. §1828-57a, Mason's 1943 Supplement.

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).

Before an ordinance takes effect, including an ordinance granting a franchise to a power company, it may be revoked or repealed by village council either by motion, resolution, or ordinance. Union Public Service Co. v. Village of Minnesota, 212M92, 2NW(2d)555. See Dun. Dig. 6790.

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.

A local government having equipment not needed for its purposes and sufficient space not necessary for transaction of municipal business may grant permission to use same temporarily for civilian defense purposes, but there is no authority for expenditure of funds by local government for general civilian defense purposes. Op. Atty. Gen. (835), Jan. 26, 1942.

Where a quorum of council is present it is not necessary that a majority of those present should vote in affirmative in order for a proposition to carry, and refusal of members present to vote will not defeat acts of majority of those actually voting. Op. Atty. Gen. (471E), Feb. 7, 1942.

General municipal funds may be appropriated by council to any municipal object, but special funds established for a specific purpose, may not, without express authority, be permanently transferred to some other fund to be used for another and different purpose. Op. Atty. Gen. (476A-15), Mar. 20, 1942.

Village may employ someone to collect garbage and salvage materials and pay salary out of general village fund, garbage to be disposed of at some public dumping ground, and salvage materials being sold and proceeds

placed in general revenue fund. Op. Atty. Gen. (469B), Mar. 20, 1942.

Power of a village to fix closing hours of gasoline stations for purpose of conservation of gasoline and oil is questionable. Op. Atty. Gen. (477b-5), June 3, 1942.

Village cannot adopt by reference the milk ordinance and code recommended by the United State Public Health Service, nor can it do this indirectly by having a village board of health adopt the code as a regulation. Op. Atty. Gen. (292e), May 4, 1943.

A donation to the U.S.O. is not permitted. Op. Atty. Gen. (476b-2), Oct. 21, 1943.

Any village assessor may be reimbursed for expenses incurred in attending school for assessors at the University. Op. Atty. Gen. (12b-1), Nov. 13, 1941.

(2).

Village board or council may not enter into a contract with a labor union, though it may permit union to appear and speak as representative of employees who are members of it. Op. Atty. Gen. (270d-12), June 12, 1943.

(4).

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).

Compensation of village attorney and additional compensation for extraordinary services are a matter of contract. Op. Atty. Gen. (469b-1), May 12, 1942.

Right of adjoining villages to maintain a joint policing service is doubtful, because of residential requirement. Op. Atty. Gen. (785-s), June 9, 1942.

(6).

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., (463a-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).

Where a real estate corporation owned a platted area in which it installed water and sewer facilities at its own expense for purpose of making lots saleable, including cost of installation in purchase price of lots, and formed a service corporation as a convenient legal means by which it could conduct part of its business in connection with such system, no contract, express or implied, or quasi contract, arose from fact that village granted such service corporation a franchise with the "right and privilege to install, maintain and operate" the water and sewer systems and the "right" to erect and maintain fire hydrants approved by said Village Council, on which village could be held liable for services rendered the community in connection with the systems, though franchise contained a provision that "said hydrants may also be used by the village for fire protection purposes upon such terms as may be mutually agreed upon". Country Club District Service Co. v. Village of Edina, 214M26, 8NW(2d)321. See Dun. Dig. 6670.

Whether original cost or the reproduction cost of water and sewer systems, ordinarily used in proceedings to fix utility rates, have any application where the basis for recovery is implied or quasi contract, query. Id. See Dun. Dig. 2182, 6681.

If remodeling work substantially changes the building or enlarges it or greatly enhances its value, it is said to be a "rebuilding" rather than a "repair", or if a building is so changed in plan, structure, or general appearance that it might, according to common understanding, in common parlance, be called "a new building", then the work is properly called "building" or "rebuilding" and not "repair" within meaning of a municipal ordinance. Julius v. Lenz, 215M106, 9NW(2d)255. See Dun. Dig. 6525.

A village ordinance declaring it to be unlawful to "build, erect or construct or cause to be built, erected or constructed any wooden or other combustible building" within certain designated fire limits, and further requiring anyone "desiring to build, erect or construct any building or desiring to repair any building already built" to obtain a permit therefor from the village council, but not making it unlawful to repair such buildings, was valid so far as it prohibited construction of building, but was ineffective and unenforceable so far as it required a permit for the "repair" of a building. Id. See Dun. Dig. 6525.

Remodeling of a building held to constitute "repair" and not "construction". Id.

A village may pass an ordinance regulating storage of gun powder and other explosives, but every person selling or buying dynamite or any explosive must have a federal license. Op. Atty. Gen. (201a-4), May 6, 1943.

Extension of water mains and assessment of cost were laid on village boundary streets. Op. Atty. Gen. (624d-10), June 10, 1943.

Village may purchase fire extinguishing apparatus out of funds on hand, but warrants generally may be issued only against funds on hand or in anticipation of collection of taxes which have been levied and which will be available for purpose for which warrants were issued, and a village in no event can incur obligations in excess of maximum levy which may be made. Op. Atty. Gen. (688c-1), Apr. 18, 1941.

Village is not liable for negligent act of volunteer fire department nor in failing to have fire hydrant in proper working condition, and cannot gratuitously compensate owner of building for loss resulting from such negligence. Op. Atty. Gen. (844B-4), Jan. 19, 1942.

(9).

An owner of a platted area which installs improvements such as water and sewer systems at its own expense and includes part of the expense of the improvements in purchase price of lots, has a right to use the systems without charge in exercise of its franchises from village, but in claiming compensation for services rendered the community in connection with storm sewer system and fire hydrant and fire protection, it cannot claim right to a return on the basis that it is the full and exclusive owner of the systems, since what the lot owners have paid for cannot be included. Country Club District Service Co. v. Village of Edina, 214M26, 8NW (2d)321. See Dun. Dig. 6657.

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.

Village may pave streets and pay therefor out of general fund. Op. Atty. Gen. (396g-10), May 23, 1942.

Vacation of a county highway by a county board within a village, council merely consenting thereto, does not have effect of vacating the highway as a village street, if it is such as well as a county road. Op. Atty. Gen. (377a-15), June 16, 1942.

Subsection does not apply to villages incorporated under the 1835 law. Op. Atty. Gen. (396g), Aug. 7, 1942.

Individuals installing tile drainage system on own land and upon village road and sealing culvert under highway may be required to remove the tile and sealing from road. Op. Atty. Gen. (148a), Oct. 15, 1942.

(11).

Village may enact ordinance requiring licensing of dogs and prescribing penalties for violation thereof. Op. Atty. Gen. (477b-7), May 19, 1941.

(15).

An ordinance providing for the licensing of an amusement device, for the operation of which a charge is made, or any merchandising machine whose operation depends in whole or in part upon the skill of the operator, does not on its face violate the gambling laws. Op. Atty. Gen. (733j), July 16, 1941.

(16).

Council may appropriate money to repair and bind books donated to village library. Op. Atty. Gen. (285a), June 12, 1941.

(20).

Where a corporation engaged in the real estate business, as owner of a platted area, installed improvements such as water and sewer systems at own expense and sold lots with the understanding that no assessments therefor would be imposed because purchase price included payment of improvements, and organized another corporation as a service company to maintain and operate water and sewer services, with only three shares of stock and no property or officers or employees, such service corporation was as much bound by legal consequences of the facts relating to the sale of lots as was the real estate corporation, and fact that an individual subsequently became the owner and holder of the stock in such service corporation did not alter the result, and he could not contend that corporation had full and exclusive ownership of such system as against the community or grantor of franchise, a village. Country Club District Service Co. v. Village of Edina, 214M26, 8NW (2d)321. See Dun. Dig. 6657.

An owner of a platted area which installs improvements such as water and sewer systems at its own expense and includes part of the expense of the improvements in purchase price of lots, has a right to use the systems without charge in exercise of its franchises from village, but in claiming compensation for services rendered the community in connection with storm sewer system and fire hydrant and fire protection, it cannot claim right to a return on the basis that it is the full and exclusive owner of the systems, since what the lot owners have paid for cannot be included. Id. See Dun. Dig. 6681.

A village amending its franchise to a service corporation operating sewer and water facilities at the insistence of one about to make a loan to the service corporation for improvement and extension of systems, so as to show that any title which village might acquire to be property under the provisions of the franchise would be subject to

the mortgage, was barred by laches and estoppel from questioning the legality of the mortgage. Id. See Dun. Dig. 6670.

Whether original cost or the reproduction cost of water and sewer systems, ordinarily used in proceedings to fix utility rates, have any application where the basis for recovery is implied or quasi contract, query. Id. See Dun. Dig. 2182, 6681.

Village council may set up different rate for water to apply to different groups of users of water, so long as it does not act arbitrarily. Op. Atty. Gen. (624c-11), May 8, 1942.

(21).

Right of village to compel public utility service in absence of franchise. Op. Atty. Gen. (624C), Jan. 14, 1942.

Village council has no power to regulate rates of power company whose franchise has expired, and right to charge license fee for use of street is doubtful, in absence of a contract. Op. Atty. Gen. (624A-5), Mar. 25, 1942.

(23).

Any funds, not presently needed, may be invested during the war, including investment in War Savings Bonds. Laws 1943, c. 193.

Under Laws 1885, c. 145, §21, subs. 8th, 11th, 26th, and 28th, granting to villages governed thereby power to control and protect village property, to establish and improve public parks, to establish harbor and dock limits, regulate the location, construction and use of all piers, docks, wharves, and boathouses on any navigable waters, and fix rates of wharfage, and to establish police regulations for good order of village, a village was authorized to establish and maintain a public dock on park property adjacent to a navigable lake, to require all watercraft using waters adjacent to park to use public dock to exclusion of other shore lands of the park, notwithstanding fact that owners of such watercraft may have riparian rights in such shore lands, to charge a fee for a permit to use a space on dock, and to set apart for bathing purposes a part of such waters to the exclusion of all other uses of which waters are susceptible. Nelson v. De Long, 213M425, 7NW(2d)342. See Dun. Dig. 6689.

State may delegate to a village as a governmental agency its powers to regulate navigable waters within corporate area thereof. Nelson v. De Long, 213M425, 7NW (2d)342. See Dun. Dig. 6675.

There is no discrepancy between Laws 1941, c. 70, §1, Subd. 23, and Laws 1941, c. 244, and only change made is to change date for preparation and publication of annual financial statement in villages from November to January. Op. Atty. Gen. (469a-5), June 4, 1941.

Village may establish a sinking fund to pay outstanding bonds when due and levy a tax therefor within statutory tax limits. Op. Atty. Gen. (519q), June 10, 1941.

Village has no authority to invest moneys belonging to general fund in defense bonds, but may invest moneys in sinking fund. Op. Atty. Gen. (551), Sept. 17, 1942.

Towns are not authorized to contribute out of public funds expenses of rationing. Op. Atty. Gen. (835), Dec. 22, 1942. This seems to have been changed by Laws 1943, c. 168.

Village may build, own and operate a hospital, to be paid for out of general fund, and may issue bonds, and county may assist. Op. Atty. Gen. (1001h), Jan. 14, 1943.

(24).

Village may enact ordinance regulating installation of plumbing though it has no system of water works or sewerage. Op. Atty. Gen. (477b-22), May 8, 1941.

It is doubtful that an ordinance requiring lodging houses and restaurants to close at midnight would be valid. Op. Atty. Gen. (477b-5), July 15, 1942.

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.—Regular meetings of the council shall be held at such times as may be prescribed by the by-laws. Special meetings may be called by two members by writing filed with the clerk, who shall notify the members of the time and place thereof in the manner prescribed by the by-laws. The president shall preside, except that a president pro tempore shall be chosen from the trustees who shall preside in the absence of the president and who shall perform the duties of president during the president's disability or absence from the village. All meetings shall be open to the public. The council may preserve order at its meetings, compel the attendance of members, and punish non-attendance, and shall be the judge of the election and qualification of its members. (As amended Act Mar. 3, 1943, c. 99, §1.)

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. (471h), Dec. 20, 1939.

This section is the only statute authorizing council to compel attendance of members and punish non-attendance, and no civil action may be brought to "reprimand" a member, but there is no reason why council may not "reprimand" a member. Op. Atty. Gen. (471E), Jan. 21, 1942.

If office of president of a village council becomes vacant because of his absence abroad, council may not appoint one of its members as president. Op. Atty. Gen. (471h), Feb. 9, 1943. This has been changed by Laws 1943, c. 99. Op. Atty. Gen. (471h), Mar. 5, 1943.

In absence of or on disability of president of council, a president pro tem should be appointed. Op. Atty. Gen. (471h), Mar. 31, 1943.

When village President leaves for military service, council may appoint President pro tem, when public necessity does not require acting substitute. Op. Atty. Gen. (471h), Aug. 3, 1943.

1196. Ordinances, how enacted.

Act of village council in form of an ordinance both as to title and contents, granting a power company authority to use streets, must be published as an ordinance. Union Public Service Co. v. Village of Minneota, 212M92, 2NW(2d)555. See Dun, Dig. 6618.

1197. Publication—Effect.

A power company with legal advice on start of negotiations could not claim that ordinance granting franchise was in effect though not signed by village president or attested by recorder or published, under doctrine of equitable estoppel, since it must have known that ordinance must be signed, attested and published. Union Public Service Co. v. Village of Minneota, 212M92, 2NW(2d)555. See Dun, Dig. 6788, 6789.

Before an ordinance takes effect, including an ordinance granting a franchise to a power company, it may be revoked or repealed by village council either by motion, resolution, or ordinance. Id. See Dun, Dig. 6790.

Publication of proceedings is permissive, not mandatory. Op. Atty. Gen. (277B-4), Oct. 13, 1941.

1197-2. Same—What are included in village proceedings.

Union Public Service Co. v. Village of Minneota, 212M92, 2NW(2d)555; note under §1196.

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

After the passage of twenty years a village cannot claim invalidity of a franchise to a service corporation operating water and sewer facilities because it was granted without public bidding. Country Club District Service Co. v. Village of Edina, 214M26, 8NW(2d)321. See Dun, Dig. 6699, 6707, 6710, 6719.

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. 13, 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.

Water and light commission need not advertise for bids on purchases. Op. Atty. Gen. (707a-15), Apr. 2, 1941, reversing Mar. 14, 1941, and modifying Apr. 24, 1939.

A diesel engine for improvement of utility plant may be purchased without advertising for bids. Op. Atty. Gen. (707a-4), Apr. 25, 1941.

In order to award a contract for purchase of pumping equipment and digging of a well without advertising, there must be an emergency which will satisfy court. Op. Atty. Gen. (707a-8), June 11, 1941.

Village may purchase abandoned school house for use as a village hall without advertising for bids. Op. Atty. Gen. (707a-15), June 11, 1941.

Member of village council may obtain a license for sale of 3.2 liquors, but probably should not vote upon his own application. Op. Atty. Gen. (217B-7), Aug. 6, 1941.

Section has no application to villages incorporated under 1885 acts. Op. Atty. Gen. (688C-1), Aug. 22, 1941.

Village may not lease premises from a tenant of a councilman. Op. Atty. Gen. (90A-1), Sept. 13, 1941.

Village may not enter into contract to snowplow streets with a partnership of which a council member is affiliated. Op. Atty. Gen. (90A-1), Feb. 17, 1942.

City justice of the peace of Robbinsdale may not lawfully write insurance for the city. Op. Atty. Gen. (90E-3), Feb. 19, 1942.

Councilman holding liquor license is ineligible to vote on establishment of municipal liquor store. Op. Atty. Gen. (218G-13), Mar. 6, 1942.

Whether an emergency exists permitting award of contract without advertising is a question of fact for determination of administrative officers in the first instance. Op. Atty. Gen., (707a-8), May 18, 1942.

It is not necessary to advertise for bids in order to purchase a particular piece of real estate. Op. Atty. Gen. (707a-15), Sept. 9, 1942.

A member of village council who is owner and publisher of a newspaper cannot do the village printing or sell supplies to it, but may publish matter which statute requires a village to publish in a newspaper printed and published in the village, his paper being the only one in the village. Op. Atty. Gen. Jan. 21, 1943, Jan. 25, 1943.

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.

Village has no authority to expend public funds in maintenance of private driveway. Op. Atty. Gen. (377b-7), May 29, 1941.

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.

In determining whether to grant or deny a petition for vacation, village council should be governed solely by considerations of public welfare, officially having no concern with effect of proceedings on interest of private individuals. Op. Atty. Gen. (396g-16), Apr. 1, 1942.

It is suggested that this section be complied with in vacation proceedings in villages operating under Laws 1885, Ch. 145, as well as §29 of that act. Id.

Partial vacation of a street in a village operating under Laws 1885, Ch. 145, is probably permissible. Id.

Statute providing for vacation proceedings in district court is applicable to plats and streets in villages operating under the 1885 law. Id.

Neither village nor council may be held liable for damages to petitioning property owners or anyone else either for granting or denying a petition for a street vacation, being exercise of a governmental power. Op. Atty. Gen. (396g-16), Apr. 7, 1942.

Decision upon a petition for vacation of a street involves the exercise of discretion. Id.

Chance that any court would assume to reverse decision of a council denying a petition to vacate a street is very remote, action of council being essentially legislative in character. Id. See Dun, Dig. 5753, 6623b.

Vacation of a county highway by a county board within a village, council merely consenting thereto, does not have effect of vacating the highway as a village street, if it is such as well as a county road. Op. Atty. Gen. (377a-15), June 16, 1942.

1203. Benefit assessments—Cost of land, etc.

Section applies only to villages incorporated under the Revised Laws of 1905. Op. Atty. Gen. (396g), Aug. 7, 1942.

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.

A petition is required for building curb and gutter and assessing cost on abutting landowners. Op. Atty. Gen. (396g-7), Sept. 9, 1942.

A village may construct a sewer before benefits have been assessed against abutting owners. Op. Atty. Gen. (387g-1), May 11, 1943.

Though usual legal proceedings designating a town road were not observed, road could be established by user

to the extent that village through which it extended could expend funds in the maintenance. Op. Atty. Gen. (379a-2), Oct. 6, 1943.

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.) [441.253]

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

Village of assessed valuation of less than \$500,000 can levy a tax of 2 per cent. for general revenue, 1 per cent. for street and bridge taxes, and sufficient to care for bonds outstanding, but cannot levy a tax for light in addition to 2 per cent. levy for general revenue. Op. Atty. Gen. (519q), Nov. 26, 1941; Dec. 8, 1941.

1222. Claims—How audited and paid—Interest.—No money demand against such village shall be paid until audited and allowed by the council, nor otherwise than an order drawn upon the treasurer therefor. Such demand shall be made out in items, and be verified by an attached affidavit that the claim is just and correct and that no part of it has been paid. The clerk shall indorse thereon the word "Disallowed," if such be the fact, or "Allowed in the sum of \$—————" if approved in whole or in part; specifying in the latter case the items rejected. Such accounts and affidavits shall be filed by the clerk, and consecutively numbered throughout the year. Each claim allowed shall also bear the number of the order drawn for its payment, and the clerk shall take and preserve a receipt for each order issued. Orders presented to the treasurer and not paid for want of funds, shall be so marked, and paid in the order of their presentation, and shall bear interest at the rate of not to exceed five per cent from the date of such presentation. (As amended Act Apr. 20, 1943, c. 512, §1.)

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.

Orders which were issued and presented prior to April 21, will bear interest at the rate of 6% and orders presented on or after that date will bear at not to exceed 5%, but village council should adopt a resolution or ordinance declaring the rate of interest that its orders will bear after presentation. Op. Atty. Gen. (476c-3), June 2, 1943.

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.

1224. Financial report.

A member of village council who is owner and publisher of a newspaper cannot do the village printing or

sell supplies to it, but may publish matter which statute requires a village to publish in a newspaper printed and published in the village, his paper being the only one in the village. Op. Atty. Gen. Jan. 21, 1943, Jan. 25, 1943.

1225. Tax levy.

Laws 1943, c. 122, provides that in "any village now or hereafter having a population of not less than 4,800 nor more than 5,000 according to the 1940 Federal census and an assessed valuation of not more than \$1,100,000, exclusive of moneys and credits, may levy annually for general corporation purposes an amount not exceeding 25 mills on such assessed valuation".

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. (519q), March 21, 1940.

Village of assessed valuation of less than \$500,000 can levy a tax of 2 per cent. for general revenue, 1 per cent. for street and bridge taxes, and sufficient to care for bonds outstanding, but cannot levy a tax for light in addition to 2 per cent. levy for general revenue. Op. Atty. Gen. (519q), Nov. 26, 1941; Dec. 8, 1941.

1225-12½ to 1225-12½ m.

An act relating to the financial affairs of certain cities, villages, towns and school districts more than 50 per cent of the assessed valuation of which consists of iron ore, prescribing penalties for violation of its provisions, and repealing in part Laws 1929, c. 303; Laws 1931, c. 342; Laws 1933, c. 210; Laws 1933, c. 275; Laws 1933, c. 415; Laws 1935, c. 261. (Laws 1943, c. 526, §§1 to 11.)

1225-24½ to 1225-24½ n.

An act relating to the financial affairs of certain cities, villages, towns and school districts more than 50 per cent of the assessed valuation of which consists of iron ore, prescribing penalties for violation of its provisions, and repealing in part Laws 1929, c. 303; Laws 1931, c. 342; Laws 1933, c. 210; Laws 1933, c. 275; Laws 1933, c. 415; Laws 1935, c. 261. (Laws 1943, c. 526, §§1 to 11.)

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.

1225-37 to 1225-48.

An act relating to the financial affairs of certain cities, villages, towns and school districts more than 50 per cent of the assessed valuation of which consists of iron ore, prescribing penalties for violation of its provisions, and repealing in part Laws 1929, c. 303; Laws 1931, c. 342; Laws 1933, c. 210; Laws 1933, c. 275; Laws 1933, c. 415; Laws 1935, c. 261. (Laws 1943, c. 526, §§1 to 11.)

1225-49 to 1225-54.

Repealed in part. See Laws 1943, c. 526; note under 1225-55.

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.)

An act relating to the financial affairs of certain cities, villages, towns and school districts more than 50 per cent of the assessed valuation of which consists of iron ore, prescribing penalties for violation of its provisions, and repealing in part Laws 1929, c. 303; Laws 1931, c. 342; Laws 1933, c. 210; Laws 1933, c. 275; Laws 1933, c. 415; Laws 1935, c. 261. (Laws 1943, c. 526, §§1 to 11.)

