

## CHAPTER 412

## VILLAGES INCORPORATED UNDER R. L. 1905, CHAPTER 9

NOTE: Laws 1943, Chapter 117, repealed all laws under which the eight remaining villages organized under special acts were operating; and also repealed the laws under which the 327 villages under the 1885 act, including those originally organized under Laws 1875, Chapter 139, were functioning. This brought all villages under the provisions of Revised Laws 1905, Chapter 9, as amended.

**412.02 WHAT TERRITORY MAY BE INCORPORATED.**

HISTORY. R.S. 1851 c. 41 ss. 1, 2; 1854 c. 25 s. 3; P.S. 1858 c. 17 ss. 116, 117; 1883 c. 73 s. 3; 1885 c. 145 s. 3; 1887 c. 62 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 206; G.S. 1894 s. 1200; 1903 c. 208 s. 1; R.L. 1905 s. 700; 1907 c. 255 s. 1; 1907 c. 270; G.S. 1913 s. 1204; 1919 c. 324; G.S. 1923 s. 1111; M.S. 1927 s. 1111.

"Lands adjacent thereto" include only those which lie so near the center or nucleus of population on the platted lands as to be somewhat suburban in their character and to have some community of interest with the platted portion in the maintenance of a village government. Laws 1885, Chapter 145, does not authorize the incorporation of large tracts of rural territory having no natural connection with any village and no adaptability to village purposes. *State ex rel v Minnetonka Village*, 57 M 526; 59 NW 972; *State ex rel v Village of Fridley Park*, 61 M 146, 63 NW 613; *State ex rel v Village of Holloway*, 90 M 271; 96 NW 40; *St. Paul Gaslight Co. v Village of Sandstone*, 73 M 225, 75 NW 1050.

Under the provisions of Revised Laws 1905, Section 700, et seq., the county commissioners are not vested with discretionary power to determine whether the unplatted portion of a village, proposed for incorporation, adjoins the platted part and is so conditioned as properly to be subject to village government. *State ex rel v Village of Gilbert*, 107 M 364, 120 NW 528.

The final test whether territory adjacent to platted lands may be incorporated with it as a village is whether they have such a natural connection and the people residing thereon have such a community of interest that the whole may be properly subjected to village government. *State ex rel v Village of Alice*, 112 M 330, 127 NW 1118.

Necessary population to authorize incorporation should be composed of actual residents. *State ex rel v Village of Island Lake*, 130 M 100, 153 NW 257.

The validity of the incorporation of a village organized under the provisions of General Statutes 1913, Chapter 9, can be inquired into only at the instance of the state in appropriate quo warranto proceedings. *Hammer v Narverud*, 142 M 199, 171 NW 770.

A private suit to restrain the election of officers after the proceedings for the organization of a village under the provisions of General Statutes 1913, Chapter 9, have been completed and the organization has, on the face of the record, become legally constituted cannot be maintained. *Hammer v Narverud*, 142 M 199, 171 NW 770.

Writ of ouster ordered against a recently incorporated village (and its officers), because its area consists almost exclusively of agricultural land, containing no nucleus or population and not conditioned, as required by statute, so as to be properly subject to village government. *State ex rel v So-called "Village of Minne-washta"*, 165 M 369, 206 NW 455.

A public corporation de facto exists where there is

(1) Some law under which a corporation with the powers assumed might lawfully have been formed;

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(2) A colorable and bona fide attempt to perfect an organization under such a law;

(3) User of the rights claimed to have been conferred by the law for an appreciable length of time.

Time of exercise of the functions of a corporation is not of controlling importance.

Where a municipal body has assumed, under color of authority, to exercise the power of a public corporation of a kind recognized by the organic law, the validity of its organization can be challenged only by the state, and neither the corporation nor any private party can, in private litigation, question the legality of its existence. The fact that the organization was so defective as to be void in its inception does not change the rule. *Evens v Anderson*, 132 M 59, 155 NW 1040.

Laws 1897, Chapter 94, provides that all railroad companies shall provide, "at all villages and boroughs" on their respective roads, depots, with suitable waiting rooms for the protection and accommodation of passengers, and freight rooms for the storage and protection of freight. The word "village" must be construed as referring only to incorporated villages. *State ex rel v M. & St. L. R. Co.* 76 M 469, 79 NW 510.