1225-56 to 1225-62.

Repealed in part. See Laws 1943, c. 526; note under 1225-55.

1225-71. Application of act.—Mason's Supplement 1940, Sections 1225-71 to 1225-87, as amended, shall apply to any village having an assessed valuation in excess of \$500,000 and less than \$1,000,000, exclusive of moneys and credits, more than 70 per cent of which valuation consists of iron ore, a population of more than 1,000 and less than 2,000, and an outstanding unfunded indebtedness in excess of 20 per cent of its assessed valuation. It shall apply, to the extent of the tax levies and payments provided for herein, to any town which embraces within its limits all the territory of any such village, and from which such village has not been separated for election or assessment purposes; provided that more than 50 per cent of the total population of such town is contained in such village. Where the words "village" or "town" are hereinafter used, they shall be understood as applying only to villages or towns to which Mason's Supplement 1940, Sections 1225-71 to 1225-87, as amended, applies, as hereinbefore provided. (As amended Act Apr. 10, 1943, c. 391, §1.)

1225-72. Outstanding warrants segregated for payment under this act.—All outstanding warrants or other indebtedness of any such village as of December 31, 1935, shall be segregated to be paid only by levies and contributions from the village and town as hereinafter provided. There shall be a special fund created by the village treasurer called the "village indebtedness fund," from which such warrants and indebtedness shall be paid. (As amended Act Apr. 10, 1943, c. 391, §2.)

1225-73. Part of taxes segregated for payment into fund—Tax levy—Limitations—Other payments into fund.—Of the annual levy of such village for general purposes 9 mills (or so much thereof as, after allowance for probable tax delinquencies, will produce \$6,000) shall be segregated and levied for and paid into such village indebtedness fund; of the annual tax levy of any such town 2 mills (or so much thereof as, after allowance for probable tax delinquencies, will produce \$15,000) shall be levied for and paid into such village indebtedness fund. All such levies shall be within the existing per capita or mill limitations upon levies of such village or town. In addition to the levies above provided, any such village may levy in excess of existing mill limitations 14 mills (or so much thereof as, after allowance for probable tax delinquencies, will produce \$9,000) upon all the taxable property of the village, which amount shall be paid into such village indebtedness fund. In addition thereto, there shall be set aside and paid into such village indebtedness fund all moneys hereafter collected by such village on the tax levies of 1934 and prior years, which shall have not been used prior to December 31, 1935, for the reduction of such indebtedness, and all moneys not exceeding however, the sum of \$15,000, hereafter collected on the delinquent taxes of 1933 and prior years by any such town; provided that no part of the delinquent village taxes for library fund shall be paid into such village indebtedness fund except insofar as necessary to pay warrants or indebtedness against such library fund. (As amended Act Apr. 10, 1943, c. 391, §3.)

1225-74. Payments to village treasurer—Separate funds—Apportionment—Payment of warrants.—All moneys provided to be paid into such village indebtedness fund by any such town shall, as collected, be paid to the treasurer of the village by the county auditor and county treasurer. Such fund shall be kept separate from all other moneys of the village, and shall be used solely for the payment of such indebtedness or any bonds issued to fund the same. The village treasurer shall apportion the moneys in such village indebtedness fund between the various funds of the village against which warrants or indebtedness are outstanding, in proportion to the respective amounts of warrants and indebtedness against each such fund, and shall pay warrants against such funds

out of the moneys apportioned thereto, in the order that such warrants were presented to the treasurer and stamped "Not paid for want of funds". In any year in which the levies and contributions to such fund, as hereinbefore provided, shall not equal an amount which could be levied for payment upon such warrants by the village under existing laws, the warrant-holders, or any of them, may require payment by the village from other funds of the amount by which such permissible levy of the village shall exceed the levies and contributions to such fund. (As amended Act Apr. 10, 1943, c. 391, §4.)

1225-82. Funding bonds—Obligation—Lien—Sale—Interest—Maturity—Investment in—Tax levy—Payment.—Any such village may, without a vote of the electors, fund all or any portion of such indebtedness existing on December 31, 1935. Bonds issued for such purpose shall be the obligation of the village alone and, except as contributions from the annual levies of the town are provided for herein, shall not be a lien upon any property in said town outside the limits of the village. Such bonds may be issued and sold to the state or to private purchasers, or both, or exchanged for warrants or other evidence of indebtedness funded thereby, with the holders thereof. Such bonds shall bear interest at not to exceed six per cent per annum, and if sold to the state, at not to exceed the rate provided by statute on loans from the state. They shall be sold or exchanged for not less than par. They shall mature in annual installments as nearly equal as practicable, the amount of such installments not to exceed the probable receipts of such village indebtedness fund, as provided for herein. The first of such installments shall fall due in not less than one year from the issuance of such bonds, and the last of such installments shall fall due in not more than ten years thereafter. Within the limits of the constitution, such bonds shall be legal investments of the State Board of Investment. At the time of issuing any such bonds, the village shall make an annual and irrevocable tax levy in an amount sufficient, with the contributions and levies for such fund by the town, to retire such bonds at maturity. If purchased by the state, the state auditor, at the time of certifying to the county auditor the levy to be spread for the payment thereof shall take into consideration, in fixing the amount of such levy, the probable receipts from the contributions and levies to be made by the town towards the payment of such bonds. If such bonds be sold to the state, the village treasurer shall pay into the county auditor's fund for the payment of such bonds any moneys in the village indebtedness fund provided for herein, and the county auditor shall withhold any pay into the fund maintained by him for the payment of such bonds the moneys levied and to be paid by the town thereon. Levies made for the payment of such bonds shall be within the limitations herein set forth, except as such limitations may be insufficient to meet such bonds at maturity. (As amended Apr. 10, 1943, c. 391, §5.)

1225-84. Liability of towns.—Mason's Supplement 1940, Sections 1225-71 to 1225-87, as amended, shall not be construed as providing for the payment of any moneys by the town to the village after the indebtedness herein referred to shall have been paid and retired in full, or as thereafter limiting in any way the levies of such town or village. (As amended Act Apr. 10, 1943, c. 391, §6.)

1225-85. Purpose and construction—Change in population, etc.—Mason's Supplement 1940, Sections 1225-71 to 1225-87, as amended, is remedial in its nature and intended to remedy the financial condition of villages within the class stated, where, by reason of a substantial portion of the valuation consisting of iron ore, there is likelihood of diminishing valuations in the future, and for such purpose to set aside contributions from the levies of the town in which any such village is located, where by reason of

the majority of the population of such town being within the limits of the village, and by reason of the property in the village against which such indebtedness is a charge being subject to taxation by such town, there is a community of interest in the discharge of such indebtedness. It is also intended to secure a sound fiscal policy in such villages after the payment of such indebtedness. If any such village shall come within the provisions of Mason's Supplement 1940, Sections 1225-71 to 1225-87, as amended, said sections shall continue to govern the operations thereof, notwithstanding any subsequent change in population, valuation or indebtedness. (As amended Act Apr. 10, 1943, c. 391, §7.)

1225-86. Provisions not severable.—The provisions of Mason's Supplement 1940, Sections 1225-71 to 1225-87, as amended, insofar as they provide for contributions from the town or village and excess levies over the mill limitations upon property in the village, are not severable, and if any of said levies be held to be unconstitutional Mason's Supplement 1940, Sections 1225-71 to 1225-87, as amended, shall be unconstitutional. (As amended Act Apr. 10, 1943, c. 391, §8.)

1225-87. Limitation of tax levy.—The total amount of such taxes as so levied shall not exceed the existing limitations upon the levies of such town. (As amended Act Apr. 10, 1943, c. 391, §9.)

1225-88. Salaries of village trustee.—The trustees of any such village shall receive a salary of \$15.00 per month and the president of the council of any such village shall receive a salary of \$20.00 per month. (Act Apr. 10, 1943, c. 391, §10.)

1225-91 to 1225-102.
See Laws 1943, c. 526.

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

See Laws 1943, c. 526.
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.

1225-104 to 1225-106.
See Laws 1943, c. 526.

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 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., 207M518, 292NW187. See Dun. Dig. 6733.

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.

Where voters have approved purchase of a utility plant, consent of voters is not required for improvement, and new equipment and apparatus may be purchased in manner directed by charter. Op. Atty. Gen. (707a-4), Apr. 25, 1941.

Generally a village operating a municipal water plant is acting in its proprietary capacity and is liable for failure to exercise reasonable care. Op. Atty. Gen., (844b), June 16, 1942.

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.)

[647.44]

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.)

[647.44]

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.)

[647.44]

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.)

[647.44]

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.)

[647.44]

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 laying 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.)

[647.42]

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.) [647.42]

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.) [647.42]

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.

It requires the concurrence of both the commission and council to transfer surplus funds out of water and light fund of a village operating under the 1885 law. Op. Atty. Gen. (624a-6), July 24, 1942.

1252. Purchase of electrical energy.

Village may extend power lines outside limits to serve municipally owned airport. Op. Atty. Gen. (624c-12), Dec. 15, 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.

Village council and not water, light, power, and building commission is proper body to execute contract for purchase of electrical energy. Op. Atty. Gen. (624c-2), Sept. 5, 1941.

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.

1258. Tax levy—Park fund; etc.

This section limits expenditures by a village for acquisition of land for recreational facilities. Op. Atty. Gen. (476B-10), Jan. 12, 1942.

1263-1 to 1263-3. [Repealed.]

Repealed. Laws 1943, c. 653, §24.

1264-3. Villages may acquire land for park purposes by condemnation.

This section limits expenditures by a village for acquisition of land for recreational facilities. Op. Atty. Gen. (476B-10), Jan. 12, 1942.

A village may accept a gift of 240 acres of land contiguous to the village, to be used for park and other recreational purposes. Op. Atty. Gen. (476b-10), Dec. 22, 1942.

Village of Kenyon has authority to purchase land for park purposes and pay for the same out of the general fund if there is sufficient money therein, and without making a special levy for park purposes, and there is no objection to permitting boy scouts to use the park. Op. Atty. Gen. (469c-8), Aug. 23, 1943.

1264-6. Police pension fund created in certain villages.

Laws 1943, c. 196, provides for incorporation of police department and for police pension fund in villages of 2200 to 3000 population, and an assessed valuation of \$800,000 to \$1,000,000, 70% of which consists of iron ore; membership and termination of membership in police pension fund association; retirement and amount of pension; tax levy; directors and officers of association, custodian of funds; investment of funds of association.

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.

1264-13½d. Deductions from pay—Tax levy—Premium on bonds of Treasurer and Secretary—Investment of surplus.—In addition to the moneys in the special fund of said association or provided to be raised therefor under existing laws for the payment of pensions and other benefits, revenues from the following sources shall be paid to said special fund, to-wit: It shall be the duty of the village recorder,

treasurer or other disbursing officer of such village to deduct each month from the monthly pay of each member of the Fire Department who is a member of the association a sum equal to three and one-half per cent of such monthly pay, and to place the same to the credit of said special fund. The village council or other governing body of such village shall each year, at the time the tax levies are made for the general revenues of the village, levy, within the per capita or mill limitations now permitted by law, a tax one one-fifth of a mill on all of the taxable property of such village, which levy shall be transmitted to the county auditor of the county in which the village is situated at the time the other levies are transmitted and shall be collected, and the penalties therefor shall be enforced, in the same manner as the other taxes of such village. The village treasurer, when the moneys derived from such tax are received by him, shall pay the same to the treasurer of the Firemen's Relief Association, together with all penalties and interest collected thereon, in the following manner: Of the first levy made after the passage of this act an amount not to exceed one-half of such levy may, at the discretion of the board of trustees of said relief association, be placed to the credit of the general fund of said association. The balance of said levy, as well as all subsequent levies, shall be credited to the special fund of said association, and shall not be withdrawn from said fund or transferred, to any other fund except for the purposes of this act; provided, however, that said board of trustees may, in its discretion, pay premiums upon the bond of the treasurer and secretary from said special fund, and may also invest the balance of its funds in certificates of indebtedness of such municipality, and the governing body of such municipality shall sell its certificates of indebtedness to such relief association at the prevailing rate that it sells such certificates to the general public, or others. (As amended Act Apr. 12, 1943, c. 413, §1.)

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.

1269. Board of freeholders.

Members of charter commission do not hold over after expiration of four years from time of appointment. Op. Atty. Gen. (58g), May 4, 1943.

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, 206M446, 288NW 845. 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.

Provision in home rule charter retaining unseparated status of village from township for election and assessment purposes would be valid. Op. Atty. Gen. (58o), Aug. 14, 1941.

City condemning property for an airport outside its boundary must proceed under its charter and not under general law. Op. Atty. Gen. (234b, 817f), Oct. 6, 1943.

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.

A four-sevenths vote is required to adopt a new charter in city of South St. Paul, and if it is a complete charter in itself, it would still be a new charter even though it contains some of the provisions of the old charter. Op. Atty. Gen. (58b), Mar. 19, 1943.

1286. Amendments to home rule charters, etc.—
Subdivision 1 * * * * *

Subdivision 2 * * * * *

Subdivision 3 * * * * *

Subdivision 4. Amendments shall be submitted as in the case of the original charter, and the proposal shall be published once a week for four weeks in at least one newspaper of general circulation in such city. In every city of the first class, the publication shall be made in a newspaper having an aggregate regular paid circulation of at least 25,000 copies and the governing body of any city of the first class may in addition thereto publish said proposal in any other legal newspaper located in said city. The form of ballot and mode of voting shall be similar to those used upon the adoption of such charter, the general nature of each amendment being briefly indicated. If three-fifths of those lawfully voting at such election shall declare in favor of any amendment so proposed, the same shall be certified, deposited and recorded, and shall take effect, as in the case of the original charter, provided that, if it be proposed that any amendment shall take effect at a specified time, it shall take effect as proposed. (As amended Mar. 30, 1943, c. 227, §1.)

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. 251.

A four-sevenths vote is required to adopt a new charter in city of South St. Paul, and if it is a complete charter in itself, it would still be a new charter even though it contains some of the provisions of the old charter. Op. Atty. Gen. (58b), Mar. 19, 1943.

1297. New charter authorized.

A four-sevenths vote is required to adopt a new charter in city of South St. Paul, and if it is a complete charter in itself, it would still be a new charter even though it contains some of the provisions of the old charter. Op. Atty. Gen. (58b), Mar. 19, 1943.

1310½.

DECISIONS RELATING TO CITIES IN GENERAL.

1. In general.

Any funds, not presently needed, may be invested during the war, including investment in War Savings Bonds. Laws 1943, c. 193.

There can be no justification for exercise of a power that is not possessed. City of Waseca v. E., 206M154, 288 NW229. See Dun. Dig. 6575.

Violations of a city ordinance need not be proved beyond a reasonable doubt. State v. Jamieson, 211M262, 300NW809. See Dun. Dig. 6806.

Whether a municipality may be sued elsewhere than in county in which it is situated is a question of venue rather than jurisdiction. Scaife Co. v. Dornack, 211M349, 1NW(2d)356. See Dun. Dig. 10104, 10111a.

City council had authority to adopt ordinance requiring seller of intoxicating liquor to obtain a license and to prescribe definite term of punishment for violation thereof. State v. Hope, 212M319, 3NW(2d)499. See Dun. Dig. 4912.

State may delegate governmental functions to municipal corporations. Nelson v. De Long, 213M425, 7NW(2d)342. See Dun. Dig. 6517a.

State may delegate to a village as a governmental agency its powers to regulate navigable waters within corporate area thereof. Id. See Dun. Dig. 6691, 6933.

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.

Public funds may not be expended for purchase or construction or maintenance of a municipal hotel. Op. Atty. Gen. (59B-10), Aug. 11, 1941.

A local government having equipment not needed for its purposes and sufficient space not necessary for transaction of municipal business may grant permission to use same temporarily for civilian defense purposes, but there is no authority for expenditure of funds by local government for general civilian defense purposes. Op. Atty. Gen. (835), Jan. 26, 1942.

A city may not donate municipal funds derived from its operation of a municipal liquor store to the Red Cross, or to any private charity, and, though it may advertise, it may not make a donation under the guise of advertising. Op. Atty. Gen. (218E), Feb. 10, 1942.

A city does not possess inherent power to install a storm sewer. Op. Atty. Gen. (387B-10), Feb. 19, 1942.

City has no power to appropriate money to assist in maintenance of a private cemetery. Op. Atty. Gen. (59a-3), May 19, 1942.

A city, such as Chatfield, has power to accept a hotel building as a gift and lease it temporarily, and it is subject to tax. Op. Atty. Gen. (59a-40), Oct. 6, 1942.

A city has no power to operate a hotel, though it may lease property given to it as a gift and permit buildings thereon to be operated as hotel. Op. Atty. Gen. (59a-40), Oct. 6, 1942.

Towns are not authorized to contribute out of public funds expenses of rationing. Op. Atty. Gen. (835), Dec. 22, 1942. This seems to have been changed by Laws 1943, c. 168.

A city on state border may acquire an airport in another state, if that state does not object. Op. Atty. Gen. (234b), June 15, 1943.

2. Contracts.

Municipalities have power to purchase equipment and finance it by revenue derived from its use. Hendricks v. C., 207M151, 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., 207M307, 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., 208M509, 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. 23, 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.

City may create office of milk inspector and fix his salary, but may not enter into cooperative milk inspection agreement with another state and cities therein whereby each pays a specified part of his salary and travel expense. Op. Atty. Gen. (292e), Dec. 29, 1941.

In absence of express authority, a city may not lawfully enter into a contract for deed calling for periodical payments over a specified term of years, or take a conveyance, subject to assumption of mortgage. Op. Atty. Gen. (59a-40), Apr. 29, 1942.

City purchasing land for purpose of maintaining and operating thereon a municipal hospital could rent out unused building and receive rent therefor. Op. Atty. Gen. (59a-40), May 19, 1943.

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).

City engineer of Brainerd supervising construction of storm sewer by city employees had supervisory power under city charter to lower a house drain running to sanitary sewer system which obstructed construction of storm sewer, and in action by landowner against city for trespass and damage to wall, ultra vires was not a defence, though engineer acted without specific authorization. Clark v. City of Brainerd, 210M377, 298NW 364. See Dun. Dig. 6813.

Testimony of expert that from 85 to 90% of pollution of stream was caused by materials coming from canning factory through city sewer and that from 10 to 15% was created by drainage from stalk pile not passing through city sewer was sufficient to enable jury to apportion harm caused by each source and confine city's liability to that portion for which it was responsible. Huber v. City of Blue Earth, 213M319, 6NW(2d)471. See Dun. Dig. 6661a.

A city is liable for pollution of water by sewage. Id. See Dun. Dig. 6661a.

That a city enacts an ordinance forbidding certain offensive matter from being cast into its sewers affords it no defense to an action for nuisance brought against it by a lower riparian owner for polluting a stream, into which the sewers drain, with sewage which includes such offensive matter. Id. See Dun. Dig. 6810.

A sewer discharging offensive, unpurified effluent into a natural stream so as to create a nuisance is the proximate and not the remote cause or condition of the nuisance, since if sufferers from the nuisance were left to recover from each household and business in a city, it would create an intolerable situation and be a travesty on justice. Id. See Dun. Dig. 7274.

Rules applicable to duties of any distributor of electricity were applied in determining question of negligence of a city, with respect to the insulating and placing of high-tension wires. Schroeffer v. City of Sleepy Eye, 215M525, 10NW(2d)398. See Dun. Dig. 2996f.

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.

City is not liable for injury to employee of independent contractor hauling gravel for city. Op. Atty. Gen. (844b), Apr. 18, 1941.

Liability of city for illegal acts of its bartender. Op. Atty. Gen. (844b), Jan. 28, 1943.

Operation of bathing beach in another state, governmental function, liability for accident occurring on bathing beach in Wisconsin. Op. Atty. Gen. (844b-1), July 28, 1943.

Governmental responsibility for torts in Minnesota. 26 Minn. Law Rev. 293.

Governmental responsibility for torts in Minnesota. 26 Minn. Law Rev. 700.

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., 206M557, 289NW788. See Dun. Dig. 6575.

It is within police power of city council to impose restrictions and to require permits in certain industries and occupations, including storage of linseed oil. State v. Northwest Linseed Co., 209M422, 297NW635. App. dism'd 313US544, 61SCR 960, 85LEd1511. See Dun. Dig. 6794.

Rules governing repeal of statutes govern repeal of ordinances. Id. See Dun. Dig. 6790.

A municipality, if it has proper delegated authority and if it legislates consistently with state law, may make an act an offense against municipality although it is by statute an offense against state. State v. Houston, 210M379, 298NW358. See Dun. Dig. 6752.

Where power to legislate upon a given subject is granted a municipality and mode of its exercise and detail is not prescribed, an ordinance passed pursuant thereto must be a reasonable exercise of the power or it will be pronounced invalid. Id. See Dun. Dig. 6755.

Power to establish and regulate markets is an appropriate subject for municipal regulation. Id. See Dun. Dig. 6756.

General welfare clause of city charter, which amounts to a grant of all usual and necessary powers, does not limit a city to doing of the things enumerated therein but authorizes licensing and regulating of businesses not specifically referred to in charter. Id. See Dun. Dig. 6768.

Eggs are "provisions" as that term is commonly understood in regulatory city charter provision. Id. See Dun. Dig. 6768.

Within their scope, city ordinances have the force and effect of law. Mayes v. Byers, 214M54, 7NW(2d)403, 144 ALR821. See Dun. Dig. 6748.

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

Minutes of a meeting of a city council should show the matters which have come before it and the action taken upon them, but language of minutes and extent of detail rests in discretion of council. Op. Atty. Gen. (277b-1), July 31, 1943.

Councilman holding liquor license is ineligible to vote on establishment of municipal liquor store. Op. Atty. Gen. (218G-13), Mar. 6, 1942.

5. Ordinances.

Although violation of municipal ordinance need not be proved beyond reasonable doubt, a conviction cannot be grounded in evidence patently insufficient. State v. Oelschlagler, 212M485, 4NW(2d)102. See Dun. Dig. 6806.

In construing and determining validity of a city licensing ordinance court must bear in mind that there is a distinction between power to license as a police regulation and the same power when conferred for revenue purposes, since a narrower construction must be adopted if it is a police regulation than in case of a grant by charter to council of discretionary authority with a view to public revenue. Barron v. City of Minneapolis, 212M566, 4NW(2d)622. See Dun. Dig. 6794.

An ordinance requiring a license fee of \$5.00 for each 5c coin vending machine and \$1.00 for each 1c coin vending machine was a revenue measure and could not be sustained as a police regulation. Id. See Dun. Dig. 6800(10).

A municipality is authorized to regulate a subject and to require those who do any act under it to obtain a license, and city may charge person procuring it reasonable fee, but only to cover labor and expense of issuing license, services of officers, and other expenses directly or indirectly imposed. Id. See Dun. Dig. 6800.

All who participate directly or as accessories in the violation of a municipal ordinance prohibiting the keeping for sale of intoxicating liquor are principals. State v. McBride, 215M123, 9NW(2d)416. See Dun. Dig. 6801.

In a prosecution for sale of intoxicating liquor without a license in violation of a city ordinance, court followed the rule that if there is reasonable evidence to sustain the conviction it cannot be disturbed on review. Id. See Dun. Dig. 6807a.

In absence of statutory or charter authority, city cannot enact an ordinance defining petit larceny and providing punishment therefor. Op. Atty. Gen. (477b-20), July 2, 1942.

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.

Village council has no power to regulate rates of power company whose franchise has expired, and right to charge license fee for use of street is doubtful, in absence of a contract. Op. Atty. Gen. (624A-5), Mar. 25, 1942.

Industrial commission has authority to determine necessity of automatic windshield wipers on one-man streetcar, but any requirement that two men operate streetcar is a matter for city to determine. Op. Atty. Gen. (270c-4), Dec. 29, 1942.

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, 1939.

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.

City with home rule charter, silent on the question, cannot acquire a gas plant without a vote of the people, even though it had the right to acquire the plant under the franchise ordinance. Op. Atty. Gen. (59b-7), Sept. 2, 1943.

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.*, 206M510, 289NW58. See Dun. Dig. 2996d.

Acquisition by city of New Ulm of natural gas distribution system operated under a franchise providing for acquisition by the city at the end of 5-year period. Op. Atty. Gen. (624c-10), June 25, 1943.

Election is necessary if no agreement is reached for purchase by New Ulm of gas plant from company holding franchise. Op. Atty. Gen. (624c-10), Sept. 13, 1943.

On purchase of gas plant by New Ulm, election is necessary unless price or method of ascertaining price can be agreed upon. Op. Atty. Gen. (624c-10), Sept. 15, 1943.

1340. State's ownership of bed of navigable river.

Where riparian owner of land bordering upon navigable river built an embankment upon that part of his land lying between ordinary high water mark and ordinary low water mark United States was not liable to compensate such riparian owner for injuries caused solely by the raising of waters below high water mark. *U. S. v. Chicago, M. St. P. & P. R. Co.*, 312US592, 61SCR 772, 85LEd1064, rev'g (CCA8), 113F(2d)919. See Dun. Dig. 3038a, 6962.

Rule to effect that state could not cut off riparian rights of an abutting owner by asserting its sovereign dominion over relictions was designed to protect a riparian owner's fundamental right of access to water, and reasons supporting it can have no application in a case involving adverse possession of relict land. *Schmidt v. Marschel*, 211M539, 2NW(2d)121. See Dun. Dig. 6954, 6961.

Where lake is navigable in fact, its waters and bed belong to state in its sovereign capacity, and riparian owner takes fee only to high-water mark, but with all rights incident to riparian ownership, including right to accretions or relictions formed or produced in front of his land by the accession or recession of waters. *Id.* See Dun. Dig. 6953, 6954, 6961.

Owners of land bordering on shore of a meandered nonnavigable lake own bed of lake in severalty. *Id.* See Dun. Dig. 1070.

Navigability and nonnavigability mark the distinction between public and private waters. *Nelson v. De Long*, 213M425, 7NW(2d)342. See Dun. Dig. 6925.

State may delegate to a village as a governmental agency its powers to regulate navigable waters within corporate area thereof. *Id.* See Dun. Dig. 6691, 6933.

Power of Congress to regulate navigable waters is paramount to that of the state. *Id.* See Dun. Dig. 6931.

Power to regulate the use of navigable waters involves an exercise of the police power, under which rules may be prescribed to insure to all the equal enjoyment of public rights and to prevent and to suppress the clashing of private interests and resulting public disorder. *Id.* See Dun. Dig. 6933.

State may delegate its powers over navigable waters to agents selected by it to act in a representative capacity in performing its public functions. *Id.* See Dun. Dig. 6933.

As against the state, a riparian owner can exercise no dominion or make a valid grant of rights in waters adjacent to riparian lands or in submerged lands under such waters. *Id.* See Dun. Dig. 6950, 6965.

Rights in shore line and submerged lands along lake shore may be separated and dissociated from littoral or riparian lands and transferred to and enjoyed by persons having no interest in original riparian estate. *Id.* See Dun. Dig. 6961.

The state, in its sovereign capacity, as trustee for the people, holds all navigable waters and lands under them for public use. *Id.* See Dun. Dig. 6961.

A public navigable stream does not lose its character because it is artificially improved and used as part of a county ditch. Op. Atty. Gen. (273A-1), Sept. 24, 1941.

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.)

Proposed amendment. Op. Atty. Gen. (175i), Mar. 30, 1943.

1363. Tax levies.

Proposed amendment. Op. Atty. Gen. (175i), Mar. 30, 1943.

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.) [441.47]

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 acqui-

sion, purchase, construction, operation or maintenance of any such bridge or bridges and approaches thereto. (Act Apr. 17, 1941, c. 286, §2.) [441.48]

1372-¾b. 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.) [441.49]

1372-¾c. 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.)

[441.50]

1372-¾d. 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.) [441.51]

1372-¾e. 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.)

[441.52]

1372-¾f. 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.) [441.53]

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.) [441.54]

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.) [441.55]

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 tunnel, 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.

1372-8. Hospitals in cities with more than four thousand; etc.

Act authorizes establishment of a hospital by a city such as Willmar, but bond issuing authority must be found elsewhere Op. Atty. Gen. (1001a), June 12, 1941.

1373. Licensing soft-drink vendors.

Village may adopt an ordinance licensing sale of soft drinks for consumption on or off premises. Op. Atty. Gen. (477B-24), Aug. 20, 1941.

Distilled, fermented, spirituous or vinous beverages having up to and including 3.2% of alcohol by weight are not regulated by the beer law or the intoxicating liquor law, and may be regulated by municipalities as soft drinks. Op. Atty. Gen. (217), Aug. 6, 1942.

Ordinance regulating sale of soft drinks is not applicable to school district operating a cafeteria in which soft drinks are sold to pupils. Op. Atty. Gen. (634d), Sept. 24, 1942.

1377. Conciliation and small debtors' court.

Pleadings in conciliation and small claim courts need not follow the technical rules. Warner v. A. G. Anderson, Inc., 213M376, 7NW(2d)7. See Dun. Dig. 1527a.

A claim of a defendant stated in answer to a complaint in an action begun in conciliation court of Duluth and on appeal tried de novo in the municipal court need not be formulated to comply with ordinary rules of pleading a counterclaim unless other party so requests by proper motion. Id. See Dun. Dig. 6908, 7617.

CONCILIATION COURTS OF PARTICULAR COUNTIES

Duluth.

Certiorari is a proper method to review judgment of municipal court of Duluth rendered on removal from the conciliation court. Warner v. A. G. Anderson, Inc., 213M376, 7NW(2d)7, overruling 212M610, 3NW(2d)673. See Dun. Dig. 1527a.

Under Laws 1927, c. 17, §19(a), municipal court of Duluth had jurisdiction of an appeal from conciliation court though address of parties was not shown in either the original demand or proof of service, the statute being directory in nature and the defect being amendable, or such as might be disregarded. Duff v. Ustak, 215M33, 9NW(2d)319. See Dun. Dig. 1527aa.

Minneapolis.

Laws 1917, c. 263, §3, as amended by Laws 1929, c. 242, §1, and by Laws 1935, c. 145, §1, is amended by Laws 1943, c. 148, §1.

1379. Procedure.

Judge of municipal court of Luverne, when acting as conciliation judge, cannot tax costs against either party, other than disbursement to prevailing party, and cannot require a fee from plaintiff upon entering a claim, to be retained by him, or tax a fee against the losing party as and for costs, which he retains. Op. Atty. Gen. (307e), June 1, 1943.

1382. 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

1392. Registration for special elections; etc.

St. Paul Central Business District Authority. Laws 1944, c. 544.

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-42), 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.

1422-1. Salary of Chief of Fire Department in first class cities.—That in any city of the first class of the State of Minnesota the city council or other governing body in such city is hereby authorized and empow-

ered, by ordinance, to fix and from time to time re-fix the salary of the chief or head of the fire department of any such city. (Act Apr. 10, 1943, c. 375, §1.)

[418.051]

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.

Laws 1943, c. 267, provides that in cities of the first class with assessed value of less than \$90,000,000, police relief association may pay certain disability or dependency pensions in such amounts as provided by its articles of incorporation to its members pensioned and who have reached 50 years and served 20 years, or to their widows and children under 16.

Laws 1943, c. 280, provides police relief association in city of first class in county having 450,000 population, and assessed valuation of \$450,000,000, may pay disability or dependency amounts to its members who have reached the age of 50 years and have served 20 years in department.

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.

Application by member before attaining the age of 50 years is premature, though application provides that pension should commence at a future date. Op. Atty. Gen. (785j), July 16, 1943.

In determining right to retire after 20 years' service, time spent in military service while on leave must be counted without requirement that application for retirement pay into the fund deductions he would have paid had he not been in military service. Id.

At least 20 years of actual service is necessary to entitle a member to a pension, and this period must be exclusive of leaves of absence from employment without pay, except that credit may be allowed for the period a member may serve in the military service. Id.

1438. Payments—Limitations.

Pensions may not be paid to retired policeman while employed under a defense training program, teaching welding to prospective defense workers, under local board of education, though such board is reimbursed monthly by state board of education which in turn is reimbursed by federal government. Op. Atty. Gen. (785j), June 11, 1942.

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.

1442-2. Pension system for disabled or retired employees.—That every such municipal department or bureau of health now existing, or which may hereafter be organized, may and hereby is authorized to become incorporated pursuant to the provisions of the General Statutes of Minnesota, and to adopt articles of incorporation and by-laws as a relief association to provide and permit said department or bureau of health relief association so incorporated or so organized, to pay out of and from any fund that it may have received from the State of Minnesota or from any other source, a service or disability pension in such sum and under such limitations and conditions as its articles of incorporation and by-laws shall provide and permit, to each of its pensioned members, who shall have reached the age of fifty years or more, and who shall have done active duty as a member of such health department or bureau for a period of twenty years or more in the city in which such relief association shall be so organized, or who having been

disabled physically or mentally because of any injury or disability received or suffered while so employed as such member of such health department or bureau so as to render necessary his retirement from active service, and in addition thereto to pay out of and from any such fund funeral benefits for deceased members, not exceeding the sum of \$100.00 for each deceased member, and general administration expenses, in such sum and under such limitations and conditions as the articles of incorporation and by-laws shall provide and permit. Such member entitled to pension under the provisions hereof may be placed upon the pension list, and shall receive such pension, in such sum and under such limitations and conditions as the articles of incorporation and by-laws shall provide and permit; provided, however, that such funds shall not be used for any other purpose than for the payment of service and disability pensions as herein provided, funeral benefits for deceased members and general administration expenses. The service or disability pension payable to members of such relief associations who meet the requirements of this section shall be the sum of \$75.00 per month. Provided further, that whenever it shall appear that any applicant for a service pension was a member of such relief association for a period of less than twenty years at the time of retirement, the amounts herein provided shall be reduced in such sum and under such limitations and conditions as its articles of incorporation and by-laws shall provide and permit. (As amended Apr. 2, 1943, c. 278, §1.)

1442-3. May increase or reduce amounts.—Every such association shall at all times have and retain the right to reduce the amount of such pension if such pensioner was a member of such relief association for a period of less than twenty years; provided, however, that pensioners who have been members of such associations for twenty years and have met the provisions of Section 1442-2 or are disability pensioners as defined in Section 1442-2, shall receive the sum of \$75.00 per month. (As amended Apr. 2, 1943, c. 278, §2.)

1442-4. When not to be paid.—The pension authorized by this act shall not be paid to any person who is drawing salary in any amount from said municipality or who shall have been convicted of a felony for which he shall be adjudged to be imprisoned, or who is an habitual drunkard; and any person receiving the pension herein mentioned shall not receive or be entitled to receive any other or further pension or relief from said association. Every person employed in the health department or health bureau of any city in which a health relief association has heretofore or may hereafter be organized shall be required to join such health relief association, provided, however, that part-time employees shall hereafter not be eligible to join any such association; provided further, that this section shall not affect the status of the membership of persons heretofore joining any such pension association organized under the provisions of Chapter 430 of the Laws of Minnesota for 1919 or acts amendatory thereof; provided further, that school nurses employed on the school year basis shall be considered full-time employees. (As amended Apr. 2, 1943, c. 278, §3.)

1442-6. Association to have charge of funds—Tax levy.—Said association through its officers shall have full charge, management and control of the health department or bureau pension fund herein provided for, which said fund shall be derived from the following sources; first, dues of its members and from the gifts of real estate or personal property, rents or money or other sources; second, the Commissioner of Finance or Department of Finance of any city affected by this act shall deduct each month from the monthly pay of each member of such department or bureau of health relief association, a sum equal to one per cent of such monthly pay and place the same

to the credit of the said health department or bureau pension fund; third, an amount or sum equal to one-twentieth of one mill shall be annually assessed, levied and collected by the proper officers of such city where a health relief association exists, upon each dollar of taxable property in such city as the same appears on the tax records of such city, which said sum shall by the proper officers of said city be placed to the credit of the health department or bureau pension funds, and shall not be used or devoted to any other purpose than for the purpose of the health department or bureau pension fund. (As amended Apr. 2, 1943, c. 278, §4.)

1442-8. Members of board.—The governing board of said association shall consist of five members to be elected annually. The members of the first board shall hold their offices for one, two, three, four and five years respectively and until their successors are duly elected and qualified. The commissioner of public safety or other department head, and chief health officer and city treasurer or commissioner of finance, or other similar officer, shall be ex-officio members of said governing board. The city treasurer or commissioner of finance or other similar officer shall be ex-officio treasurer of said board and organization. All vacancies occurring in the elective membership of said board shall be filled by a special election called for said purpose. (As amended Apr. 2, 1943, c. 278, §5.)

1442-14. When effective.—Any person who shall have been employed by the city to which this act applies, and who shall have fulfilled the conditions herein specified, shall be entitled to receive retirement allowance therefrom, as set forth in the provisions of this act; provided, that no retirement allowance shall be paid any retired employee of such city prior to the expiration of the calendar year next succeeding the date this act becomes effective therein.

Any conditional present incumbent shall be entitled to participate in the benefits provided by this act upon submitting to the retirement board a written notice of desire to accept the provisions of the act and of such evidence of the right to so participate as the board may require; provided that any such employee who is less than 30 years of age at the date this provision becomes effective therein shall submit such notice before reaching that age, and any such employee who shall have passed the age of 30 at that date shall make written application for participation in the benefits of the retirement fund within 90 days after such date. Before receiving said retirement allowance, such conditional present incumbent shall contribute to the fund herein provided for an amount which shall be equal to the amount of the contributions to said fund which said conditional present incumbent would have made had he been a contributor to said fund since January 1, 1922, in accordance with the method of contribution herein provided for, plus four per cent compound interest. All such applications not filed within the time specified herein shall be denied by the retirement board.

The minimum age for retirement on a service allowance, except as otherwise provided, shall be established by the retirement board, may be greater for men than for women, may differ for different classes or grades of employment, but shall not be less than 60 years for men and 58 years for women, nor greater than 65 years. The ages so established by the board shall not be subject to revision prior to the expiration of a five year period from the establishment thereof, and shall apply to all persons who retire during the continuance thereof.

Subject to the limitations stated in this act, any employee in the contributing class who shall have attained the established age for retirement shall be entitled to retire, and any such employee who shall remain in the service thereafter, shall be retired upon reaching the age of 65 and receive a service allowance as specified in this act; provided, that the

compulsory retirement age of 65 shall not apply to employees of the Municipal Building Commission.

Any employee who retired prior to the passage of this amendment, and the designated beneficiaries of any such employee, shall be entitled to a retirement allowance to be calculated, determined and payable in accordance with the provisions of Mason's Minnesota Statutes of 1927, Sections 1442-11 to 1442-34, inclusive, as amended. Any payment heretofore made and retirements heretofore approved, which would have been valid had this act been in force at the time of making the same, are validated to the same extent as if the same had been made subsequent to the passage of this amendment. (As amended Act Feb. 20, 1943, c. 62, §1, effective Jan. 1, 1943.)

1442-17. (a) Definitions—Service allowance for present incumbent.—The service allowance for a present incumbent in the contributing class shall consist of an "annuity", a "pension" and a "supplementary allowance" as herein defined.

(b) **Service allowance for future entrant.**—The service allowance for a future entrant in the contributing class shall consist of an "annuity" and a "pension" as herein defined.

(c) **Annuity for future entrant.**—The annuity shall be the actuarial equivalent of the net accumulated contributions of the retiring employee, calculated at his or her age at the date of retirement.

(d) **Pension of future entrant.**—The pension shall be the actuarial equivalent of the accumulated amount of such annual installments as may be now or hereafter fixed and designated by law throughout the period of service of the retiring employee, not to exceed 25 years, accumulated to the date of retirement at four per cent compound interest.

(e) **Supplementary allowance for persons in contributing class.**—The supplementary allowance shall be the actuarial equivalent of the difference between:

(1) The net accumulated amount at the time of retirement of the contributions which such employee would have been required to make during the period for which credit is claimed, had the provisions of this act been in force throughout such period, and

(2) The net accumulated amount of the contributions made and to be made by the retiring employee for all periods of service for the city subsequent to the adoption of this act therein, not exceeding 30 years.

(f) **Minimum retirement allowance.**—All contributing members who, at the time of retirement, shall have fulfilled the conditions necessary to enable them to retire, shall be entitled to a combined minimum pension and supplementary allowance as defined in Mason's Supplement 1940, Sections 1442-13 and 1442-17, of \$2.00 per month for each year of service, which pension and supplementary allowance shall be in addition to the annuity as defined in the pension act.

The pension and supplementary allowance provided for herein shall be the actuarial equivalent of the accumulated annual installments and supplementary allowance credits now designated by law to be now defined as normal earned credits, plus such extra credit to be furnished by the city as will produce such minimum pension and supplementary allowance of \$2.00 per month for each year of service. Said sum of \$2.00 shall be computed under the single life plan, as defined in said pension act, and subject to the same option selections as set forth in said act.

The extra credit herein provided for shall be used only for the purpose of producing such minimum pension and supplementary allowance and shall not in any other way inure to the benefit of the contributing member or his beneficiaries.

The pension, supplementary allowance and annuity provided for herein shall be first paid from the contributing member's own contributions and normal earned credits, plus interest, until such credits are

exhausted, and from and after such time shall be paid from the extra credit provided for herein.

(g) **Death benefit.**—In the event of the death of an employee in the contributing class while still in the service of the city, there shall be paid to the heirs thereof the net amount to the credit of said employee at the time of his or her death, provided that said employee shall have fulfilled all conditions as to age, service and participation requisite for retirement on a service pension. In the absence of heirs of such employee that portion of the amount to the credit of said employee on which the pension is to be based as defined in paragraph (d) hereof and that portion on which the supplementary allowance, if any, is to be based as defined in paragraph (e) hereof shall be cancelled and the city shall be liable for only the balance of such credits.

(h) **Service.**—Except as otherwise provided in this act, the service of each "present incumbent" shall be calculated from the date in service from which said employee elects to claim credit and the amount of service of each future entrant shall be calculated from the date of original appointment. Said service shall include periods of service at different times and service for one or more departments, branches or independent boards of the municipality. It is further provided that in computing length of service of contributing employees for the purpose of this act, periods of separations from the service shall not be included.

(i) **Payment of retirement allowances.**—Retirement allowances as herein provided shall be paid in monthly installments and checks shall be issued and mailed to the last known address of each beneficiary on the first business day of the month succeeding the month in which his or her allowance is authorized; provided, however, that where a beneficiary is laboring under legal disabilities said monthly installments in such cases may be paid to the duly appointed guardian. (As amended Act Feb. 25, 1943, c. 62, §2, effective Jan. 1, 1943.)

1442-40d. Compulsory retirement of certain employees of police and fire departments.—Every employee, 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 employee, 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, employees, 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 employee, 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 employees on the payrolls of fire and police departments in cities of the first class and to exclude such employees 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 employees are future beneficiaries of the Public Employees 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.

Act is constitutional. *Burns v. City of St. Paul*, 210M 217, 297NW638. See Dun. Dig. 6591, 6600.

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 employees, 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.) [422.422]

1442-57. Expenses of interim committee to investigate pension funds.—Whenever there shall be authorized by law the creation of a joint interim committee to study and report recommendations to the legislature as to the pension or retirement systems created and existing for the benefit of the employees of any city of the first class, in order to provide necessary funds to conduct such study, to employ actuaries, accountants and other specialists to aid such interim committee in ascertaining the necessary facts and in preparing its report, and to pay the necessary expenses of said committee in conducting its work, it shall be the duty of each of the municipal pension or retirement systems or associations by their respective governing boards to appropriate and pay to the city treasurer of said city within thirty days after such interim committee shall have come into existence, an amount of money equal to two dollars per capita for each active or contributing member of such pension or retirement association enrolled at the time such payment is made. Such payment shall be made out of any unexpended moneys or revenues derived by such association from public taxation and may be included and entered as an operating expense. (Act Apr. 14, 1943, c. 449, §1.)