An existing village cannot legally be separated into separate villages. OAG Jan. 23, 1933.

## 412.03 PETITION FOR ELECTION.

HISTORY. R.S. 1851 c. 41 ss. 3, 7; P.S. 1858 c. 17 ss. 118, 122; 1883 c. 73 s. 4; 1885 c. 145 s. 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 207; G.S. 1894 s. 1201; 1903 c. 208 s. 1; R.L. 1905 s. 701; 1907 c. 255 s. 2; G.S. 1913 s. 1205; G.S. 1923 s. 1112; M.S. 1927 s. 1112.

## 412.04 NOTICE OF ELECTION.

HISTORY. R.S. 1851 c. 41 ss. 5, 6, 9, 10; P.S. 1858 c. 17 ss. 120, 121, 124, 125; 1875 c. 139 s. 1; G.S. 1878 c. 10 s. 204; 1883 c. 73 ss. 5, 12; 1885 c. 145 ss. 5, 6; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 ss. 208, 209; G.S. 1894 ss. 1202, 1203; R.L. 1905 s. 702; G.S. 1913 s. 1206; G.S. 1923 s. 1113; M.S. 1927 s. 1113.

## 412.05 INSPECTORS; RETURN.

HISTORY. R.S. 1851 c. 41 ss. 11, 12, 15; P.S. 1858 c. 17 ss. 126, 127, 130; 1875 c. 139 ss. 1, 10; G.S. 1878 c. 10 ss. 204, 213; 1883 c. 73 ss. 6, 13; 1885 c. 145 ss. 5, 7, 8; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 ss. 208, 210, 211; G.S. 1894 ss. 1202, 1204, 1205; R.L. 1905 s. 703; G.S. 1913 s. 1207; G.S. 1923 s. 1114; M.S. 1927 s. 1114.

## 412.06 INCORPORATION, WHEN EFFECTED.

HISTORY. R.S. 1851 c. 41 s. 13; P.S. 1858 c. 17 s. 128; 1875 c. 139 s. 1; G.S. 1878 c. 10 s. 204; 1883 c. 73 ss. 7 to 9; 1885 c. 145 ss. 9, 10; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 ss. 212, 213; G.S. 1894 s. 1206; R.L. 1905 s. 704; 1907 c. 255 s. 3; G.S. 1913 s. 1208; G.S. 1923 s. 1115; M.S. 1927 s. 1115.

## 412.07 ELECTION OF OFFICERS; EXPENSES.

HISTORY. R.S. 1851 c. 41 ss. 13, 14, 16, 17; P.S. 1858 c. 17 ss. 128, 129, 131, 132; 1875 c. 139 s. 9; G.S. 1878 c. 10 s. 212; 1883 c. 73 s. 10; 1885 c. 145 s. 11; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 214; 1893 c. 188 s. 1; G.S. 1894 s. 1208; R.L. 1905 s. 705; G.S. 1913 s. 1209; G.S. 1923 s. 1116; M.S. 1927 s. 1116.

## 412.075 GENERAL POWERS AND DUTIES.

HISTORY. 1885 c. 145 s. 9; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 212; G.S. 1894 s. 1206; R.L. 1905 s. 706; G.S. 1913 s. 1210; G.S. 1923 s. 1117; M.S. 1927 s. 1117.

Counties and other municipalities can legally sell bonds to the federal government under the national industrial recovery act. OAG Aug. 15, 1933.

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Where village voted bonds to erect an auditorium and fire hall, to be used partly as a village hall, and discovered that \$5,000 was insufficient, council could issue warrants of indebtedness for the completion of the building without a vote of electors, provided the village has funds on hand sufficient for that purpose or will have such funds when taxes levied have been collected. OAG Jan. 26, 1935 (476b-8).

A village council has power to construct a village hall without a vote of electors, unless a bond issue is necessary, or to erect a building as a memorial to war veterans with vote of electors, but has no authority direct to erect a community building with or without vote of electors. OAG Feb. 11, 1935 (476b-8).

Real estate to be used for a particular purpose, such as city dump, may be purchased without advertising for bids. OAG Nov. 12, 1936 (469a-12).

Village may purchase property outside corporate limits for use as a dumping grounds. OAG April 6, 1937 (469a-12).