1442-58. Purposes for which funds may be used.—The funds so secured shall be available to the interim committee to defray its necessary expenses in conducting its studies and in making its report and recommendations. The members of such committee shall receive no compensation for their services but shall be paid necessary expenses incurred in attendance upon the meetings of the committee. The Chairman of the committee shall file with the city comptroller a statement showing the expenses incurred, which with claims for other expenses incurred by the committee shall not exceed the amount received by the city treasurer for that purpose. The city comptroller shall audit such claims and issue his warrants upon the city treasurer who shall pay the same out of the funds so received. Any surplus remaining unexpended from said fund after the said committee has made its

report and has been discharged, shall be returned to the several contributing pensions or retirement associations, in proportion to the amounts originally contributed by them. (Act Apr. 14, 1943, c. 449, §2.)

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 employees 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.) [426.17]

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.) [426.17]

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., 207M307, 291NW131. See Dun. Dig. 6693.

1485. Acquisition and operation.

Penn-O-Tex Oil Co. v. C., 207M307, 291NW131; note under §1484.

1499-3. Powers and duties.

Persons employed in hospitals under authorization of Laws 1931, c. 56, are public employees within Municipal Employees Retirement Act. Op. Atty. Gen. (331b-1), Mar. 27, 1941.

1537. Condemnation, how conducted, etc.

Where city condemned land for use in widening a city street and received a warranty deed from landowner upon payment of award, and a small triangular piece was not used for street but was turned over to Department of Parks and Playgrounds and was landscaped by a public spirited citizen, title which city acquired under the deed in addition to easement acquired by condemnation was a qualified or terminable fee, a sovereign or prerogative title, which it as an agency of the state, holds in trust for the city and which it can neither sell nor devote to a private use, but this does not mean that fee-simple title cannot be lost or relinquished by abandonment of all public use. Kendrick v. City of St. Paul, 213M283, 6NW (2d)449. See Dun. Dig. 2.

Where a city condemns land and landowner on receipt of award for damages delivers a warranty deed to the city, effect of deed is to be determined by law of conveyancing and not by the law of condemnation, as against contention that such a deed is merely a receipt for damages. Id. See Dun. Dig. 6694.

1560. Title acquired.

The construction and maintenance by a citizen of a rock garden upon a small triangular tract purchased by a city immediately adjoining one of its streets, garden being accessible to public at all times except at night, when gates of an ornamental fence around the tract are locked, is a public use and does not constitute an abandonment of the tract for public purposes. Kendrick v. City of St. Paul, 213M283, 6NW(2d)449. See Dun. Dig. 6623a.

1569. Residence districts—Council may designate.

It is within power of city counsel to enact a zoning ordinance. State v. Miller, 206M345, 288NW713. See Dun. Dig. 6525.

A building permit should not be refused because the proposed building may violate a restriction contained in the title to lots in the same addition, and an ordinance prohibiting construction of houses of less than a number of square feet ground area would probably be invalid if only ground therefor is the aesthetic. Op. Atty. Gen. (59a-32), Aug. 18, 1943, Aug. 23, 1943.

1581. Local assessments for streets, parks; etc.

Tax and assessment provision of lease should be read in its entirety and in light of conduct of parties in respect to it. S. T. McKnight Co. v. Central Hanover Bank & Trust Co., (CCA8), 120F(2d)310.

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.

1607-14. Quorums—Meetings—Officers and employees.

Sanitary district has authority to make employees' retirement contract with an insurance company, providing for a contribution of four per cent of employee's monthly earning and an equal amount from employer. Op. Atty. Gen. (387a-3), Aug. 6, 1942.

1607-16. Powers of sanitary district.

Rule that statute defining a private nuisance has no effect against state, its officers and agents engaged in a lawful undertaking under its sovereign authority has no application to a sanitary district guilty of trespass and invasion of premises of a land owner by a nuisance damaging structures, incident to blasting and other operations in construction of a sewer under a city. Jones v. Al Johnson Const. Co., 211M123, 300NW447. See Dun. Dig. 7264.

1607-20. May enter land for purposes of surveys and construction.

In action against a sanitary district for damages based on trespass and invasion of premises of land owner by a nuisance damaging structures thereon, consisting of blasting and other operations in construction of a sewer under a city street, it not being shown that construction of a sewage disposal plant was "ultra hazardous", objection to question propounded to an engineer whether 50 pounds of dynamite exploded at one time was or was not ultra hazardous, might well have been sustained, but was not prejudicial where jury well understood that blast in question was a mishap. *Jones v. Al Johnson Const. Co.*, 211M123, 300NW447. See Dun. Dig. 7249.

A sanitary district, while lawfully engaged in constructing a sewage tunnel under a city street, may be held liable to adjacent property owner for creating a private nuisance, if, by blasting or other operations, soil is so shaken and disturbed that building settles unevenly, breaking windows, cracking cement floors, foundation walls and plastering, dislocating plumbing, and putting doors out of plumb. *Id.* See Dun. Dig. 7264.

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 contract 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.*) [445.163]

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-8), Sept. 13, 1940.*

Authority to issue bonds without vote of electors is not exhausted by one issue. *Op. Atty. Gen. (36c-8), Feb. 26, 1942.*

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 fa-

ilities 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.

1613-1. Lost, stolen or unclaimed property in possession of city—Notice of—Publication.

Dispositions of stolen property and in hands of sheriff when he is unable to find the owner. *Op. Atty. Gen. (605b-40), May 20, 1943.*

1614. Height of buildings in cities regulated.

Owner of a building situated in commercial zone existing at time ordinance became effective was entitled to erect an addition to such building on street wall line without any action by city council. *Morse v. Wind, 211M356, 1NW(2d)369. See Dun. Dig. 6525.*

1617-2. Board of adjustment.

Owner of a building situated in commercial zone existing at time ordinance became effective was entitled to erect an addition to such building on street wall line without any action by city council. *Morse v. Wind, 211M356, 1NW(2d)369. See Dun. Dig. 6525.*

1618. Restricted residence districts.—Any city of the first class may, through its council, upon petition of fifty (50) per cent of the owners of the real estate in the district sought to be affected, by resolution, designate and establish by proceedings hereunder restricted residence districts and in and by such resolution and proceedings prohibit the erection, alteration, or repair of any building or structure for any one or more of the purposes hereinafter named, and thereafter no building or other structure shall be erected, altered or repaired for any of the purposes prohibited by such resolution and proceedings, which may prohibit the following, to-wit: hotels, restaurants, eating houses, mercantile business, stores, factories, warehouses, printing establishments, tailor shops, coal yards, ice houses, blacksmith shops, repair shops, paint shops, bakeries, dyeing, cleaning and laundering establishments, billboards and other advertising devices, public garages, public stables, apartment houses, tenement houses, flat buildings, any other building or structure for purposes similar to the foregoing. Public garages and public stables shall include those, and only those, operated for gain.

Nothing herein contained shall be construed to exclude double residences or duplex houses, so-called schools, churches, or signs advertising for rent or sale the property only on which they are placed, and nothing herein contained shall be construed so as to prohibit the council of any such city of the first class from permitting the remodeling or reconstruc-

tion of the interior of any structure in any such restricted residence district which possesses a gross ground area delineated by its foundation walls of at least 1,000 square feet, so that the same shall contain separate accommodations for several, not in excess of four, families; provided that the substantial alteration of the exterior of any such structure shall not be authorized in any such case; and provided further, that such city council shall expressly find in each such case that such remodeling or alteration shall be consistent with the public health and safety.

No building or structure erected after the creation of such district shall be used for any purpose for which its erection shall be prohibited hereunder.

The term "Council" in this act shall mean the chief governing body of the city by whatever name called.

Any district or any portion thereof created under the provisions of this act may be vacated and the restriction thereon removed by the council upon petition of 50 per cent of the owners of the real estate in the original district. A portion of a restricted residence district may be vacated and relieved of the restrictions imposed thereon pursuant to this act by the council upon petition of the owners of the portion of the district sought to be relieved if such portion or lot sought to be relieved does not in any part lie between other portions of such restricted district, or if the portion sought to be relieved abuts upon a public street or alley along one border of such district and extends along said public street or alley the entire distance between cross streets, or if the portion or lot sought to be relieved is contiguous to, along one or both sides, or across a public street along its entire front from a parcel of land which shall be duly zoned under a valid municipal zoning ordinance for commercial, multiple dwelling or industrial purposes. The vacation of such district or portion thereof and the removal of the restrictions therefrom shall be accomplished in the same manner herein provided for the creation of any such district, and in the vacation of any such district or any portion thereof and the removal of such restrictions each and all of the provisions of this act as to allowance of damages and benefits to property affected and as to the appointment of commissioners to appraise such damages and benefits and the duties of such commissioners, of the city clerk, and of each and all of the other officers upon whom duties are herein imposed shall be complied with, and when such proceedings for the vacation of any such district or portion thereof shall have been completed, the property included within such district or portion thereof so vacated shall be deemed relieved of each and all of the restrictions imposed in the proceeding creating such district. In the allowance of damages and benefits to property affected by any proposed vacation, no evidence shall be received, or consideration given to the existence of any other restriction or any restrictive or zoning ordinance, law, or regulation. (As amended Apr. 1, 1943, c. 245, §1.)

A building permit should not be refused because the proposed building may violate a restriction contained in the title to lots in the same addition, and an ordinance prohibiting construction of houses of less than a number of square feet ground area would probably be invalid if only ground therefor is the aesthetic. Op. Atty. Gen. (59a-32), Aug. 18, 1943, Aug. 23, 1943.

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, 206M345, 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.

1626-1 to 1626-8. [Repealed.]
Repealed. Laws 1943, c. 653, §24.

1626-9. Cities may establish airport. [Repealed.]
Repealed. Laws 1943, c. 653, §24.
It is only in cities of the first class that land for a new airport be contiguous to an existing airport. Op. Atty. Gen. (234b), Jan. 28, 1943.

1626-10 to 1626-19. [Repealed.]

Repealed. Laws 1943, c. 653, §24.

1627. Operation of flying machines. [Repealed.]

Repealed. Laws 1943, c. 653, §24.

1628. Altitude. [Repealed.]

Repealed. Laws 1943, c. 653, §24.

Section is repealed by implication by Laws 1941, c. 386 (§5494-16 herein). Op. Atty. Gen. (234a), July 21, 1941.

1629. Location of landing field. [Repealed.]

Repealed. Laws 1943, c. 653, §24.

This section was not superseded by Laws 1941, c. 386 (§5494-16). Op. Atty. Gen. (234a), July 21, 1941. But see Laws 1943, c. 653 (Mason's Minn. St. §§5494-125 to 5494-148).

1630. Violations—Penalties. [Repealed.]

Repealed. Laws 1943, c. 653, §24.

HOUSING ACT FOR CITIES OF FIRST CLASS NOT UNDER HOME RULE CHARTERS

ARTICLE I GENERAL PROVISIONS

1630-4. Definitions.

Term "construction", may refer either to the erection of a structure or to its present condition. *Mayer v. Byers*, 214M54, 7NW(2d)403, 144ALR821. See Dun. Dig. 6525.

1630-6. Alterations and change in occupancy.

Neither Housing Act nor Building Code applied to a stairway in a building constructed before their passage though lumber was renewed after adoption of code. *Pangolas v. Calvet*, 210M249, 297NW741. See Dun. Dig. 6525.

Requirement of two handrails on stairways more than 42 inches wide applies to a hotel building constructed prior to passage of building code, even though no inspector has ordered the construction of a second handrail. *Judd v. Landin*, 211M465, 1NW(2d)861. See Dun. Dig. 6525.

There was a violation of independent ways of egress provision by a fraternity house erected before passage of act, where alterations were made on third floor which affected access to existing ways of egress. *Briggs v. Minnesota Delta Upsilon Club*, 212M14, 2NW(2d)151. See Dun. Dig. 6525.

ARTICLE II DWELLINGS HEREAFTER ERECTED

Title 1 Light and Ventilation

1630-16. Side yards—Distance between adjoining buildings—In order to ensure adequate light. **.**

(a) * * * * *

(b) * * * * *

(c) In the case of private-dwellings and of two-family dwellings hereafter erected or altered to a multiple-dwelling, such space shall be not less than three feet from the side wall of the dwelling to the side lot line. Provided, however, that in no case shall the combined width of side yards for any such dwelling be less than double the width as prescribed in subdivision (a) and (b) of this section for a building of like height. (As amended Mar. 26, 1943, c. 179, §1.)

(d) to (g) * * * * *

1630-23. Window area of rooms—In every dwelling hereafter erected the total window area in each room shall be at least one-eighth of the superficial floor area of the room and the whole window shall be made so as to open in all its parts. At least one such window shall be not less than eight square feet in area between stop beads. In multiple-dwellings the top of at least one window shall be not less than seven feet above the floor. Provided, however, that where an open porch or sun-parlor adjoins a room, one-half of the windows opening upon such porch or sun-parlor may be considered as part of the total window area required for such room. (As amended Mar. 26, 1943, c. 179, §2.)

Title 3 Fire Protection

1630-44. Means of egress.

Construction requiring that residents have independent access to ways of egress does not leave meaning so vague as to render statute void for uncertainty. *Briggs v. Minnesota Delta Upsilon Club*, 212M14, 2NW(2d)151. See Dun. Dig. 6525.

Provision that certain multiple dwellings shall have at least two independent ways of egress which shall be located remote from each other means that occupants shall have independent access to the two ways of egress. *Id.*

There was a violation of independent ways of egress provision by a fraternity house erected before passage of act, where alterations were made on third floor which affected access to existing ways of egress. *Id.*

Whether third floor of fraternity house containing a dormitory violated this section held for jury, though there was both a staircase and a fire escape. *Id.*

Whether violation of statute was proximate cause of injuries to persons sleeping in dormitory of fraternity house held for jury. *Id.*

ARTICLE IV.—MAINTENANCE

1630-74. Public halls—Lighting in daytime.

A change of floor level at entrance of a basement beauty shop held to present jury questions as to negligence of lessor and lessee of premises and contributory negligence of a patron. *Wood v. Prudential Ins. Co.*, 212M 551, 4NW(2d)617. See *Dun. Dig.* 5369, 6987, 7019.

ARTICLE V IMPROVEMENTS

1630-107. Egress.

There was a violation of independent ways of egress provision by a fraternity house erected before passage of act, where alterations were made on third floor which affected access to existing ways of egress. *Briggs v. Minnesota Delta Upsilon Club*, 212M14, 2NW(2d)151. See *Dun. Dig.* 6525.

ARTICLE VI REQUIREMENTS AND REMEDIES

1630-113. Penalties for violations.—Every person, firm or corporation who shall violate any provision of this act, shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars or by confinement in the city workhouse for a period not exceeding ninety days. Each day's continuance of the violation of this act shall be deemed a separate offense. (As amended Mar. 26, 1943, c. 179, §3.)

PROVISIONS RELATING TO CITIES OF SECOND CLASS

1643. Mayor to have supervision of police department.—That in each city of the second class in the State of Minnesota the Mayor of such city shall hereafter have the exclusive power to direct the law enforcing activities of the police department, and the chief of police and such other officers as may be acting in such department shall at all times be subordinate to such Mayor; provided, however, that this section shall not apply to cities of the second class operating under a special charter. (As amended Mar. 30, 1943, c. 235, §1.)

1643-2. Pensions for police officers.—That every paid municipal police department now existing or which may hereafter be organized may and is hereby authorized to become incorporated pursuant to the provisions of any applicable law of this state, or adopt a constitution and by-laws as a relief association to provide and permit and allow said police relief association so incorporated or so organized to pay out of and from any funds it may have received from the State of Minnesota, or from any other source, a service pension in such amounts and in such manner as its articles of incorporation or the constitution and by-laws shall so designate, not exceeding, however, the sum of \$75.00 per month to each of its pensioned members who shall have arrived at the age of 50 years or more, and shall have done active police duty as a member of such paid municipal police department for a period of 20 years or more in the police department of such city in which such relief association has been or shall be so organized, or who having been disabled physically or mentally because of any injury received or suffered while in the performance of his duty as such police officer, so as to render necessary his retirement from active police service may be placed upon the pension list, and shall receive such pension as provided for in said articles of incorporation or constitution and by-laws; provided, however, that if any

such police officer shall die leaving a widow surviving him she may be paid as long as she remains unmarried such amounts not exceeding, however, the sum of \$75.00 per month and in such manner as the articles of incorporation or constitution and by-laws of said police relief association shall provide; provided, however, that said fund shall not be used for any other purpose than for the payment of service pensions and a disability pension as herein provided. (As amended Apr. 10, 1943, c. 382, §1.)

Pensions cannot be increased beyond limit of the law as it existed at the time of retirement. *Op. Atty. Gen.* (785j), May 7, 1943.

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.) [424.01]

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 incorporated 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.) [424.02]

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.) [424.03]

Where member of an association established prior to enactment of this act was receiving compensation from relief association and thereafter died and widow was paid pension in accordance with old law, and thereafter an association was reorganized in compliance with this act, and pensions and compensations were increased, association may not pay widow a pension in accordance with amounts established under this act. *Op. Atty. Gen.* (198A-1), Oct. 18, 1941.

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 become 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.) [424.04]

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.) [424.05]

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.) [424.06]

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.) [424.07]

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 fire-

men's relief association. (Act Apr. 16, 1941, c. 267, §8.) [424.08]

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 statements 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.) [424.09]

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.) [424.10]

Persons to whom state auditor shall issue warrant each fiscal year for premium tax paid by insurance company to the state—filing financial reports as prerequisite: Op. Atty. Gen. (254d), June 24, 1943.

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.) [424.11]

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 from each fireman's salary two per cent of the lowest salary paid to any fireman in the service on or after May 1, 1943, 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 and 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 salary 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; Apr. 22, 1943, c. 567, §1.)

[424.12]

"Basic pay" means the normal or regular pay which a fireman received every month, and not the pay he received when first entering into the employment, and the only compensation to which the 2% would not apply would be overtime or extra compensation or compensation paid for special work in addition to and above the regular salary of the recipient. Op. Atty. Gen. (688m), Apr. 13, 1943.

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.)

[424.13]

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.)

[424.14]

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.)

[424.15]

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.)

[424.16]

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.)

[424.17]

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.)

[424.18]

Section refers only to funds set up in accordance with this act and does not affect funds established under old law. Op. Atty. Gen. (198A-1), Oct. 18, 1941.

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.)

[424.19]

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.)

[424.20]

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.)

[424.21]

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.)

[424.22]

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.)

[424.23]

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.)

[424.24]

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.)

[424.25]

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.)

[424.26]

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.)

[424.27]

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.)

[424.28]

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.) [424.29]

1664-91. Building and zoning regulations.

A building permit should not be refused because the proposed building may violate a restriction contained in the title to lots in the same addition, and an ordinance prohibiting construction of houses of less than a certain number of square feet ground area would probably be invalid if only ground therefor is the aesthetic one. Op. Atty. Gen. (59a-32), Aug. 18, 1943, Aug. 23, 1943.

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.

1712-1. Tax levy for musical entertainments.

Money may not be appropriated from general funds for "musical entertainment." Op. Atty. Gen. (59b-3), Apr. 21, 1941.

1713. Cities empowered to make local improvements; etc.

City engineer of Brainerd supervising construction of storm sewer by city employees had supervisory power under city charter to lower a house drain running to sanitary sewer system which obstructed construction of storm sewer, and in action by landowner against city for trespass and damage to wall, ultra vires was not a defence, though engineer acted without specific authorization. Clark v. City of Brainerd, 210M377, 298 NW364. See Dun. Dig. 6813.

1716-5. Police department may be incorporated.

Policemen's relief associations and pensions in cities of not less than 17,500 and not more than 18,750 inhabitants. Laws 1943, c. 432, §1 to 23.

1716-16. May pay health or accident benefits.

A city police relief association may operate a hospitalization benefit plan for its members. Op. Atty. Gen. (785M), Jan. 2, 1942.

1716-21. Police civil service—Application of act.

This act shall apply to every city of the third class having an assessed valuation of more than \$15,000,000. In the event any city shall at any time come under the terms of this act it shall continue thereunder notwithstanding any subsequent change in classification or valuation. (Act Apr. 10, 1943, c. 381, §1.) [419.19]

1716-22. Police Civil Service Commission created in certain cities.—There may be created in every city of the third class having an assessed valuation of more than \$15,000,000, a police civil service commission 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 resolution of its council, expressly adopting the provisions of this act, adopted by a vote of a majority of all the members of the council present at a regular meeting thereof, approved by the mayor, and this act shall not apply to any such city until the adoption of such resolution. (Act Apr. 10, 1943, c. 381, §2.) [419.20]

1716-23. Membership of Commission in certain cities.—In any such city where the administration, management, and control of the police department is,

by home rule charter, vested in a police and fire commission consisting of three members and a secretary and the term of office of each commissioner is for a period of six years, such commissioner shall constitute the police civil service commission. Their terms of office as police civil service commissioner shall be concurrent with their terms of office as police and fire commissioners. The president of the police and fire commission shall be president of the civil service commission. (Act Apr. 10, 1943, c. 381, §3.) [419.21]

1716-24. Meetings of Commission.—The commission shall first meet immediately after its appointment and thereafter on the first Monday in April of each year. The commission may from time to time fix the times of its meetings, and adopt, amend and alter rules for its procedure. Special meetings may be called by the president on 24 hours' notice in writing to each of the members of the commission. (Act Apr. 10, 1943, c. 381, §4.) [419.22]

1716-25. Commissioner shall serve without pay.—Each commissioner shall serve without pay. The city clerk shall serve as secretary without compensation. All expenses incurred by the commission in connection with performance of its duties including supplies, stationery, equipment, shall be paid by the police and fire commission from funds appropriated for the operation of the police department. Such bills shall first be approved by the police civil service commission and submitted by its secretary to the police and fire commission for payment. (Act Apr. 10, 1943, c. 381, §5.) [419.23]

1716-26. Duties of Commission.—The commission shall have control and supervision over the employment, promotion, discharge, and suspension of all members, officers and employees of the police department of such city.

The commission shall immediately after its appointment and organization grade and classify all employees of the police department of said city 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 employee as the commission deems 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 employment they seek. All applications shall be upon forms prescribed by the commission and contain such data, and information as the commission deems necessary and useful. (Act Apr. 10, 1943, c. 381, §6.) [419.24]

1716-27. Commission to make rules.—The commission shall make, amend, alter, and change rules to promote efficiency in the police department service and to carry out the purposes of this act. The rules shall provide among other things for:

(a) The classification of all offices and employments in the police department;

(b) Competitive examinations to test the relative fitness of applicants for promotion or entrance into the police department;

(c) Public advertisements of all examinations at least ten days in advance in a newspaper of general circulation in said city posting same for ten days in the city hall and at each station house;

(d) The creation and maintenance of lists of eligible candidates after successful examination in order of their standing in the examination and without reference to the time of examination, which shall be embraced in an eligible register, and the commission may

by rule provide for striking any name from the eligible register after it has been thereon two years;

(e) The rejection of candidates or eligibles who, after the entry of their names, shall fail to comply with the reasonable rules and requirements of the commission in respect to age, residence, physical condition, or otherwise, or who have been guilty of criminal, infamous, or disgraceful conduct, or of any wilful misrepresentation, deception, or fraud in connection with their applications for employment;

(f) The certification of the name standing highest on the appropriate list to fill any vacancy;

(g) Temporary employment without examination, with the consent in each case of the commission, in cases of emergency but no such temporary employment shall continue more than 60 days nor shall successive temporary employments be permitted for the same position. The prohibition contained in this section against re-employment of temporary employees shall not be effective until after the termination of the present war emergency;

(h) Promotion based on competitive examination and upon records of efficiency, character, conduct, and seniority;

(i) Suspension with or without pay for not longer than 60 days and for leave of absence, with or without pay; and

(j) Such other rules not inconsistent with the provisions of this act as may be found necessary to secure the purpose of this act.

Copies of such rules shall be kept posted in a conspicuous place at each police station house and no rules of general application with reference to employment, promotion, discharge, or suspension shall be effective until so posted. (Act Apr. 10, 1943, c. 381, §7.)

[419.25]

1716-28. Tenure of office and employment.—No officer or employee after six months' continuous employment shall be removed or discharged except for cause upon written charges and after an opportunity to be heard in his own defense as in this chapter hereinafter provided. Such charges shall be investigated by or before such civil service commission. The finding and decision of such commission shall be forthwith certified to the chief or other appointed or superior officer, and will be forthwith enforced by such officer. Nothing in this act shall limit the power of any officer to suspend a subordinate for a reasonable period not exceeding 60 days for the purpose of discipline, or pending investigation of charges when he deems such suspension advisable. (Act Apr. 10, 1943, c. 381, §8.)

[419.26]

1716-29. Commission shall prescribe standards.—The commission shall ascertain the duties of each officer, position, and employment in the police protection service of such city, and designate by rule as well as may be practicable the grade of each office, employment, or position. The commission shall prescribe standards of fitness and efficiency for each office, position, and employment and for each grade, and adapt its examination thereto.

The civil service commission shall prescribe in its rules that all vacancies in any position, rank, or office of the police department, except that of patrolman, shall be filled by the promotion of a regular member of the police department after examination; that no person under 21 years of age or more than 35 years of age shall be eligible to take the examination for employment in said police department; that the retirement from the service of said police department shall be optional on the part of said police officers between 55 and 60 years of age; and such retirement shall be compulsory at 65 years of age; that any regular member of said police department who has heretofore been granted leave of absence from said police department by the police and fire commission now in control of the affairs of said police department,

shall be granted an identical leave of absence by the civil service commission at its first meeting. (Act Apr. 10, 1943, c. 381, §9.)

[419.27]

1716-30. Examinations.—All examinations shall be impartial, fair, and practical and designed only to test the relative qualifications and fitness of applicants to discharge the duties of the particular employment which they seek to fill. No question in any examination shall relate to the political or religious convictions or affiliations of the applicant. All applicants for positions of trust and responsibility shall be specially examined as to moral character, sobriety, and integrity, and all applicants for position requiring special experience, skill, and faithfulness shall be specially examined in respect to those qualities. It shall be the duty of the chief of the police department and of every employee to act as an examiner or assistant examiner, at the request of the commission, without special compensation therefor. The members of the commission collectively or individually may act as examiners or assistant examiners. (Act Apr. 10, 1943, c. 381, §10.)

[419.28]

1716-31. Notice of examination.—Notice of the time, place, and scope of each examination shall be given by publication and posting as specified in section 7, and mailing such notice to each applicant upon the appropriate list of the application register ten days in advance. The names of those found eligible upon examination, after giving credit for character and previous successful experience, shall be entered with their address and percentages on the eligible register. No name shall remain upon the eligible register more than two years without a new application, and, if the rules of the commission so require, a new examination. When a vacancy has been filled or a new appointment made, the names selected shall be stricken from the eligible register and transferred to the service register. (Act Apr. 10, 1943, c. 381, §11.)

[419.29]

1716-32. Charges may be filed.—Charges of inefficiency or misconduct may be filed with the secretary of the commission by a superior officer or by any member of the commission of his own motion, and thereupon the commission shall try the charges after no less than ten days' written notice to the accused. Such notice shall set forth the charges as filed. In the event that the charges are filed by a member of the commission the complaining commissioner shall not sit. The trial of said charges shall be open to the public and each commissioner shall have the power to issue subpoenas and to administer oaths to compel the attendance and testimony of witnesses and the production of books and papers relevant to the investigation. The commission shall require by subpoena the attendance of any witness requested by the accused who can be found in the county in which such city is located. The commission may make complaint to the district court of disobedience of its subpoenas or orders under this section, and the court shall prescribe notice to the person accused and require him to obey the commission's subpoena and order, if found within the lawful powers of the commission, and punish disobedience as a contempt of court. Witnesses shall be entitled to the same fees and mileage as for attendance upon the district court, except that any officer, agent, or employee of said city who receives compensation for his services, shall not be entitled to fees or mileage. (Act Apr. 10, 1943, c. 381, §12.)

[419.30]

1716-33. Proceedings after investigations.—If, after investigation and trial by civil service commission as herein provided, an employee is found guilty, of inefficiency, breach of duty, or misconduct, he may be removed, reduced, or suspended and his name may

be stricken from the service register. If the board shall determine that the charges are not sustained, the accused if he has been suspended pending investigation, shall be immediately reinstated and shall be paid all back pay due for the period of suspension.

Findings and determinations hereunder and orders of suspension, reduction, or removal, shall be in writing and shall be filed within three days after the completion of such hearing with the secretary of the commission and it shall be the duty of the secretary to notify such employee of said decision in writing. Any person suspended, reduced, or removed by the commission after investigation may appeal from the order to the district court by serving written notice thereof upon the secretary within ten days after the filing of said order or the receipt by said employee of written notice of said order as above provided.

Within five days thereafter, the secretary shall certify to the clerk of the district court, the record of the proceedings, including all documents, testimony, and minutes. The case shall then be at issue and shall be placed on the calendar by the clerk to be tried before the court without jury at the next general term thereof to be held in the county where said city is located at the place nearest said city. The question to be determined by the court shall be: "Upon the evidence was the order of the commission reasonable?" After trial in the district court an appeal may be taken from the decision thereof to the supreme court by the employee or the commission in the same manner as provided for other court cases. (Act Apr. 10, 1943, c. 381, §13.)

[419.31]

1716-34. Unlawful acts of applicants a misdemeanor.—An applicant for examination, appointment or promotion in the police department service of said city who shall give, render, or pay or promise to give, render, or pay any money, service, or other thing to any person, for or on account of or in connection with his examination, appointment or proposed appointment or promotion shall be guilty of misdemeanor and be subject to suspension or removal. (Act Apr. 10, 1943, c. 381, §14.)

[419.32]

1716-35. Unlawful acts of officers or members a misdemeanor.—Any member, officer, or employee of the police department, when operating under civil service in accordance with the provisions of this chapter, who shall in any manner solicit, receive or pay, or be in any manner concerned in soliciting, receiving, or paying any assessment, subscription, or contribution for any party or political purpose, shall be guilty of a misdemeanor and subject to suspension or removal. (Act Apr. 10, 1943, c. 381, §15.)

[419.33]

1716-36. Solicitation of political contributions a misdemeanor.—Any person who shall solicit or receive, or be in any manner concerned in soliciting or receiving an assessment, contribution, or payment for any political purpose from any member, officer or employee in police department operated under civil service shall be guilty of misdemeanor. (Act Apr. 10, 1943, c. 381, §16.)

[419.34]

1716-37. Certain officers to continue without examination.—Any police officer regularly employed at the time of the creation of the civil service commission shall come under the jurisdiction of the civil service commission without examination. (Act Apr. 10, 1943, c. 381, §17.)

[419.35]

1716-38. Commissions may be abolished—How.—Any police civil service commission hereafter created, pursuant to the provisions of this act may be discontinued and abolished as follows: A petition signed by 10 per cent of the number of legal voters voting at the last general municipal election shall be filed

with the governing body of such city and request that the following question be submitted to the voters: "Shall the police civil service commission be abolished?"

When such petition is filed, the governing body of such city shall cause this question to be submitted to the voters at the first following general municipal election.

Such commission shall be deemed to be abolished if five-eighths of the votes cast in this election be in favor of such abolishment; and the status of the police department and all employees thereof shall thereafter be deemed to be the same as if said commission had not been created. (Act Apr. 10, 1943, c. 381, §18.)

[419.36]

1716-41. Police department may form relief association in cities of the third class.—The police department of each city of the third class employing six or more regular and fully paid policemen when authorized by an ordinance may maintain a policemen's relief association which shall be duly incorporated under the laws of this state. All such associations now existing as such corporations, or hereafter incorporated under the laws of this state, shall have perpetual existence. (Act Apr. 20, 1943, c. 521, §1.)

[423.37]

City of South St. Paul may levy a tax of one mill for benefit of special relief fund of policemen's relief association in addition to charter maximum levy of 20 mills. Op. Atty. Gen. (519c), June 22, 1943.

1716-42. Organization and operation.—Each such relief association shall be organized, operated, and maintained in accordance with its own articles of incorporation and by-laws, by policemen, as hereinafter defined, who are members of said police department. Each association shall have the power to regulate its own management and its own affairs, and all additional corporate 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. 20, 1943, c. 521, §2.)

[423.371]

1716-43. Who is policeman under act.—A policeman under this act is a duly appointed policeman, policewoman, or police matron, who is regularly entered on the payroll of the police department of such city, serving on active duty therein, after having completed any probationary period required under the laws or ordinances of such city. Probationers in the police department, substitutes and persons employed irregularly from time to time, and elective officials of such department, shall not be deemed to be included under this act.

All persons who are members of the policemen's relief associations of such cities, at the time of the passage of this act, whether their status is embraced within the definition of a policeman 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 policeman herein provided shall have the right to retain his membership on promotion or appointment to other positions to which such policemen 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 in accordance with their articles of incorporation and by-laws, and shall be subject to all of the provisions thereof, existing at the time of the passage of this act, or as thereafter duly repealed or amended. (Act Apr. 20, 1943, c. 521, §3.)

[423.372]

1716-44. Acting policemen to become members.—Every policeman as herein defined shall automatically become a member of the policemen's relief association of any such city upon the completion of any probationary period required under the laws or ordinances of such city and his appointment as a regular policeman of such city as defined in Section 3 hereof. He shall thereupon become subject to the articles of incorporation and by-laws of such association, and shall be entitled to all of the privileges and benefits therein provided for members of the policemen's relief association of such city. (Act Apr. 20, 1943, c. 521, §4.)

[423.373]

South St. Paul police belonging to the benevolent association of that city may retire from the public employees' retirement association and obtain a refund of their accrued salary deductions. Op. Atty. Gen. (331b-5), Sept. 20, 1943.

1716-45. Officers of association.—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 directors 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 such 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 special fund. (Act Apr. 20, 1943, c. 521, §5.)

[423.374]

1716-46. Secretary and treasurer to make annual report.—The secretary and treasurer of every association, prior to the first day of February in each year, shall jointly prepare and sign with the approval of the association's board of directors, a detailed and itemized report of all receipts and expenditures in the association's special fund for the preceding calendar year, showing the sources 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 or city recorder of the city in which the association is located, and with the mayor and the treasurer thereof. No money shall be paid to a relief association by the city in which the association is located until said report is so filed. (Act Apr. 20, 1943, c. 521, §6.)

[423.375]

1716-47. Tax levy.—The city council or other governing body of each such city wherein such a relief association is located may each year, at the time the tax levies for the support of the city are made, and in addition thereto, levy a tax for the benefit of the special relief fund of such policemen's relief association of one mill on all taxable property within such city, until the balance in said special fund of such policemen's relief association in any such city has reached the sum of \$50,000.00, and thereafter said levy may be reduced by such city to a sum sufficient to maintain the balance in said special fund at not less than \$50,000.00.

The tax so levied shall be transmitted with other tax levies to the auditor of the county in which such city is located and by said county shall be collected and payment thereof enforced, when and in like manner as state and county taxes are paid.

As soon as practicable after the first day of June and the first day of November, in each year, the county treasurer of each such county shall pay to the treasurer of each such relief association within said county the amount of such tax then collected and payable to said association, together with all interest and penalties so collected, and all interest collected thereon between the time of collection and the time of

payment to such relief association. And the city treasurer of such city, in the event that such tax or any part thereof is paid to him, shall likewise pay the same to the treasurer of the policemen's relief association of such city, as soon as the same has been collected, together with all interest and penalties thereon. (Act Apr. 20, 1943, c. 521, §7.)

[423.376]

1716-48. Deductions from salaries.—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 from the salary of each policeman of such city subject to the provisions of this act, two per cent of the basic pay of all such policemen of such city, and transfer the total thereof to the treasurer of the special fund of the policemen's relief association, who shall credit said total to the special fund of such association and to the credit of each individual policeman from whose pay said deductions were so made.

If a policeman in any such city is separated from the service due to resignation or some reason not involving malfeasance, nonfeasance, moral turpitude, or if his separation from such service is caused by injury, death or other disability, under such circumstances that no pension benefits are payable to him or his widow or children, the treasurer of the special fund shall return to such policeman, or in case of his death, to his heirs, executors or administrators, all of the amounts so deducted from his base pay without interest, but less the amount of any disability, or other benefits theretofore paid to such policeman. (Act Apr. 20, 1943, c. 521, §8.)

[423.377]

1716-49. Association to have management of funds.—Each such 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 tax levies by the city in which such relief association is located, and interest from the investment thereof.

(b) Funds derived from deductions made from the basic pay of members of such relief association.

(c) Funds derived from private sources such as gifts, charges, rents, entertainments, dues paid by members, and from other sources. (Act Apr. 20, 1943, c. 521, §9.)

[423.378]

1716-50. To be placed in separate funds.—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 city in which the relief association is located, including wage deductions from the basic pay of policemen, shall be deposited in the special fund and shall be expended only for the purposes herein after 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. 20, 1943, c. 521, §10.)

[423.379]

1716-51. Purposes for which expenditures may be made.—All monies received by such relief association and deposited by it in its special fund shall be appropriated and disbursed by each such association only for the following purposes, to-wit:

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

(b) For the payment of disability and service pensions to members of such relief associations.

(c) For the payment of salaries and expenses of its officers and employees, and the expense of operating and maintaining such relief association, including the

premiums on the official bonds of its officers and employees. (Act Apr. 20, 1943, c. 521, §11.) [423.38]

1716-52. Shall determine who is entitled to relief.—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 fix the age limit of children to which pensions may be paid, subject to, and in accordance with, the provisions of this act. (Act Apr. 20, 1943, c. 521, §12.) [423.381]

1716-53. Payments during disability.—A member of such association who, by reason of sickness or accident, becomes disabled from performing the duties of a policeman in the police department of any such city, shall be entitled to receive from the association during disability, such disability pension as the by-laws of the association may provide, which pension shall in no event, however, be less than \$75.00 per month. No disability pension shall be paid or allowed by such association unless notice of the disability and application for pension on account thereof, shall be made by or on behalf of the disabled member to the secretary of the association within ninety days after such disability. (Act Apr. 20, 1943, c. 521, §13.) [423.382]

1716-54. Time limit.—A member of any such relief association entitled to disability pension, as herein defined, shall receive the same from such association for such periods of time, at such times, and in such amounts, as the by-laws of the association shall provide, but in no event shall such disability pension be less than \$75.00 per month. (Act Apr. 20, 1943, c. 521, §14.) [423.383]

1716-55. Retirement age.—A member of any such association as herein defined, who has completed a period, or periods of service, as a policeman in the police department of any such city, equal to twenty years or more, shall, after he has arrived at the age of fifty years or more, and has retired from the payroll of the police department of such city, be entitled to a service pension equal to one-half of the monthly base pay of such policeman at the time of his retirement from said police department, but in no event shall such pension be less than \$75.00 per month, which pension shall be payable monthly during the term of his natural life in conformity with the by-laws of such association. All leaves of absence of more than ninety 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. No deductions shall be made for a leave of absence granted to a member to enable him to accept an appointive position in said police department not subject to the provisions of this act. No member shall be entitled to draw both a disability and a service pension. (Act Apr. 20, 1943, c. 521, §15.) [423.384]

1716-56. Retirement after 20 years of service.—A member of such association as herein defined, who has completed a period, or periods of service, as a policeman in the police department of any such city equal to twenty years or more, but has not reached the age of fifty 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 fifty years, the association shall, upon application therefor, pay his pension from the date the application is approved by the association. (Act Apr. 20, 1943, c. 521, §16.) [423.385]

1716-57. Service in armed forces to be included.—In determining the years of service of any such policeman, no deduction shall be made for the period any such policeman shall have been a member of the armed forces of the United States subsequent to his entry into the service of the police department, who left the service of such police department to enter the armed forces of the United States, providing such policeman is honorably discharged from the armed forces of the United States, and resumes his duties as such within sixty days after such discharge from the armed services of the United States, or within such further period as may be granted to him by the board of directors of such association within which to resume said duties. (Act Apr. 20, 1943, c. 521, §17.) [423.386]

1716-58. Survivors of pensioners to receive benefits.—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 any such police department as a policeman, and remained such continuously after their 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 before his retirement from said police 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 born the issue of the lawful wedlock of such pensioner.

Such widow and said child or children shall be entitled to a pension or pensions as follows:

(1) To such widow a pension of not less than \$25.00 and not to exceed \$60.00 per month, as the by-laws of such association shall 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 sixteen, and not to exceed eighteen years of age, which pension and age shall be fixed by the by-laws of such 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 or remarriage of their mother, be entitled to receive a pension or pensions in such amount or amounts as may be fixed by the by-laws of such association, until they reach the age of not less than sixteen and not more than eighteen 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. 20, 1943, c. 521, §18.) [423.387]

1716-59. Board of Examiners.—The relief association shall establish a board of examiners who shall, as and when requested by the association's board of directors, investigate and make report on all applications for disability pension and make recommendations as to the allowance or disallowance thereof; investigate and make report on all disability pensioners, and make recommendations as to the continuance or discontinuance thereof; and investigate and report on all applications for service pensions. 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 police department, and a majority vote of the members of the relief association on said board shall constitute its recommendation to the board of directors. (Act Apr. 20, 1943, c. 521, §19.) [423.388]

1716-60. Investment of funds.—Money accumulated in the special fund of any such association shall be invested from time to time as the board of directors thereof shall direct only in bonds of the United States and the state of Minnesota, and of municipalities situated in the state of Minnesota, and at no time shall the funds of any such association be permitted to accumulate in any bank in an amount larger than the deposit insurance carried by said bank for the protection of individual depositors. (Act Apr. 20, 1943, c. 521, §20.) [423.389]

1716-61. Funds exempt from execution.—All payments made or to be made by any such policemen's relief association 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 absolutely void. (Act Apr. 20, 1943, c. 521, §21.) [423.39]

1716-62. Application 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. 20, 1943, c. 521, §22.) [423.391]

1716-63. Provisions severable.—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. 20, 1943, c. 521, §23.)

PROVISIONS RELATING TO CITIES OF FOURTH CLASS

1719-1. Territory annexed to cities of fourth class—by ordinance.—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 or village government, and being contiguous to and surrounded on all sides by the corporate limits of a city of the fourth class or village, the city or village council may, by ordinance, annex such tract, or tracts, to the city or village upon notice to the owners thereof as hereinafter provided. (Act Apr. 16, 1941, c. 265, §1; Act Feb. 27, 1943, c. 83, §1.) [413.143]

1719-2. Owners to receive notice.—Whenever the city or village 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 or village will be to its interests and will cause no manifest injury to the persons owning such tract, or tracts, the city or village council may, by ordinance, declare said tract, or tracts, to be annexed to such city or village, and thereupon such tract, or tracts, shall become a part of such city or village as effectual as if it had been originally a part thereof. (Act

Apr. 16, 1941, c. 265, §1; Act Feb. 27, 1943, c. 83, §2.) [413.143]

1719-3. Ordinance filed with register of deeds.—It shall be the duty of the council of any city or village 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 or village 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 or villages of less than 10,000 population, and not as repealing such law. (Act Apr. 16, 1941, c. 265; Act Feb. 27, 1943, c. 83, §3.) [413.143]

1728. Salaries of mayor and council—Submission of voters.

Laws 1943, c. 49, fixes salaries of mayor and aldermen in cities of the fourth class in counties having population of 24,000 to 26,000, containing 550,000 to 560,000 acres, and with an assessed valuation of \$6,000,000 to \$8,000,000.

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.

Power to maintain an airport or bathing beach outside city limits carries with it authority to adopt rules and regulations governing use thereof. Op. Atty. Gen. (62b), Apr. 9, 1941.

City of Pipestone may lease land for golf course and airport purposes without a vote of electors, under a lease providing an option to purchase and to receive property as a gift if rentals are paid for a certain time. Op. Atty. Gen. (59a-40), June 3, 1942.

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.

1742. Powers of commission.

Golf course no longer required for park purposes may be leased to a private party for agricultural purposes. Op. Atty. Gen. (59a-40), Mar. 27, 1943.

1743. Meetings — Ordinances—Contracts—Claims, etc.

Park board desiring to lease unused land for agricultural purposes to a private party must call for bids. Op. Atty. Gen. (59a-40), Mar. 27, 1943.

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.)

[418.12]

City of the board class adopting act providing for a board of police commissioners thereby abolished the police civil service law, as far as it was concerned. Op. Atty. Gen. (785e-2), Jan. 7, 1943; Feb. 2, 1943.

Act should be treated as valid until competent court holds otherwise, though it applies only to West St. Paul. Op. Atty. Gen. (785e-2), Feb. 5, 1943.

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.)

[418.12]

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.)