Village council may sell real estate when no longer needed for village purposes without a vote of the people. OAG April 26, 1934 (469a-15); OAG Sept. 23, 1935 (469a-15).

A village does not have power to levy a special tax for the maintenance of its streets. OAG Jan. 5, 1935 (481b-7).

Village has no power to levy a special tax for fire equipment, except as authorized by section 4031-11 (88.04). OAG Jan. 5, 1935 (481b-7).

Village which has no water, light, and building commission may not levy a special tax for water and light purposes. OAG Jan. 5, 1935 (481b-7).

Village is without authority to pay claim for damages to automobile rented to council committee and injured through negligence of member of council driving it. OAG March 17, 1934.

The council may sell real estate not needed for village purposes. A vote of the electorate is not required. 1942 OAG 254, April 21, 1941 (469A-15).

A village need not advertise for bids when selling personal property. OAG Jan. 21, 1944 (469a-14).

## **412.08 INCLUDING TERRITORY NOT SUBJECT TO VILLAGE GOVERNMENT.**

**HISTORY.** 1909 c. 148 s. 1; G.S. 1913 s. 1221; G.S. 1923 s. 1119; M.S. 1927 s. 1119.

## **412.09 PEACE OFFICERS.**

**HISTORY.** 1883 c. 73 s. 52; 1885 c. 145 ss. 51, 52; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 ss. 255, 256; 1891 c. 146 sc. 3 s. 9; G.S. 1894 ss. 1270, 1294; R.L. 1905 s. 721; G.S. 1913 s. 1262; G.S. 1923 s. 1180; M.S. 1927 s. 1180.

## **412.10 ASSESSOR; TOWN TAXES.**

**HISTORY.** R.S. 1851 c. 41 s. 42; P.S. 1858 c. 17 s. 157; 1885 c. 145 s. 18; 1887 c. 62 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 221; 1889 c. 122 s. 1; G.S. 1894 ss. 1218, 1289; 1899 c. 33; R.L. 1905 s. 716; G.S. 1913 s. 1256; G.S. 1923 s. 1173; M.S. 1927 s. 1173.

The election district mentioned in the amendment of 1887 has reference to general elections. State v Spaude, 37 M 322, 34 NW 164.

Under a liberal construction of Laws 1923, Chapter 211, a village may reimburse the assessor for his expenses in attending school for assessors at the state university. 1942 OAG 187, Nov. 13, 1941 (12B-1).

Where village and town constitute one election and assessment district, the assessor must be paid by the town. OAG July 21, 1944 (12c-1).

## **412.11 CLERK; BOND; DEPUTY.**

**HISTORY.** R.S. 1851 c. 41 s. 64; P.S. 1858 c. 17 s. 179; 1885 c. 145 s. 46; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 249; G.S. 1894 s. 1264; 1895 c. 270; R.L. 1905 s. 718; G.S. 1913 s. 1259; G.S. 1923 s. 1177; M.S. 1927 s. 1177; 1943 c. 71 s. 1.

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Deputy recorder may hold other compatible salaried position, such as clerk of municipal court. OAG Feb. 26, 1929.

This section does not apply to villages operating under the 1885 act, but Laws 1895, Chapter 270, from which this section was derived in constructing the 1905 Village Code, is still operative as to villages existing under the 1885 act, and the office of deputy recorder has no fixed term, and the incumbent need not be appointed each year, and his salary is subject to change by the council at any time. OAG Jan. 16, 1930.

### 412.12 DUTIES; COMPENSATION.

**HISTORY.** R.S. 1851 c. 41 ss. 64 to 66; P.S. 1858 c. 17 ss. 179 to 181; 1883 c. 73 ss. 11, 46; 1885 c. 109 ss. 1, 3; 1885 c. 145 s. 46; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 249; 1891 c. 146 sc. 3 ss. 2, 4; G.S. 1894 ss. 1264, 1287; 1899 c. 115; R.L. 1905 s. 719; G.S. 1913 s. 1260; G.S. 1923 s. 1178; M.S. 1927 s. 1178.

Power of council of village operating under the 1885 act to fix salary of recorder yearly where his term has been extended to two years by Laws 1929, Chapter 413. OAG Jan. 16, 1930.