[418.12]

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.)

[418.12]

Board of police commissioners may discharge an officer without any hearing, unless it adopts rules to that effect. Op. Atty. Gen. (785e-2), Jan. 7, 1943; Feb. 2, 1943.

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.)

[418.12]

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.)

[418.12]

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 compensa-

tion 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.)

[418.12]

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.)

[418.12]

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.)

[418.12]

Procedure for abolishing board of police commissioners and returning to police civil service plan. Op. Atty. Gen. (785e-2), Jan. 7, 1943; Feb. 2, 1943.

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.

1800. Inspection of milk, dairies, etc.—The governing body of every city in this state, may provide for the inspection of milk and cream sold within its limits, and of dairies, and of dairy herds kept for the production of such milk and cream.

Two or more such municipalities may contract with one another to provide joint administration of this law and may by contract apportion the expense thereof. (As amended Apr. 2, 1943, c. 275, §1.)

Cities and villages may provide jointly for inspection of dairies, milk and cream and division of cost thereof. Op. Atty. Gen. (292b), Nov. 10, 1943.

1811. General election laws to apply. [Repealed.]

A village justice has authority to suspend sentence in case of a violation of a village ordinance, and village is required to pay fees. Op. Atty. Gen. (266B-8), Jan. 2, 1942.

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.

It is doubtful if authority to "improve streets" is sufficient to authorize council to install storm sewers. Op. Atty. Gen. (387b-1), June 5, 1941.

This act has no application where a street forming part of a trunk highway is improved under a cooperative agreement between city and state. Op. Atty. Gen. (396c-17), July 15, 1941.

Village operating under Laws 1885, c. 145, may proceed under this act, and several streets may be improved in one proceeding. Op. Atty. Gen., July 30, 1941.

In condemnation proceeding in the widening of street pursuant to Laws 1939, c. 75, §4, the only matters considered are acquisition of land and determination of damages, with offsets for benefits to parts of parcels not taken, and matter of assessing benefits upon other property owners is to be taken care of in other proceedings relating to improvement itself. Op. Atty. Gen. (396c-6), Aug. 28, 1942, Sept. 2, 1942.

A petition is required for building curb and gutter and assessing cost on abutting landowners. Op. Atty. Gen. (396g-7), Sept. 9, 1942.

This statute does not relate to sewers. Op. Atty. Gen. (387g-1), May 11, 1943.

1821. Assessment.

Special assessment lien for paving attaches when council adopts a resolution accepting these special assessments. Op. Atty. Gen. (408c), June 6, 1941.

This act has no application where a street forming part of a trunk highway is improved under a cooperative agreement between city and state. Op. Atty. Gen. (396c-17), July 15, 1941.

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.

If village is paving a street and school district wishes an additional six or eight feet on each side of street which passes school house and is willing to pay cost of paving these strips and village is proceeding under some statute which permits laying out of a street of such a width and levying of cost against abutting owners on basis of special benefits received, assessments for total cost of paving these two strips may be levied against school district and may be paid by it. Op. Atty. Gen. (396E), Aug. 11, 1941.

It is mandatory upon school district to pay assessment taxes for oiling street along school property, if the oiling is not for purpose of merely temporarily laying the dust. Op. Atty. Gen. (396-e), June 24, 1942.

1822-1. Municipalities may levy special assessment against school property in certain cases.—Any city, village, or borough however organized, may levy special assessments against the property of a school district, except one operating under the home rule charter of any city of the first class, or a county benefited by an improvement to the same extent as if such property were privately owned. If the amount of any such assessment is not paid when due, it may be recovered in a civil action brought by the city, village, or borough against the school district or county owning the property so assessed. (Act Apr. 24, 1943, c. 609, §1.)
[471.61 (1)]

1822-2. Special assessments for improvements heretofore made.—When any local improvement has heretofore been made and special assessments have been levied to finance all or part of the cost of such improvement under any law or charter not expressly authorizing assessments against public property, any county or school district owning property benefited by such improvement may pay to the city, village, or borough making the improvement the amount of any benefit received therefrom not in excess of the amount that would have been assessable against such property were it privately owned. (Act Apr. 24, 1943, c. 609, §2.)
[471.61 (2).]

County board pays on the basis of the benefits which it considers were received by the county and not upon the basis of the assessment. Op. Atty. Gen. (480c), Aug. 26, 1943.

1822-3. Application of act.—This act shall not modify any law or charter provision authorizing the imposition of special assessments against counties and school districts. (Act Apr. 24, 1943, c. 609, §3.)
[471.61 (3)]

1823. Supplemental assessments.

Inadvertently omitted past paving assessment installments may be added by county auditor to taxes for current year. Op. Atty. Gen. (408c), Nov. 26, 1941; Dec. 6, 1941.

1824. Certificates of indebtedness authorized.

Certificates of indebtedness for paving are not "expenses incurred", and no certificates bearing a lower rate may be issued to refund those of original issue. Op. Atty. Gen., June 11, 1941.

Laws 1943, c. 4, validates proceedings for the improvement of streets in villages including proceedings for the sale of bonds to pay the cost of such improvements.

1828-16 ¾ a. Police department may incorporate.

The police department in any such city is hereby authorized to become incorporated pursuant to the provisions of any laws of the State of Minnesota and to adopt articles of incorporation and by-laws as a relief association. All members of such department at the time of the taking effect of this act and all persons subsequently becoming members of such department shall be members of such association, except municipal court officers and persons appointed for temporary service or for probationary periods. For the purpose of this act no employment after six months shall be considered temporary or probationary. All such members of the department shall be assessed for entrance fee and dues of the association, as fixed by its by-laws, which with the assessment authorized by Section 13, shall, when certified by the secretary of the association to the city clerk, be deducted from the pay of such member and paid into the proper fund of the association. (As amended Mar. 15, 1943, c. 116, §1.)

1828-16 ¾ c. Retirement pension.—When any member of the association reaches the age of 55 years he may retire and shall thereupon be entitled to a pension as long as he lives, at the following rates:

(a) \$75.00 per month when such member shall have served as a member of said police department for a period of 20 years or more, excluding temporary employment or probationary periods.

(b) An additional \$5.00 per month for each year of service over 20 that said person may have served as a member of such police department after the age of 55 years. The total amount of pension hereunder shall in no event exceed \$100.00 per month.

(c) In the event such member shall retire after reaching the age of 55 years or more, and after having been a member of said department for at least ten years but before having served 20 years in said department, the amount of pension which he shall receive shall be that proportion of \$75.00 per month which the years of service in said department prior to retirement bear to 20 years, major fractions of years of service to be treated as one year and minor fractions to be disregarded.

(d) In no event shall temporary employment or employment for probationary period be considered in computing pension allowance hereunder.

(e) In the event any member shall be discharged from the service of said police department after having served 20 years or more and before such member has reached the age of 55, he may, upon the vote of a majority of the members of the relief association, be permitted to continue as a member of said association, notwithstanding that he is no longer a member of said police department, and upon reaching the age of 55 years, shall be entitled to a pension at the rate of \$75.00 per month; provided that in such event such member shall make application to said association for such privilege within six months from the time he is discharged and shall contribute each month after said discharge, and until reaching the age of 55 years, to the pension fund of said relief association a sum of money equal to 31 ½ % of the then average monthly pay of members in said department holding the rank held by said member at the time of the discharge. In the event such association approves such application, such member shall within 60 days thereafter pay into said association for the pension fund the monthly installments herein provided for the period between his discharge and the time of the first payment. Thereafter, in the event said member shall default in the payment of such monthly as-

assessments and such default shall continue for a period of sixty days, all right hereunder shall cease. In the event that any member of the police department and of the relief association, regardless of his age, becomes totally disabled from performing any kind of work, labor, or services after he has served as a member of the police department for at least ten years and shall have been discharged or shall have resigned from the police department by reason of disability, he shall be entitled to and paid a pension from the pension fund of the association, the amount of which shall be that proportion of \$100.00 per month which the years of service in the department prior to retirement bear to 25 years, major fractions of years to be treated as one year and minor fractions to be disregarded.

No such pension for disability shall commence until the association shall have been furnished with satisfactory proof as to the applicant's age, his years of service in the department, and of his disability and causes thereof. The applicant must submit himself to examination by the official physician of the association and to such other doctor as the association may direct and submit to such examination as often as requested by the association, the cost of which is to be paid by the association out of the pension fund. The applicant may submit reports as to his disability from other doctors at his own expense, to the association for consideration but the report of the official physician of the association is the basis upon which the association decides upon the allowance of the disability pension and computes the amounts thereunder. No such pension shall be paid to any person who is receiving compensation under the Workmen's Compensation Act for injury causing such disability. (As amended Mar. 15, 1943, c. 116, §2.)

Where member of police department was retired on pension, and due to war emergency it became necessary to take him back into the service, on a temporary basis, but employment may continue for longer than one year, an additional \$5 per month must be paid him when he again goes on the pension list on account of additional year of active service over age of 55 years. Op. Atty. Gen. (785j), Jan. 18, 1943.

1828-16 ¾ k. 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.

1828-16 ½ g. 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.

Term "year" of service cannot be extended to mean a part of a year. Op. Atty. Gen. (688m), Dec. 10, 1942.

1828-16 ½ a. Who may receive pension.

Provisions are applicable only to cities that fall within classification mentioned, and are not applicable to Cloquet. Op. Atty. Gen. (198A-3), Sept. 5, 1941.

1828-16 ½ d. 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 ½ f. 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, 288NW845. See Dun. Dig. 8011.

1828-26. Vacancies.—Whenever a vacancy shall

occur in the office of Alderman by death or removal or resignation or otherwise, the common council shall have power and it shall be their duty to declare the office vacant by resolution entered upon their minutes. Any vacancy occurring in any office shall be filled by a resolution of the common council adopted by a majority vote of the remaining members of the council within 15 days after such vacancy occurs. A person elected or appointed to fill a vacancy shall hold his office and discharge the duties thereof, for the unexpired term and with the same rights and subject to the same liabilities as the person whose office he may be elected or appointed to fill. (As amended Oct. 27, 1943, c. 87, §1.)

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 25, 1940.

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

1828-53. Officers—Other duties—Compensation.

This section does not apply to city of Hastings. Op. Atty. Gen. (59a-41), July 10, 1942.

COMMON COUNCIL—GENERAL POWERS AND DUTIES

1828-57. Powers and duties of council enumerated.

While an express limitation on number of filling stations would probably be declared invalid, cities and villages may adequately protect public interest, even if an individual is thereby denied right to open a filling station or to maintain one already established. Op. Atty. Gen. (477b-10), Mar. 29, 1941.

It would be proper for council by a three-fourths vote to appropriate or set aside money from general fund for purposes of recreation and recreation facilities, and authorizing the hiring of a recreational director at a stated salary, and then a majority would be sufficient to select and engage the director. Op. Atty. Gen. (63a-1), Nov. 12, 1942.

1828-57a. Council of certain cities and villages may levy certain assessments for collection and disposal of garbage.—The council of any village or city of the fourth class which shall provide by contract or otherwise for regular collection and disposal of garbage or refuse from dwellings and places of business in the village or city of the fourth class may by ordinance obligate the owners of all property served to pay the proportionate cost of such service to their respective properties, and in default of payment such village or city council may annually levy an assessment equal to such unpaid cost as of September first of each year, against each lot or parcel of land so served for which the service charge is unpaid. Such assessment may include a penalty not to exceed ten per centum of the amount thereof and shall bear interest at such amount not exceeding six per centum per annum as the council shall determine. Such assessment shall be certified to the auditor of the county in which the land assessed is situated and shall be collected and remitted to the village or city treasurer in the same manner as assessments for local improvements. (Act Mar. 29, 1943, c. 223, §1.) [443.015]

1828-61. Ordinances, regulations; etc.

It would be proper for council by a three-fourths vote to appropriate or set aside money from general fund for purposes of recreation and recreation facilities, and authorizing the hiring of a recreational director at a stated salary, and then a majority would be sufficient to select and engage the director. Op. Atty. Gen. (63a-1), Nov. 12, 1942.

1828-63. Audit of accounts by council.

Person employed by a city to audit its books need not be a certified public accountant. Op. Atty. Gen. (373b), July 1, 1943.

FIRE DEPARTMENT

1828-83. Assisting firemen—Penalty for refusing.

Laws 1943, c. 169, authorizes cities of fourth class contiguous to city of first class and which is organized and operating under a home rule charter to establish a fire department, to appoint and fix compensation of officers and members thereof, to provide fire-engines and other equipment, and engine houses, and water supply; to issue and sell bonds not exceeding \$30,000 and to levy taxes for payment thereof.

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.

Laws 1943, c. 19, provides that in all cases where the governing body of any city of the fourth class has heretofore adopted proceedings for the issuance of bonds for the purpose of acquiring real property to be used in establishing a municipal airport, and the proposition of issuing such bonds has been submitted to the voters of the city at a special election called for that purpose and more than three-fourths of the voters voting thereon have voted in favor of issuing such bonds, all such proceedings are hereby legalized and validated, and said bonds, when issued, are hereby declared to be legal, valid and binding general obligations of said city.

This act shall not apply to any actions or proceedings now pending in which the validity of any such proceedings is called in question.

Laws 1943, c. 24, provides that: The council of any village, or the council of any city of the fourth class, in any county of this state which now has, or which hereafter may have, not less than 75 per cent of its area located within the boundaries of federal forests, state forests, and Indian reservations may appropriate annually a sum of money, not exceeding \$300.00, for the purpose of

advertising and advancing the recreational or agricultural interests of such city or village or the county in which such city or village is located.

1828-106. Compensation of deputy clerks in cities of fourth class.—The council of any city of the fourth class operating under a home rule charter providing for the appointment of a deputy clerk may fix the compensation of the deputy clerk and provide for its payment from the general fund of the city. This act shall not affect the right of any such city to include a contrary provision in any home rule charter or amendment hereafter adopted. (Act Apr. 1, 1943, c. 260, §1.) [418.13]

PROVISIONS RELATING TO CITIES, VILLAGES, BOROUGHS, TOWNS AND COUNTIES

1829. Right of eminent domain.

A village operating under Laws 1885, c. 145, should follow procedure provided by that act in condemning land. Op. Atty. Gen. (234b), May 27, 1941.

Any village may exercise power of eminent domain for purpose of acquiring a site for a municipal liquor store building, and without a vote of electors unless bonds are to be issued. Op. Atty. Gen., (218r), Apr. 10, 1942.

1830. Gifts to municipalities.

A city, such as Chatfield, has power to accept a hotel building as a gift and lease it temporarily, and it is subject to tax. Op. Atty. Gen. (59a-40), Oct. 6, 1942.

A village may accept a gift of 240 acres of land contiguous to the village, to be used for park and other recreational purposes. Op. Atty. Gen. (476b-10), Dec. 22, 1942.

1831. Damages—Notice of claim—Limitation.

Persons in military service. Laws 1943, c. 525.

Case 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. 207M518, 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., 208M384, 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.

Failure to give statutory notice of claim is not excused upon grounds of estoppel and waiver where city accepted without objection notice of claim presented to it, obtained actual knowledge of facts of case through its officers, and caused plaintiff to be examined to determine extent of her injuries. Olson v. City of Virginia, 211M64, 300NW42, 136ALR1365. See Dun. Dig. 6739.

Section is constitutional. Id.

Notice of claim which omits to state amount of compensation demanded by injured party is void. Id.

Notice of claim against a city is to be liberally construed in favor of injured complainant. Id.

This section controls over a similar city charter provision. Id. See Dun. Dig. 6740.

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 relating to installation of street lights at intersection or crossing would not increase its liability. Op. Atty. Gen., (844E-8), Jan. 14, 1941.

Governmental responsibility for torts in Minnesota. 26 Minn. Law Rev. 700.

1831-1. Same—Limitation of time in which certain actions may be brought.—In respect to injuries sustained on or after October 26, 1941, the time to bring actions for damages under Mason's Minnesota Statutes for 1927, Section 1831, for injuries sustained is hereby extended for two years from the date of injury, whenever the claimant or his attorney is serving or has served in the armed services of the United States of America or the Minnesota State Guard, during any portion of the first year following the date of such injury. (Act Apr. 20, 1943, §525, §1.)

[465.091]

1834. Judgment against municipality—Payment.

Judgment may be paid in installments when it so provides. Op. Atty. Gen. (63b-10), Aug. 11, 1942.

A judgment against a dissolved town is not an obligation of county, but it is possible that county officers may be compelled to levy tax against property in old town to pay it. Op. Atty. Gen. (441b), Aug. 21, 1942.

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.

City hospital board of Owatonna has no authority to invest any part of hospital funds in bonds or securities of any character. Op. Atty. Gen. (59A-22), Feb. 17, 1942.

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.

1845-1. Annexation of state lands to cities or villages.—

Whenever any state lands which were acquired and held for state institutions are not included in any incorporated city or village but which are immediately adjoining any city, and it is deemed desirable by a majority of the resident electors thereof that the city limits should be extended so as to include the said territory, or some part thereof, a petition signed by a majority of such resident electors as appears by the votes cast at the last preceding general election may be presented to the city council of such city asking for the annexing of such territory or some designated part thereof, and said city council may by ordinance thereupon annex such territory to said city and shall therein designate to what ward or wards the said territory shall be annexed. (Act of Apr. 25, 1895, c. 247.)

[413.211]

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.

1848. Election, how conducted—Ballots.

At an election to annex contiguous territory to a city polls shall be opened between 9:00 A. M. and 10:00 A. M. and remain open until 5:00 P. M., there must be closed voting booths, and peace officers may remain in voting place. Op. Atty. Gen. (59A-1), Aug. 19, 1941.

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).

Methods of accounting for municipal light and power operation. Op. Atty. Gen. (624a-6), Apr. 4, 1941.

Village council may not change term of office of commissioners who unanimously requested it because they wished to change fiscal year of commission to calendar year to agree with fiscal year of village. Op. Atty. Gen. (624E-2), Jan. 10, 1942.

If Water & Light Commission of a city of the fourth class is created under a home rule charter, and not pursuant to an ordinance accepting the provisions of this law, powers are to be determined by charter and not by this act. Op. Atty. Gen. (624a-3), June 22, 1942.

1854. Appointment of members; etc.

Members of commission may be appointed and assume their duties at some future date within a reasonable pe-

riod 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.

An officer may be appointed superintendent of village utility commission plant. Op. Atty. Gen. (624A-3), Jan. 29, 1942.

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 of 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.

Water and light commission need not advertise for bids on purchases. Op. Atty. Gen. (707a-15), Apr. 2, 1941, reversing Mar. 14, 1941, and modifying Apr. 24, 1939.

A regulation providing for discontinuance of service for failure to pay is reasonable, as is a penalty in case of delinquent bills, and the consumer in applying for service subjects himself to rules pertaining to method of payment. Op. Atty. Gen. (624c-4), Apr. 4, 1941.

A diesel engine for improvement of utility plant may be purchased without advertising for bids. Op. Atty. Gen. (707a-4), Apr. 25, 1941.

Village council and not commission is proper body to execute contract for purchase of electrical energy. Op. Atty. Gen. (624C-2), Sept. 5, 1941.

Vote of electors is not necessary to authorize a joint use contract for use of poles of commission and local telephone company. Op. Atty. Gen. (624c-14), Nov. 5, 1941; superseding Sept. 19, 1935.

Commission of village could not transfer an existing power line to state without a vote of two-thirds of electors. Op. Atty. Gen. (624c-10), Dec. 10, 1941.

It is necessary to advertise for bids for purchase of materials. Op. Atty. Gen. (624E-1), Jan. 27, 1942.

Commission may extend power lines outside village limits upon a three-fourths vote of its own members, followed by an affirmative vote of electors at a special or general election to be called by the village council. Op. Atty. Gen. (624C-13), Mar. 2, 1942.

Commission may build up and set aside and reserve a part of its money for purpose of making improvements in the future when enough money shall have been accumulated. Op. Atty. Gen. (624a-6), July 24, 1942.

It requires the concurrence of both the commission and council to transfer surplus funds out of water and light fund of a village operating under the 1885 law. Op. Atty. Gen. (624a-6), July 24, 1942.

There does not appear to be any provision authorizing council or commission to invest funds of water and light commission while the same are and remain a part of funds of water, light, power and building commission. Op. Atty. Gen. (624a-6), July 24, 1942.

In absence of any prohibition in city charter, surplus funds of water and light department may be transferred by favorable action of both water and light commissioners and city council and be used for acquiring an airport. Op. Atty. Gen. (234b), Oct. 15, 1942.

Control and operation of memorial building may be taken over by water, light, power and building commission, if ordinance providing for operation of building by a commission is repealed. Op. Atty. Gen. (469c-6), Jan. 12, 1943.

Contracts for purchase of electric energy over a term of years is to be made by village council, not by light and power commission. Op. Atty. Gen. (624c-2), Apr. 21, 1943.

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.

Delinquent steam, light and power bill as a lien on property sold under mortgage foreclosure. Op. Atty. Gen. (624c-4), July 12, 1941.

Commission may provide a 10% penalty for delinquency. Op. Atty. Gen. (624c-4), Dec. 26, 1941.

City furnishing water service may adopt reasonable rules and regulations to enforce payment of charges, but in absence of authority in charter, may not make a special assessment therefor, and levy against property served. Op. Atty. Gen. (624D-5), Feb. 27, 1942.

A regulation requiring both husband and wife to be parties to a service contract with utility is valid, but commission may not make a service charge a lien against real property of the user in absence of a statute or charter provision so authorizing, though a city furnishing services may adopt reasonable rules and regulations to enforce payment of charges. Op. Atty. Gen. (624c-4), Apr. 21, 1942.

1860. Application of act.

Members of commission had no vested rights as to salary at time of adoption of home rule charter. Op. Atty. Gen., (624e-3), Mar. 31, 1942.

1860-½ a. Petition—To be voted on.

On a ballot for an election to abolish commission it would be proper to print an explanation that a "yes" vote would mean a discontinuance of the commission and that a "no" vote would mean retention of commission. Op. Atty. Gen. (28a-5), Nov. 13, 1942.

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.