Village clerk has power to vote on the resolution increasing his compensation at the beginning of his term. OAG June 3, 1936 (470i).

### 412.13 CONSTABLES; DUTIES; COMPENSATION.

**HISTORY.** R.S. 1851 c. 41 s. 67; P.S. 1858 c. 17 s. 182; 1875 c. 139 s. 14; 1876 c. 36 s. 2; G.S. 1878 c. 10 s. 217; 1883 c. 73 ss. 41, 47; 1885 c. 145 ss. 41, 47; 1887 c. 53 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 250; G.S. 1894 ss. 1259, 1265; R.L. 1905 s. 720; G.S. 1913 s. 1261; G.S. 1923 s. 1179; M.S. 1927 s. 1179.

A village may pay a salary to a constable for police work. OAG July 15, 1933.

The office of village constable becomes vacant when he is convicted of any offense involving a violation of his official oath. OAG Nov. 15, 1933.

A regular peace officer who attends to keep quiet and order at polling place during a general election should be paid such compensation as may be fixed by the village council. 1942 OAG 81, Dec. 14, 1942 (185a-12).

### 412.14 JUSTICES OF THE PEACE; POWERS; DUTIES; FEES.

**HISTORY.** 1875 c. 139 s. 14; 1876 c. 36 s. 2; G.S. 1878 c. 10 s. 217; 1883 c. 73 s. 41; 1885 c. 145 ss. 41, 42; 1887 c. 53 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 ss. 244, 245; G.S. 1894 s. 1259; 1895 c. 53; 1897 c. 151; R.L. 1905 s. 722; 1907 c. 459 s. 1; G.S. 1913 s. 1263; G.S. 1923 s. 1181; M.S. 1927 s. 1181.

A change of venue in an action brought before a village justice of the peace should, under Laws 1897, Chapter 151, be made to a justice of the peace of the same village, or to a justice of a town adjoining the village; not to a justice of the peace of a town adjoining the town in which the village is located. The town within which the village is located is an adjoining town within the meaning of the statute. *Wadena Cracker Co. v Gaylord*, 93 M 199, 101 NW 72.

A duly elected justice of the peace who fails to file his bond and oath with the clerk of court, but assumes to act as a duly qualified justice is an officer de facto, if not an officer de jure. *Canty v Bockenstedt*, 170 M 383, 212 NW 905.

No one but the state may question the jurisdiction of a village justice of the peace because he has filed his bond with the village clerk instead of the clerk of court, and his acts are valid as those of a de facto officer and convictions before him are valid. OAG June 3, 1935 (266a-2).

City of International Falls, by adoption of a home rule charter without providing for the election of a justice of the peace abolished that office. OAG April 9, 1936 (306a).

Municipality cannot be compelled to furnish criminal forms to justices of the peace. OAG Oct. 4, 1934 (266a-3).

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## 412.15 PROSECUTIONS BY VILLAGE.

**HISTORY.** 1875 c. 139 s. 7; G.S. 1878 c. 10 s. 210; 1883 c. 73 s. 35; 1885 c. 145 s. 35; 1887 c. 82; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 238; G.S. 1894 s. 1252; R.L. 1905 s. 723; G.S. 1913 s. 1264; G.S. 1923 s. 1182; M.S. 1927 s. 1182.

A village marshal has no right to arrest and take into his custody a person who has been found guilty of a violation of a village ordinance unless a writ of commitment is in his hands at the time he seeks to make such arrest. The fact that a commitment has been issued and delivered to him, which he has surrendered to the village attorney, will not justify taking defendant into his custody. *State ex rel v Leindecker*, 91 M 277, 97 NW 972.

## 412.16 PLEADING; EVIDENCE; JUDGMENT.

**HISTORY.** 1883 c. 73 s. 36; 1885 c. 145 ss. 35, 36; 1887 c. 82; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 ss. 238, 239; G.S. 1894 ss. 1252, 1253; R.L. 1905 s. 724; G.S. 1913 s. 1265; G.S. 1923 s. 1183; M.S. 1927 s. 1183.

In a complaint charging the violation of a certain village ordinance, such ordinance was described by its title and date of passage. Held sufficient. *Village of Fairmont v Meyer*, 83 M 456, 86 NW 457.

## 412.17 APPEALS.

**HISTORY.** 1883 c. 73 s. 37; 1885 c. 145 s. 37; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 240; G.S. 1894 s. 1254; R.L. 1905 s. 725; G.S. 1913 s. 1266; G.S. 1923 s. 1184; M.S. 1927 s. 1184.

Where a party appeals to the district court on questions of both law and fact from a conviction and sentence in justice's court for the violation of a village ordinance, and upon a trial of the appeal is again convicted, the sentence of the district court is not limited by the sentence of the justice, but the court may impose any sentence within the limits of the penalty prescribed by the ordinance. *Village of Elbow Lake v Holt*, 69 M 349, 72 NW 564.

Defendant was convicted in the municipal court of the city of Madison for violating a city ordinance and attempted to appeal to the district court by complying with the procedure on appeals from justice courts in civil actions, instead of the procedure on appeals in criminal actions. His appeal was rightly dismissed by the district court. *City of Madison v Martin*, 109 M 292, 123 NW 809; *Village of Crosby v Sternich*, 160 M 261, 199 NW 918.

The provisions of the general laws that any person convicted of a criminal offense before a justice may appeal, does not apply to convictions for violating a city ordinance where the charter expressly provides that no appeal shall be allowed. *City of Red Wing v Nibbe*, 160 M 274, 199 NW 918.

Two dollar appeal fee applies only to civil actions and not to criminal appeals from justice court to district court. OAG May 29, 1934 (266b-1).

## 412.18 FINES; FEES.

**HISTORY.** R.S. 1851 c. 41 s. 24; P.S. 1858 c. 17 s. 139; 1875 c. 139 s. 8; G.S. 1878 c. 10 s. 211; 1883 c. 73 ss. 38, 40; 1885 c. 145 ss. 38, 40; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 ss. 241, 243; G.S. 1894 ss. 1255, 1258; R.L. 1905 s. 726; G.S. 1913 s. 1267; G.S. 1923 s. 1185; M.S. 1927 s. 1185

## 412.19 COUNCIL.

**HISTORY.** R.S. 1851 c. 41 ss. 19, 23; P.S. 1858 c. 17 ss. 134, 138; 1875 c. 139 s. 4; 1877 c. 61 ss. 1, 2; G.S. 1878 c. 10 s. 207; 1883 c. 73 ss. 21, 50; 1885 c. 145 s. 21; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 224; 1889 c. 104; 1889 c. 122 s. 2; 1891 c. 102 s. 1; 1891 c. 146 sc. 3 s. 5; 1891 c. 146 sc. 4 ss. 1, 4, 5, 9 to 12; 1891 c. 146 sc. 5 ss. 1 to 4, 6; 1891 c. 146 sc. 6 s. 1; 1891 c. 146 sc. 7 ss. 1, 2, 5; 1891 c. 149 s. 1; G.S. 1894 ss. 1224, 1290, 1295, 1298, 1299, 1303 to 1306, 1309 to 1312, 1314, 1316 to 1318, 1321; 1897 c. 25; 1901 c. 167; 1905 c. 138; R.L. 1905 s. 727; 1909 c. 263; G.S.

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1913 s. 1268; 1917 c. 406 s. 1; 1919 c. 478; 1923 s. 164; G.S. 1923 s. 1186; M.S. 1927 s. 1186; 1945 c. 58 s. 1.

Under an ordinance intended for the suppression of the unrestrained traffic in intoxicating liquors and which forbids selling, dealing in, or disposing of the same without a license, a person engaged in such unlicensed traffic may, under a prosecution for an unlawful disposition of such liquors contrary to the terms of the ordinance, be convicted on proof of a gratuitous as well as other disposition thereof. *State v Deusting*, 33 M 102, 22 NW 442.

Evidence that the superintendent of a village electric system had general authority with respect to the management thereof is sufficient prima facie to establish his authority to act with respect to a particular matter concerning the same. *Theisen v Minn. Power & Light Co.* 200 M 515, 274 NW 617.

It is not a part of the official duty of the president of a village council to detect and apprehend persons suspected of committing crimes outside of his village and he may earn a reward offered for the arrest and conviction of the perpetrators of such a crime. *Burkee v Matson*, 114 M 233, 130 NW 1025.