1860½ d. Commission to collect funds.—It shall be the duty of the said commission, and it is hereby empowered to collect water, light, heat, power, gas and rent charges from patrons including the Village, and pay the same into a fund to be known and designated as "Water and Light Fund". The said commission shall have exclusive control of the said fund and of all collections made by the said commission. It shall be the duty of the commission to have full, absolute, and exclusive control of the operation and management of the water, light, power, gas, and heating plants in said Villages and to pay for the operation thereof out of the said "Water and Light Fund." The said commission may, out of the said "Water and Light Fund", purchase all necessary material and employ all necessary help in the general management, operation, and conduct of its business, including the hiring of an attorney, after April 1st, 1944, whose salary shall not exceed \$1,800 per annum, and including extensions and additions to systems provided, and that this shall not restrict or extend the powers of the village and commission to provide replacements, additions or extensions to these systems from other funds. (As amended Act Apr. 20, 1943, c. 518, §1.)

Methods of accounting for municipal light and power operation. Op. Atty. Gen. (624a-6), Apr. 4, 1941.

Commission may enter into a contract for purchase of replacements to be paid for in monthly instalments out of the "reserve fund". Op. Atty. Gen. (624C-5), Jan. 29, 1942.

1860-½ e. To create reserve fund.

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

1865. Leasing, selling or abandoning of water works or lighting plants.

Vote of electors is not necessary to authorize a joint use contract for use of poles of commission and local telephone company. Op. Atty. Gen. (624c-14), Nov. 5, 1941; superseding Sept. 19, 1935.

Commission of village could not transfer an existing power line to state without a vote of two-thirds of electors. Op. Atty. Gen. (624c-10), Dec. 10, 1941.

Special election for purpose of voting on sale of stub lines constituting part of water and light plant of village. Op. Atty. Gen. (624C-10), Jan. 10, 1942.

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.

Commission may extend power lines outside village limits upon a three-fourths vote of its own members, followed by an affirmative vote of electors at a special or general election to be called by the village council. Op. Atty. Gen. (624C-13), Mar. 2, 1942.

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.

Testimony of expert that from 85 to 90% of pollution of stream was caused by materials coming from canning factory through city sewer and that from 10 to 15% was created by drainage from stalk pile not passing through city sewer was sufficient to enable jury to apportion harm caused by each source and confine city's liability to

that portion for which it was responsible. *Huber v. City of Blue Earth*, 213M319, 6NW(2d)471. See *Dun. Dig.* 2578a.

That a city enacts an ordinance forbidding certain offensive matter from being cast into its sewers affords it no defense to an action for nuisance brought against it by a lower riparian owner for polluting a stream, into which the sewers drain, with sewage which includes such offensive matter. *Id.* See *Dun. Dig.* 6661a.

A sewer discharging offensive, unpurified effluent into a natural stream so as to create a nuisance is the proximate and not the remote cause or condition of the nuisance, since if sufferers from the nuisance were left to recover from each householder and business in a city, it would create an intolerable situation and be a travesty on justice. *Id.* See *Dun. Dig.* 6661a.

In action by lower riparian owner against a city, evidence held to show that pollution of stream was caused by materials passing through sewer of city. *Id.* See *Dun. Dig.* 6661a.

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.

Authority to establish a general system of sewers includes authority to install storm sewers. *Op. Atty. Gen.* (387b-1), June 5, 1941.

1881 to 1884.

See notes under §1880.

1885. Spreading of assessments.

See notes under §1880.

School districts and counties may be assessed for local improvements by any village, borough or city except home rule cities of the first class. *Laws* 1943, c. 609.

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.*, 208M29, 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.*, 208M29, 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.

The borough of Belleplaine is subject to the requirement of advertising for bids, notwithstanding that it was incorporated under a special law containing no provision requiring advertisement for bids. *Op. Atty. Gen.* (707a-15), May 28, 1943.

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.

School districts and counties may be assessed for local improvements by any village, borough or city, except home rule cities of the first class. *Laws* 1943, c. 609.

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.*, 208M29, 292NW777. See *Dun. Dig.* 6880.

A village may construct a sewer before benefits have been assessed against abutting owners. *Op. Atty. Gen.* (387g-1), May 11, 1943.

1892. Supplemental assessment.

See note under §1890.

1893. Fund for each proposed sewer.—All moneys collected on any such special assessments shall constitute a fund for the payment of the cost of improvement for the district for which such assessment was made, and the same shall be credited to the proper sewer district fund under the designation: "Fund of Sewer District No. . . ." and in anticipation of the collection of such special assessment the city, village or borough may issue warrants on such fund, to be known as "sewer warrants" payable at such times and in such amounts as, in the judgment of the city, village or borough council, the collections of such special assessments will provide for, which warrants shall bear interest at a rate not to exceed five (5) per cent per annum, payable semi-annually or annually, as the resolutions of the governing body may direct, and may have coupons attached representing each interest payment. Each warrant shall upon its face state for what purpose it is issued and specify the particular fund against which it is drawn, and shall be signed by the mayor or executive officer and countersigned by the clerk or recorder of the city, village or borough and be in denominations of not less than \$50.00 nor more than \$1,000. The council of any such city, village or borough may by resolution adopted prior to the issuance of such warrants pledge the full faith and credit of the city, village or borough for the payment of the principal or interest of such warrants when the moneys on hand in the appropriate sewer district fund are insufficient for such purpose and the council shall each year include in the tax levy a sufficient amount to take care of any accumulated or anticipated deficiency in the sewer fund on which warrants are so issued and the council shall pay the principal and interest of any such warrants out of the funds in the treasury when the moneys on hand in the appropriate sewer fund are insufficient to meet the payment of such principal and interest as the same matures. Provided, however, that as to any such warrants for the payment of which the full faith and credit of the city, village or borough is not pledged, such warrants shall be payable solely out of the proper sewer fund and it shall be the duty of any city, village or borough treasurer on presentation to pay such warrants and interest coupons as they mature out of any funds on hand in the proper sewer fund and not otherwise. Such warrants may be used in making payments on contracts for the improvements or may be sold by the city, village or borough for not less than par and the proceeds thereof used in paying for such improvement. Provided, further, that the council of any city, village or borough which has heretofore issued any such sewer warrants shall have power by unanimous vote of the members of such council to levy a tax not exceeding two mills in any one year for the support of the fund of any sewer district or districts. (As amended Mar. 20, 1943, c. 159, §1.)

Laws 1941, c. 23, legalizes proceedings taken by certain cities of the fourth class organized under home rule char-

ters 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.) [647.29]

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.) [647.33]

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.) [647.33]

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.

1918-2. Same—Assessment of cost of improvements against abutting owners.

Extension of water mains and assessment of cost where laid on village boundary streets. Op. Atty. Gen. (624d-10), June 10, 1943.

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.

Village operating under Laws 1885, c. 145, may proceed under this act, and several streets may be improved in one proceeding. Op. Atty. Gen., July 30, 1941.

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.

A particular tract of land not benefited may not be assessed, and, if benefited, cannot be assessed in excess of such benefits, and on question of benefit, height above or below grade of abutting property is relevant. Op. Atty. Gen. (396g-7), Aug. 7, 1942.

1918-17. Same—Petition for improvement.

Storm sewers may not be constructed under this act unless there is at least a petition by 51% of real property abutting improvement, but storm sewers may be installed under statute authorizing establishment of a general system of sewers. Op. Atty. Gen. (387b-1), June 5, 1941.

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.

City may pay a reasonable portion of costs of installation of storm sewers applicable to intersecting streets, and between street intersections, and between street and alley intersections, but rest of it should be met by special assessment against benefited property. Op. Atty. Gen. (387B-1), Sept. 30, 1941.

1918-24. Same—Assessments; etc.

Special assessments lien for sewers attaches when council, by resolution, confirms proposed assessments made. Op. Atty. Gen. (408c), June 6, 1941.

Extension of water mains and assessment of cost where laid on village boundary streets. Op. Atty. Gen. (624d-10), June 10, 1943.

1918-26. Same—Assessments; etc.

If village is paving a street and school district wishes an additional six or eight feet on each side of street which passes school house and is willing to pay cost of paving these strips and village is proceeding under some statute which permits laying out of a street of such a width and levying of cost against abutting owners on basis of special benefits received, assessments for total cost of paving these two strips may be levied against school district and may be paid by it. Op. Atty. Gen. (396E), Aug. 11, 1941.

It is mandatory upon school district to pay assessment taxes for oiling street along school property, if the oiling is not for purpose of merely temporarily laying the dust. Op. Atty. Gen. (396-e), June 24, 1942.

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.

1918-30. Same—Appeals—Sale of certificates.

Payment by a taxpayer of a portion of a tax or assessment "under protest", but not as a result of duress or coercion, constitutes a waiver by taxpayer of any objections he might have to the assessment proceedings on jurisdictional grounds. *Rosso v. Village of Brooklyn Center*, 214M364, 8NW(2d)219. See Dun. Dig. 6887b.

Where statute affords a taxpayer an adequate remedy at law to contest assessment proceedings or the collection of an assessment, taxpayer is not entitled to maintain a suit in equity to enjoin collection of the assessment. *Id.* See Dun. Dig. 6890.

A village extending its street lighting system may sell its improvement warrants either by popular subscription, or to the highest bidder after published notice. Op. Atty. Gen. (476c-4), May 20, 1941.

Appellant is not entitled to a jury trial. Op. Atty. Gen. (408c) Dec. 10, 1941.

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.

Act applies to village of Madison Lake, and property owner should first have an opportunity to do the work of constructing sidewalk, and if he fails to do so council may order work done, and a municipality may provide for doing of work by day labor without any public letting of a contract, absent charter provisions to contrary, but there must be bids where materials are to be purchased. Op. Atty. Gen. (396g-7), Apr. 10, 1941.

Laws 1901, c. 167, as amended by Laws 1903, c. 215, and Laws 1925, c. 383, is still in force and effect. *Id.*
City council of North Mankato may avail itself of this act in construction of storm sewers. Op. Atty. Gen. (387b-1), June 5, 1941.

Village operating under Laws 1885, c. 145, may proceed under this act, and several streets may be improved in one proceeding. Op. Atty. Gen., July 30, 1941.

1918-37. Same—Work, how done—Assessment of benefits.

A village may construct a sewer before benefits have been assessed against abutting owners. Op. Atty. Gen. (387g-1), May 11, 1943.

1918-41. Same—Original act supplemented, etc.

City council of North Mankato may avail itself of this act in construction of storm sewers. Op. Atty. Gen. (387b-1), June 5, 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.

School board may enter into agreement with federal government to accept a contribution in connection with the building of schools and obligating district to pay back sum to government over a period of 30 years at 3% interest, and to spend proceeds of a bond issue with title to building to remain in the United States until repayment of contribution, and board could agree with WPA and with private contractors, without enabling vote of electors of district. Op. Atty. Gen. (214f), May 29, 1941.

Retention of title to equipment for vocational education national defense program is a matter for regulation by the federal government. *Id.*

Village organized under Laws 1885 is authorized to spend available money in water fund as a sponsor's share for a dam to obtain a better water supply in wells. Op. Atty. Gen. (214F), Aug. 10, 1941.

If its budget permits county welfare board may enter into an agreement with a National Youth Administration and sponsor a sewing project and agree to pay monthly sum. Op. Atty. Gen. (125A-64), Oct. 7, 1941.

County board may not expend moneys to pay office rent of Farm Security Administration office. Op. Atty. Gen. (107b-1), May 19, 1942.

(b). A school district may avail itself of purchasing power of emergency relief agencies of federal government such as the NYA to purchase material or equipment needed in connection with school buildings erected by NYA even though cost thereof may exceed \$500. Op. Atty. Gen. (214f), Mar. 28, 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., (166i), 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.

City of Owatonna is authorized to enact an ordinance imposing charges or rentals for use of disposal plant facilities in proportion to which such facilities are used by various residents or plants in city. Op. Atty. Gen. (59b-12), May 23, 1941.

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. (387g-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. Village may contract for disposal of sewage.—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, or within one mile thereof, 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; Mar. 26, 1943, c. 185, §1.) [647.34]

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.) [647.34]

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.) [647.34]

1918-81. Certain villages may terminate projects and relevy assessments.—Any village, which prior to December 7, 1941, commenced the construction of a sewer or water project, or both, and which, by reason of the withdrawal of aid by the Works Projects Administration, or other federal agency, or the inability of the village to obtain necessary materials and supplies, or for any other reason arising from the war emergency, was forced to discontinue the construction of such project before its completion, and which has heretofore levied assessments on property deemed to be benefited by the project as originally planned, to provide money to pay part or all of the cost of such project and which has issued sewer warrants or other obligations in anticipation of the collection of such special assessments, is authorized to terminate such project and to relevy assessments and to readjust its finances pursuant to the provisions of this act. (Act Mar. 29, 1943, c. 218, §1.)

1918-82. Village council may elect.—The village council of any such village may, by resolution, determine that the necessary facts exist in order to bring such village within the provisions of this act and elect to take advantage of the provisions of this act. Such determination shall be conclusive evidence of the existence of such facts. If such village council shall determine that assessments have been levied by it to cover the cost of construction of any lateral sewer or watermain and that such lateral sewer or watermain will not be constructed during the duration of the war emergency, it may cancel the assessment on account of such lateral sewer without any notice or hearing being required and without any reassessment of the property benefited by and assessed for the portion of the project which was completed. If

the village council determines that a reassessment is necessary it shall appoint a qualified person to review the assessments for such project and to determine the property benefited by the project as theretofore completed and the amount of such benefits. Such person shall view the lands and shall prepare a proposed reassessment on the basis of benefits to each tract or parcel of land by the project as theretofore completed. Such proposed reassessment may include an assessment for all or any part of the sewer project or the water project, or for both, and may include benefits to any tract or parcel of land not abutting on the completed sewer or watermain by reason of future access to a trunk sewer or a trunk watermain or from fire protection. If the said assessor shall determine that property not included in the original assessed area has been benefited thereby he may include such property in the reassessment. (Act Mar. 29, 1943, c. 218, §2.)

1918-83. Reassessment to be filed with village clerk.—When the reassessment is completed it shall be filed with the village clerk who shall thereupon give notice of a meeting of the council to consider said reassessment by two weeks' publication in the official newspaper and by posting, not less than ten days prior to the date of meeting, in three public places in the village, which notice shall recite the time, place and purpose of the meeting. At the time and place stated in the notice, the village council shall meet to hear all arguments for or objections to the proposed reassessment. Said hearings may be adjourned from time to time. If the council determines that by reason of the inability of the village to complete the project certain property was unfairly assessed in the original assessment and that the proposed reassessment is fair, just and equitable, it may, by resolution, revoke and annul the original assessment or assessments for any such project or any part thereof and adopt the reassessment. The resolution shall provide that the reassessment is to be divided into not more than twenty annual installments payable with the ad valorem taxes for the years stated in the resolution, fix the interest rate to be paid on the deferred installments, and direct that a certified copy of the resolution and the reassessment shall be delivered to the county auditor of the county in which the village is located as his authority to spread said reassessment and cancel all or such part of the original assessment as such resolution shall direct. The resolution may provide that any amounts theretofore paid on the original assessment on account of any property reassessed shall be credited against the reassessment and may provide for repayment out of the village treasury of any amount which has been paid in excess of the whole amount of the reassessment against any lot or parcel of land. Any person deeming himself aggrieved by such reassessment must appeal to the district court of the county in which such village is located within twenty days after the adoption of such resolution. (Act Mar. 29, 1943, c. 218, §3.)

1918-84. Shall be collected by County Auditor.—The assessment levied hereunder shall be collected by the county auditor in the manner provided by law for the collection of village special assessments. The amounts payable by any county or school district shall be payable to the village treasurer in like installments and with like interest and penalty as provided for installments payable on account of assessable real property. (Act Mar. 29, 1943, c. 218, §4.)

1918-85. Shall retain moneys heretofore collected.—Any village council which has determined to take advantage of the provisions of this act shall retain moneys received from the sale of sewer warrants or other obligations which were not expended to pay the cost of the finished portion of said project in a separate fund to be used to retire the said sewer warrants or other obligations, and interest thereon, or to

pay the cost of completing all or any part of such project at such time as the village council shall determine that such project or part thereof may be completed. Pending such use, the moneys may be invested by the village treasurer, with the approval of the village council, in savings accounts or certificates of deposit of a banking institution authorized by law to receive such funds for deposit, or in securities issued by the United States or by such village; provided that the same shall be payable on or before such time as the funds so invested shall be required for retirement of the sewer warrants or other obligations issued to finance the project, or for completing all or a portion of the project. (Act Mar. 29, 1943, c. 218, §5.)

1918-86. May complete projects and make additional assessments.—Whenever the village council of any such village, which has cancelled or reduced assessments under the act, shall determine that it is expedient to complete the construction of all or any part of such sewer or water project, it shall so determine by resolution adopted by at least four-fifths of its members and may thereupon proceed with the construction of the project and may assess the additional cost thereof in the manner prescribed and authorized by the law pursuant to which the project was originally undertaken. (Act Mar. 29, 1943, c. 218, §6.)

1918-87. Shall adopt program for refunding obligations.—Any village council which has determined to take advantage of the provisions of this act is authorized to adopt a program for refunding the obligations heretofore issued on account of any such project for the purpose of extending the maturities or reducing the interest rate of any such obligations. Such program may include any or all of the outstanding obligations of the village, including obligations issued for other purposes, if the council deems that such refunding is necessary in order to equalize and reduce the annual principal payments to conform to the anticipated revenues of the village from the assessments and from other sources in accordance with the ability of the village to pay. (Act Mar. 29, 1943, c. 218, §7.)

1918-88. Bonds may be issued.—One or more series of refunding bonds may be issued hereunder by authority of a resolution of the village council and without submitting the question of their issue to the electors of the village. Such bonds shall mature at such time and in such amounts, bear such rate of interest and contain such other provisions as the village council shall determine and may be made payable solely from the special assessments or may contain a pledge of the general credit of the village as the council shall determine. Bonds issued hereunder may be exchanged for the outstanding obligations to be refunded thereby or may be sold at public sale in the manner provided by Mason's Minnesota Statutes, Section 1943, and the proceeds used to pay and redeem the outstanding obligations at their maturity or at their optional date or at any date fixed by mutual agreement of the holder thereof and the village council. (Act Mar. 29, 1943, c. 218, §8.)

1918-89. State Board of Investment may purchase bonds.—The State Board of Investment is authorized to purchase bonds issued pursuant to this act in the same manner and subject to the same limitations as expressed in Laws 1933, Chapter 389, and amendments thereof, and all the powers granted to the State Board of Investment by Laws 1933, Chapter 389, and amendments thereof, shall apply in connection with the purchase of bonds issued hereunder. (Act Mar. 29, 1943, c. 218, §9.)

1918-90. Limitations on power of council.—Nothing herein shall authorize any village council to reduce the total amount of special assessments for any project without the consent of the holders of the obligations payable from such special assessments

unless the village council shall covenant to pay out of its general revenue fund the amount of any deficit in the special assessment fund arising from such reduction. (Act Mar. 29, 1943, c. 218, §10.)

1918-91. Proceedings validated.—In event that any village, which is subject to the provisions of this act, has heretofore adopted proceedings for the cancellation or reduction of special assessments theretofore levied for any sewer or water project, which proceedings would have been authorized by this act, all such proceedings are hereby validated. (Act Mar. 29, 1943, c. 218, §11.)

1918-92. Act remedial.—This act is an additional remedial law and shall not be construed to amend or appeal [sic] any existing law relating to village indebtedness. The powers herein granted are severable and no power shall be held invalid by reason of the invalidity of any other power herein granted. (Act Mar. 29, 1943, c. 218, §12.)

1919. The village or city council or other governing body of every village and city in this state, other than cities of the first and second class and other than any city or village operating under Laws of Minnesota for 1935, Chapters 153, 192, and 208, and Laws of 1939, Chapter 434, and Laws of 1941, Chapter 196, or acts amendatory thereof, which has a regularly organized fire department, shall each year, at the time the tax levies are made for the support of the village or city, and in addition thereto, levy a tax of one-tenth of a mill on all the taxable property of such village or city. The tax so levied shall be transmitted to the auditor of the county in which the village or city is situated at the time all other tax levies are transmitted, and shall be collected and payment thereof enforced. The village or city treasurer, when the tax is received by him, shall pay the same over to the treasurer of the duly incorporated firemen's relief association of such village or city, if there is one organized, together with all penalties and interest collected thereon; but if there is no firemen's relief association so organized in any such village or city, or if any such association resign, be removed or has heretofore resigned or has been removed as trustee of such money, then the treasurer of such municipality shall keep the money in a special fund to be disbursed only for the purpose authorized by this act. Provided, that the village or city council of any village or city in this state which now has or hereafter may have a population of less than 50,000 inhabitants is hereby authorized and empowered, when in its discretion it deems it necessary or desirable so to do, to levy on the taxable property of such village or city an additional amount not to exceed nine-tenths of one mill; such additional tax to be collected and disbursed as herein provided. (As amended Apr. 6, 1943, c. 323, §1.)

Title to fire truck, whatever funds are used for purchase, should be vested in village and not in relief association. Op. Atty. Gen. (688C-1), Aug. 22, 1941.

Village may expend money levied for fire department and premium tax and general funds for equipment and maintenance of fire department. Id.

Where there is a paid volunteer fire department, but no firemen's relief association, disbursement of money should be handled by city council through enactment of a comprehensive ordinance which would fully set forth a schedule of payment, village treasurer disbursing money in accordance therewith. Op. Atty. Gen. (198B-8), Feb. 6, 1942.

Section has no application to villages incorporated under 1885 act. Op. Atty. Gen. (688C-1), Mar. 26, 1942.

Persons to whom state auditor shall issue warrant each fiscal year for premium tax paid by insurance company to the state—filing financial reports as prerequisite. Op. Atty. Gen. (254d), June 24, 1943.

Levy of a tax for fire department relief association is mandatory. Op. Atty. Gen. (519c), Oct. 8, 1943.

1919-1. Municipalities to fight fires outside of limits.

City fire department may be authorized to service fires outside municipality by council taking action described in this section, and council, or person having control of fire department, is authorized to contract

with other municipalities or private groups for compensation for services rendered in fighting such fires. Op. Atty. Gen. (688C-1), Sept. 17, 1941.

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.

Volunteer village firemen servicing fires outside of municipality are covered by Workmen's Compensation Act, including time they are proceeding by quickest route, on foot, or in their own cars, directly to the fire instead of first going to fire station. Op. Atty. Gen. (523e-4), Apr. 22, 1941.