Village council may modify contract where right to do so is reserved therein. OAG Dec. 16, 1933.

Village under general law is not authorized to enact an ordinance providing for the licensing of electricians. OAG March 24, 1938 (477b-37).

Council has right to adopt its own rules and regulations as to procedure and president has right to make or second a motion while occupying the chair. OAG March 25, 1938 (124).

Recorder and president of village council may vote at council meetings. OAG April 11, 1933.

Subd. 1. The exact wording of statute need not be followed verbatim in passing an ordinance. OAG March 19, 1932.

Subd. 2. Council of village organized under 1905 law may fix the compensation of a deputy clerk appointed under section 1177 (412.11). OAG Feb. 26, 1929.

Council of village incorporated under Laws 1885, Chapter 145, and electing not to come under the 1905 Revised Laws has power to fix the compensation of the village assessor on any reasonable basis that it deems proper. OAG June 20, 1931.

Village council may deduct from the salary of assessor previous over-payments of compensation. OAG April 8, 1932.

Salary of a policeman may be increased or decreased any time during the year. OAG June 19, 1935 (624c-11).

Compensation of village treasurer, under the general law, is governed by the laws relating to the compensation of town treasurers. OAG Oct. 18, 1935 (456f-2).

Subd. 3. Municipality cannot be compelled to furnish criminal forms to justice of the peace. OAG Oct. 4, 1934 (266a-3).

Subd. 4. A mining engineer may be employed, if absolutely necessary, to assist attorney in preparation for tax litigation involving mining properties, but a mining engineer may not be employed on a permanent salary. OAG Aug. 30, 1939 (59a-4).

Subd. 5. Under the provisions of General Statutes 1894, Chapter 10, a village council may appoint and discharge a village marshal by the mere vote of a majority on motion and without the adoption of a regular ordinance, by-law, or resolution. Such village marshal is a public officer and, as such, must qualify by executing the oath prescribed by law. *State ex rel v Schram*, 82 M 420, 85 NW 155.

It is discretionary with the village council to demand bond of officers appointed. OAG May 1, 1929.

Offices held incompatible: village attorney and village treasurer. OAG Jan. 18, 1934.

Offices held not incompatible: village marshal and street commissioner. OAG Feb. 25, 1931; village treasurer and street commissioner, OAG April 5, 1932.

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Non-resident cannot be employed as a village marshal. OAG June 6, 1932.

Council is not required to accept the lowest bidder in employing a village marshal. OAG July 20, 1934 (471k).

There can be only one marshal. OAG Aug. 7, 1939 (785p).

Council having power of appointing policeman in village has right to remove him by will without cause. OAG Jan. 27, 1933.

Police officers must furnish bonds before they are qualified as such. OAG July 27, 1936 (785c).

Village may pay expenses of policeman incurred in defense of prosecution for assault for acts performed by him in good faith in the exercise of his official duty. OAG March 18, 1937 (469a-8).

Municipality may reimburse police officer for expenses and attorney's fee necessarily incurred in action for false arrest and imprisonment, but may not pay for services of an attorney in defense of bondsman of police officer. OAG May 20, 1937 (476a-5).

Neither village nor city attorneys are under any obligation to prosecute violators of state laws in justice court. OAG Sept. 26, 1932.

Village may employ an attorney on a contingent fee basis. OAG Jan. 22, 1934.

Village may retain an attorney who is not a resident and pay him on a monthly basis. OAG Aug. 21, 1935 (469b-1).

Village may employ non-resident attorney. OAG Jan. 3, 1936 (870j).

Village attorney is required to prosecute all violations of village ordinances before a justice of the peace, but is not obligated to prosecute violations of state laws or to give aid, counsel, and advice to justice of the peace. OAG Aug. 23, 1937 (121b).

Taxpayers employing an attorney to appeal from an allowance of a claim by the council were not entitled, as a matter of right, to the reimbursement of attorney fees incurred by them, though they were partially successful. OAG Aug. 3, 1939 (476b-3).

Subd. 6. Village has inherent power to hire a person to take charge of public playgrounds. OAG June 10, 1930.

Council may construct a village hall without a vote of the people if the village has funds on hand sufficient for the purpose, and issue warrants therefor if there be taxes in process of collection which will be available for their payment. OAG April 24, 1934 (476b-8).