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.

Organized relief association, or if none exists, then a city, may purchase a fire truck from funds derived from levy authorized by §1919. Op. Atty. Gen. (688C-1), Sept. 17, 1941.

Where there is no relief association, council has power to authorize treasurer to invest funds accumulated either by 2% premium payments or by one mill tax. Op. Atty. Gen. (198B-8), Feb. 6, 1942.

Funds may be invested in defense bonds of the United States Government. Op. Atty. Gen. (198b-5), July 13, 1942.

Articles of incorporation establishing a fund for the relief and support of sick, injured or disabled members are sufficiently broad to include benefits for injury and sick benefits, and under the statute by-laws provided death benefits though articles only provide for relief for widows and orphans, and statutes authorized payment of pension benefits by an association when its certificate of incorporation or by-laws so provide. Statute is clear that to qualify for pension member shall have done "active" duty for 20 years or more and by-laws must be read to conform therewith. Ex-official members of the board of trustees have the same voice and functions as do other trustees elected from members of the association, though they are not members of the association and are not therefore entitled to attend and vote at meetings of the members. In city of Gilbert association cannot accept dues from members who have left the community and are no longer giving active service as firemen, unless such members are either on temporary leave for a period of no greater than 6 months immediately preceding annual meeting of the association or are on temporary leave with the consent of the directors within a 2 year period provided, or have received honorable discharge from the Fire Department and have complied with the provisions of articles. Officers of association must drop members who tender dues and assessments to the association but who no longer live in the municipality, except those specified. Members in the military service are entitled to a leave of absence during such device with right of reinstatement. Op. Atty. Gen. (198a-3), Apr. 30, 1943, June 4, 1943.

A provision in Articles of Incorporation, by-laws or rules which provides for payments to disabled firemen regardless of origin of their disability would not be unlawful. Op. Atty. Gen. (198b-6-d), June 9, 1943.

Moneys resulting from 2% tax paid by insurance companies may be used for uniforms and equipment in a city where there is a fireman's relief association. Op. Atty. Gen. (198b-10-e), Sept. 21, 1943.

There is no longer need for more than one special fund, in addition to a general fund which should also be maintained. Op. Atty. Gen. (198a-2), Sept. 30, 1943.

Constitution of association may be amended so as to permit members rather than board of trustees to amend the by-laws. Id.

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 insur-

ance 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.

A village may accept a gift of 240 acres of land contiguous to the village, to be used for park and other recreational purposes. Op. Atty. Gen. (476b-10), Dec. 22, 1942.

1933-1. Decoration of soldiers' graves on Memorial Day by cities, villages and towns; duty of clerks or recorders.—It shall be the duty of the clerks or recorders of all cities and villages, and the town clerks of all towns, within the State of Minnesota, to ascertain, as far as it shall be practicable so to do, if within their respective city, village or town, there are any graves of members of the armed forces of the United States, including nurses and other women who have been members of the various auxiliary forces which are a part of or which are associated with or connected with the armed forces of the United States, which probably will not be decorated at the next Memorial Day, and if any such grave or graves shall be found, it shall be the duty of such city or village clerk or recorder and of such town clerk, to cause any and all such graves within their respective town, city or village, to be decorated annually, upon Memorial Day by placing thereat an American flag. (As amended Act Feb. 18, 1943, c. 44, §1.)

1933-4. Cities, villages, boroughs may pay dues; etc.

Any village assessor may be reimbursed for expenses incurred in attending school for assessors at the University. Op. Atty. Gen. (12b-1), Nov. 13, 1941.

1933-9. Tourist camping grounds in cities, etc.

Power to maintain an airport or bathing beach outside city limits carries with it authority to adopt rules and regulations governing use thereof. Op. Atty. Gen. (62b), Apr. 9, 1941.

A village may accept a gift of 240 acres of land contiguous to the village, to be used for park and other recreational purposes. Op. Atty. Gen. (476b-10), Dec. 22, 1942.

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., (69B-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 be maintained without acquiring land for playgrounds and recreational facilities. Id.

School board may, without a vote of electors, purchase land and improve field, if there are funds available for that purpose, but if funds are not otherwise available and a bond issue is contemplated, there must be special election for that purpose, following statutory requirement for sale of bonds to the state. Op. Atty. Gen. (40c-2), July 24, 1941.

Expenditures by a village operating under 1905 act are limited by §1258 and §1264-3. Op. Atty. Gen. (476B-10), Jan. 12, 1942.

Act has no application to a community craft shop originally carried on under auspices of W. P. A. Op. Atty. Gen. (159a-16), July 13, 1942.

A village may accept a gift of 240 acres of land contiguous to the village, to be used for park and other recreational purposes. Op. Atty. Gen. (476b-10), Dec. 22, 1942.

City of Fergus Falls may make expenditure of park funds for certain recreational purposes under city charter. Op. Atty. Gen. (59a-22), June 26, 1943.

Village has power to purchase bowling alley and install it in the community hall. Op. Atty. Gen. (476b-8), June 14, 1943.

A city as a part of a recreational program may erect a baseball stadium on school athletic field, under proper authorized contract with school district, or in a public park of the city, and may permit a private baseball organization to use the stadium for baseball games, paying a specified part of admission charge collected to the city and school district as the case might be, if it would not interfere with any recreational programs conducted either by the city or by the school district or by both. Op. Atty. Gen. (59b-11), Oct. 9, 1943.

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.

The use of an old school building by the board of recreation, with the permission and advocacy of the board of education, would come within the provisions of a deed requiring the property to be used for school purposes. Op. Atty. Gen. (622a-14), July 8, 1941.

Village funds may be used for purpose of erecting a permanent building in nature of warming house connected with skating rink on real estate owned by school district or on land leased from district, but village funds may not be donated to school district to enable it to erect such a warming house on its own property. Op. Atty. Gen. (476b-1, 476b-2, 476b-10), Aug. 19, 1941.

An independent school district and a city undertaking a joint recreational program may delegate operation of program to a recreational board and each appropriate money to the board. Op. Atty. Gen. (159A-16), Feb. 25, 1942.

School board may withdraw from joint recreational program at end of stated period, and power to approve recreation board budget involves power to disapprove. Op. Atty. Gen. (159b-1), Apr. 29, 1943.

School board could employ superintendent at an annual salary of \$2,950 (his salary to include \$2,700 regular salary and \$250 for summer recreational work) though recreational activities are on city-owned property and neither playground nor swimming pool over which he has charge in summer had anything to do with the school itself. Op. Atty. Gen. (768k), May 21, 1943.

Purpose for which money may be disbursed. Op. Atty. Gen. (50b-11), Nov. 5, 1943.

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.

Library service may not be included in recreational program. Op. Atty. Gen. (285d), Oct. 2, 1942.

1933-10. Memorial buildings; etc.

Village council may lease part of public building to American Legion as a memorial room, subject to cancellation on 20 days notice, but cannot grant a perpetual lease, at least without approval of voters at election called for purpose. Op. Atty. Gen. (469A-9), Jan. 19, 1942.

Control and operation of memorial building may be taken over by water, light, power and building commission, if ordinance providing for operation of building by a commission is repealed. Op. Atty. Gen. (469c-6), Jan. 12, 1943.

Village council by ordinance may take control of war memorial building from water, light, power and building commission, and in case of destruction of building by fire may control investment of insurance money, and may invest it in war bonds pending construction of a new building. Op. Atty. Gen. (551), Apr. 13, 1943.

1933-15. Licensing restaurants, etc., in villages and boroughs.

Village may regulate hours of operation of a restaurant to prevent noise in the early morning hours. Op. Atty. Gen. (477b-5), July 10, 1943.

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.

Municipality may employ more than one band or different bands at different times, and a "band" may be any musical organization which will provide musical entertainment and recreation for citizens. Op. Atty. Gen. (59b-3), Apr. 13, 1941.

Money may not be appropriated from general funds for "musical entertainment". Op. Atty. Gen. (59b-3), Apr. 21, 1941.

A town cannot levy a tax for band purposes over and above and in addition to taxes permitted to be levied by Laws 1927, c. 110 (Mason's St. §2060-2). Op. Atty. Gen. (519H), Feb. 23, 1942.

1933-18. Same—Petition for election.

Every presumption is in favor of a legislative intent to have a workable and efficient law, and not one dulled by confusion and smothered in litigation. *Annala v. Bergman*, 213M173, 6NW(2d)37. See *Dun. Dig.* 8939.

1933-22. Same—Use of funds.

Funds must be kept in village treasury and be administered and controlled by village council, and village is without authority to appoint and delegate to a "band board" handling and disposition of funds, nor to turn such funds over to local school board. Op. Atty. Gen. (519h), May 23, 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.

1933-26. Membership—Duties—Terms of office.

There is no incompatibility in being a member of a city charter commission and member of firemen's civil service commission. Op. Atty. Gen. (358e-1), July 14, 1941.

One who was formerly a volunteer member of fire department, and still retains membership in firemen's relief association, and subject to call by fire department in cases of emergency, may serve as member of civil service commission. Op. Atty. Gen. (688b), Aug. 10, 1942.

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 employees 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.

Part time firemen are not subject to discharge after six months, and it is not mandatory to classify them. Op. Atty. Gen. (688b), Sept. 21, 1942.

1933-30. Same.

Civil service commission fearing shortage of firemen due to the war should conduct examination and endeavor to secure names for eligible list though it believes that no one would be interested in taking the examination, and then if necessary appoint temporary firemen, and employees may be given leaves of absence and temporary substitutes may be appointed to serve during their absence in the military service. Op. Atty. Gen. (688b), Aug. 13, 1942.

City council must appoint person whose name is certified by civil service commission, but not where requirements of statutes and rules of commission for publication, posting and notice to applicant of examination have not been complied with by the commission, in that notice has been published for only 7 days instead of 10. Op. Atty. Gen. (688b), May 11, 1943.

Appointment of a veteran to a position in fire department where there is a civil service commission. Id.

1933-31. Removal or discharge—Hearings.

Matters of suspensions in Mankato should be dealt with by superintendents of departments, and not by mayor, except as to departments over which he has direct superintendence. Op. Atty. Gen. (785E-2), Apr. 12, 1941.

1933-34. Notice of examinations.

City council appoint person whose name is certified by civil service commission, but not where requirements of statute and rules of commission for publication, posting and notice to applicant of examination have not been complied with by the commission, in that notice has been published for only 7 days instead of 10. Op. Atty. Gen. (688b), May 11, 1943.

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.

An ordinance prohibiting neon lights on residences, such as light advertising beauty shop in residence, already in operation, would not be valid unless lights constituted a nuisance as a matter of fact. Op. Atty. Gen. (477b-34) July 16, 1942.

A zoning ordinance must have something besides an aesthetic purpose to support it, but a proposed ordinance limiting size of lights in residence district to prevent annoyance and inconvenience which excessive illumination would cause at night might be valid, but city cannot prevent use of a sign erected prior to passage of ordinance, unless it is a nuisance per se. Op. Atty. Gen. (477b-34), July 21, 1942.

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.

Resolution in a village operating under Laws 1885, c. 145, may be passed by a vote of three to two, president voting in favor thereof on a tie vote. Op. Atty. Gen. (785E-1), Apr. 8, 1941.

City of the third class adopting act providing for a board of police commissioners thereby abolished the police civil service law, as far as it was concerned. Op. Atty. Gen. (785E-2), Jan. 7, 1943; Feb. 2, 1943.

Police commission has power and city council has not the power to determine age limit for employees of police department. Op. Atty. Gen. (785d), March 5, 1943.

Law does not begin to function until commissioners are appointed and confirmed; and until commission shall begin to operate appointments of policemen are controlled by the old law in force in the city. Op. Atty. Gen. 785E-2), Dec. 20, 1943.

1933-49. Membership—Appointment—Oath.

Term of office of an appointee expires three years from date appointment should have been made and not from date of appointment or qualification. Op. Atty. Gen. (785E-2), Apr. 28, 1941.

Offices of town assessor and member of police civil service commission are incompatible. Op. Atty. Gen., (358e-1), June 10, 1942.

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 employees 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.

A part-time special policeman may be covered under civil service system by resolution creating a commission. Op. Atty. Gen. (785E-1), Apr. 8, 1941.

Where commission designates member of police of another city to conduct an examination of applicant, it is not bound by choice of such person as to who should be chief of police. Op. Atty. Gen. (785e-2), Apr. 28, 1941.

Chief of police need not be named from members of police department. Id.

If part time police officer was a regular employee at time civil service commission was created, he is entitled to a civil service status, and should not be replaced by another who has taken the examination, and commission did not have right to abolish classification of "special officer (part time)" in absence of actual abolition of employment of part time special officers by village council. Op. Atty. Gen. (785C-2), Oct. 20, 1941.

Police commission has power and city council has not the power to determine age limit for employees of police department. Op. Atty. Gen. (785d), March 5, 1943.

Powers of police civil service commission prevail over powers of mayor in so far as provisions of this law are inconsistent with the city charter. Op. Atty. Gen. (785e-2), Apr. 28, 1943.

1933-53. May make rules for police department.—The commission shall, immediately after its appointment * * * * *

(a) to (f) * * * * *

(g) **May make rules for police department—Temporary employment.**—Temporary employment without examination, with the consent in each case of the commission, in cases of emergency but no such temporary employment shall continue more than 30 days nor shall successive temporary employments be permitted for the same position. Provided, however, that until 60 days after cessation of hostilities in the present war as declared by proper federal authority, whenever there are no names upon the legible register, temporary appointment may be made for employment to continue until the position is filled by a candidate from the eligible register under the provisions of the rules, provided that persons on the eligible list at the time of induction into the Armed Forces of the United States shall retain their position on the eligible register. (As amended Apr. 14, 1943, c. 441, §1.)

(h) to (j) * * * * *

City council could not fix maximum salary for policemen and then delegate to mayor the fixing of compensation of each police officer at the end of each month. Op. Atty. Gen. (61d, 785e-2), Sept. 23, 1942.

(d).

Promotion from eligibility list more than 2 years old. Op. Atty. Gen. (785e-2), July 26, 1943.

(e).

Facts discussed relative to status of member. Op. Atty. Gen. (785e-2), July 19, 1943.

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.

Chief of police and members of police department are subordinates to mayor and he may suspend them from employment. Op. Atty. Gen. (785e-2), Apr. 12, 1941.

Where members of police force under civil service are called or have enlisted in active military or naval service, their places may be temporarily filled during their absence by an "acting incumbent", and persons elected could be chosen from qualified list of applicants, and then if a vacancy should arise in same position otherwise than by reason of temporary absence for military or naval service, so-called "acting incumbent" could be assigned to that vacancy permanently, and another selection could be made from qualified list to fill the "acting incumbent" vacancy, and a civil service commission has power to make a rule to that effect. Op. Atty. Gen. (785E-2), Feb. 24, 1942.

Facts discussed relative to status of member. Op. Atty. Gen. (785e-2), July 19, 1943.

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.

A special part-time officer employed at time of passage of resolution may not be eliminated from his civil service status, though his position may be abolished or a reduction in personnel made in good faith. Op. Atty. Gen. (785e-1), Apr. 8, 1941.

Employees who are laid off must be placed upon re-employment register and if work is again resumed they must be reinstated in inverse order of their layoff. Id.

All police officers regularly employed at time of adoption of resolution creating civil service commission acquired a civil service status, notwithstanding that after the adoption of the resolution and before inauguration of the system all policemen were notified in writing that they were purely temporary employees and would serve subject to a probationary period. Op. Atty. Gen. (785E-2), Oct. 8, 1941.

If part time police officer was a regular employee at time civil service commission was created, he is entitled to a civil service status, and should not be replaced by another who has taken the examination, and commission did not have right to abolish classification of "special officer (part time)" in absence of actual abolition of employment of part time special officers by village council. Op. Atty. Gen. (785C-2), Oct. 20, 1941.

Persons sworn in as officers and who hold a police badge, but have never been on village payroll, including persons who had authority to police dances or for other reasons, and village trustees and recorders who have capacity of peace officers do not come automatically under jurisdiction of civil service commission. Op. Atty. Gen., (785e-2), June 1, 1942.

1933-63b. Discontinuance of commission.

Petition must be signed by persons qualified to vote at the village election, to a number equal to 25% of the voters who cast ballots at the last village election, and this must be shown by an affidavit from each signer of petition as to his qualifications as a voter, which affidavit might be made at time of signing or afterwards, and it might be made a part of petition. Op. Atty. Gen. (785E-1), Feb. 24, 1942.

1933-63c. To be submitted to voters.

Statute does not require that notice of filing of petition be given so as to permit objections thereto, and withdrawals therefrom, but council may lawfully require notice of a hearing on petition and a hearing be held. Op. Atty. Gen. (785E-1), Feb. 24, 1942.

City council may pass on sufficiency of petition for abolishment of police civil service commission at either a duly called and held special or regular meeting. Id.

1933-64. Villages and townships may cooperate in support of cemeteries.

Agreement between village and township where village located within the township and not separated for election and assessment purposes. Op. Atty. Gen. (519e), Nov. 23, 1943.

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.

Act is an enabling act and is not mandatory, and if a city has not adopted a city plan, it is not necessary to comply with provisions requiring public notice and public hearing on every plat submitted for approval. Op. Atty. Gen. (59a-9), July 22, 1941.

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.

On a building contract, school district can accept a single bid, without any competitive bidders, if proper notice has been given, but in bidding for supplies or equipment, no bid can be accepted unless competitive bids have been submitted. Op. Atty. Gen. (707a-12), May 21, 1941.

If an opportunity of bidding has been afforded to all those interested and proceedings have been marked by good faith, requirements have been met so only one bid is received. Op. Atty. Gen. (707A-7), Sept. 10, 1941.

Having in good faith advertised for bids and having received only one bid, the city may proceed under charter and award contract if circumstances are such that only one bid can be received, subject to possibility of having its action overturned by a court. Op. Atty. Gen. (707A-4), Feb. 23, 1942.

Section provides an additional restriction to any others imposed by city charters. Id.

There must be competitive bids for a combination patrol wagon and ambulance, unless an emergency exists or such vehicle is of a non-competitive type, and two bids from same bidder would not be competitive. Op. Atty. Gen. (707A-4), Mar. 27, 1942.

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.

Patented articles. Op. Atty. Gen. (707a-7), June 11, 1941.

1933-91. Public Works reserve fund established—

Tax levy.—The council of any city, village, or borough, however organized, may establish by ordinance a public works reserve fund and may annually levy taxes within existing limits for the support of such fund. It may, by the ordinance establishing the fund, designate a specific capital improvement or a type of capital improvement for which the fund is to be used. The proceeds of taxes levied for its support shall be paid into the public works reserve fund. And there may be paid into such fund any other revenue not required by statute or charter to be paid into some other fund or used for purposes other than those provided in this act for the use of the public works reserve fund. (Act Apr. 14, 1943, c. 437, §1.)

[471.57 (1)]

Levy of tax for a public works reserve fund by the city of South St. Paul must be within its charter limits of 20 mills. Op. Atty. Gen. (519c), June 29, 1943.

1933-92. Same—Purposes.—Except as provided in Section 3 of this act, the public works reserve fund shall be used only for the specific capital improvement or type of capital improvement designated by the ordinance establishing the fund. If not so designated, it shall be used only for capital improvements of a type for which the municipality establishing the fund is authorized to issue bonds. The term "capital improvement" does not include the construction or acquisition of any steam heat, telephone, gas or electric plant or system. No expenditures shall be made from the public works reserve fund before the first fiscal year following cessation of hostilities in the present war as declared by proper federal authority. (Act Apr. 14, 1943, c. 437, §2.)

[471.57(2)]

1933-93. Same—May use fund for other purposes upon vote.—The council of any municipality which has established a public works reserve fund by an ordinance designating the specific improvement or type of capital improvement for which the fund may

be used may submit to the voters of the municipality at any regular or special election the question of using the fund for some other purpose. If a majority of the votes cast on the question are in favor of such diversion from the original purpose of the fund, it may be used for any purpose so approved by the voters. (Act Apr. 14, 1943, c. 437, §3.)

[471.57(3)]

1933-101. Joint exercise of powers by counties, cities, villages, boroughs, towns, and school districts—Agreement.—Two or more governmental units, by agreement entered into through action of their governing bodies, may jointly exercise any power common to the contracting parties. The term "governmental unit" as used in this act includes every city, village, borough, county, town, and school district. (Act Apr. 22, 1943, c. 557, §1.)

[471.60(1)]

Cities and villages may provide jointly for inspection of dairies, milk and cream and division of cost thereof. Op. Atty. Gen. (292b), Nov. 10, 1943.

1933-102. Same—Agreement to state purpose.—Such agreement shall state the purpose of the agreement or the power to be exercised and it shall provide for the method by which the purpose sought shall be accomplished or the manner in which the power shall be exercised. (Act Apr. 22, 1943, c. 557, §2.)

[471.60(2)]

1933-103. Same—Disbursement of funds.—The parties to such agreement may provide for disbursements from public funds to carry out the purposes of the agreement. Funds may be paid to and disbursed by such agency as may be agreed upon, but the method of disbursement shall agree as far as practicable with the method provided by law for the disbursement of funds by the parties to the agreement. Strict accountability of all funds and report of all receipts and disbursements shall be provided for. (Act Apr. 22, 1943, c. 557, §3.)

[471.60(3)]

1933-104. Same—Termination of agreement.—Such agreement may be continued for a definite term or until rescinded or terminated in accordance with its terms. (Act Apr. 22, 1943, c. 557, §4.)

[471.60(4)]

1933-105. Same—Shall provide for distribution of property.—Such agreement shall provide for the disposition of any property acquired as the result of such joint exercise of powers, and the return of any surplus moneys in proportion to contributions of the several contracting parties after the purpose of the agreement has been completed. (Act Apr. 22, 1943, c. 557, §5.)

1933-106. Same—Residence Requirement.—Residence requirements for holding office in any governmental unit shall not apply to any officer appointed to carry out any such agreement. (Act Apr. 22, 1943, c. 557, §6.)

1933-107. Same—Not to affect other acts.—This act does not dispense with procedural requirements of any other act providing for the joint exercise of any governmental power. (Act Apr. 22, 1943, c. 557, §7.)

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.