Where village voted bonds to erect a village auditorium and fire hall, to be used partly as a village hall, and discovered that \$5,000 was insufficient, council could issue warrants of indebtedness for the completion of the building without a vote of the electors, provided the village has funds on hand sufficient for that purpose or will have such funds when taxes levied have been collected. OAG Jan. 26, 1935 (476b-8).

Subd. 7. Does not authorize the council to employ a surveyor to replat the village. OAG May 14, 1930.

Subd. 8. Laws 1895, Chapter 257, authorizing certain villages to incur an indebtedness in the purchase of fire extinguishing apparatus, construed, and is not void for uncertainty. *Du Toit v Village of Belview*, 94 M 128, 102 NW 216.

A village ordinance declaring it to be unlawful to "build, erect, or construct or cause to be built, erected or constructed, a wooden or 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 unlawful to repair such buildings, and where as in the instant case the work did not substantially change or enlarge the building or greatly enhance its value, it was a repair job and that part of the ordinance requiring a permit to repair is ineffective and unenforceable. *Julius v Lenz*, 215 M 106, 9 NW (2d) 255.

A village cannot enter into a lease of fire apparatus which is in reality a contract of purchase. OAG Oct. 6, 1931.

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Villages cannot purchase fire apparatus on a conditional sales contract providing for payments extending beyond the period of one year, or beyond the term of office of the council. OAG Oct. 6, 1931.

Village cannot enter into a conditional sales contract for the purchase of fire apparatus. OAG Aug. 23, 1933.

Village has no power to levy a special tax for fire equipment except as authorized by section 4031-11 (88.04). OAG Jan. 5, 1935 (481b-7).

Includes authority to dig a well, and the council may award a contract for a new well and issue warrants after a tax levy without any affirmative vote of the electors. OAG March 13, 1939 (469c-11).

It is a governmental duty to furnish fire protection to property regardless of whether property or insurer thereof contributes toward the cost of such protection. OAG Dec. 4, 1935 (688k).

A village may extend its water mains to some 15 families living about 1,500 feet from the platted portion of the village, if the principal purpose is to furnish fire protection, and the cost may be paid by a general tax levy, but the town cannot join with the village in making the extension. OAG May 13, 1935.

Village may pay salary to the chief of its volunteer fire department rather than payment for meetings and calls made. OAG Dec. 20, 1937 (469a-5).

Village may pay fees for attendance at fires and for regular attendance at meetings of fire department, the amount of the fees to be fixed by the council. OAG June 12, 1939 (688).

Subd. 9. The council of a village organized under the general statute relating to villages (Laws 1885, Chapter 145) has power to cause a sidewalk to be constructed and to purchase material therefor of their own motion, without petition from the owners of the adjacent lands and without an assessment of the expense being first made upon the adjacent property. *Bradley v Village of West Duluth*, 45 M 4, 47 NW 166.

This section is not applicable to a village operating under Laws 1885, Chapter 145. OAG May 27, 1931.

Laws 1901, Chapter 167, providing that village council may, on its own motion, order a sidewalk constructed, is not unconstitutional because it does not give property owners an opportunity to be heard as to the propriety or necessity of the proposed improvement. The opportunities which the property owner has to be heard when the assessment is fixed and on the application for judgment satisfy the due process of law requirement. *State v Burnes*, 124 M 471, 145 NW 377.

Villages are not required to levy special assessments to pay the cost of constructing sidewalks, and bonds may be issued under section 1942 (475.14) to pay the cost of submitting the question of issuance to a vote of the electors. OAG May 11, 1938 (480b).

A village whose streets and public grounds have been by law placed under the control of its authorities, who are given power to prevent the encumbering or obstruction of the same, may maintain an action to enjoin the erection of a building for private use on public ground. *Village of Buffalo v Harling*, 50 M 551, 52 NW 931.

Villages of this state having less population than 3,000, incorporated under the provisions of General Statutes 1894, Chapter 10, Title 3, have no authority to authorize the construction and operation, for a definite term of years, of street railways on the streets of such villages. *City of Stillwater v Lowry*, 83 M 275, 86 NW 103.

The entire cost and expense of extending the new street across the right of way, including necessary planking over the railroad tracks, was properly imposed upon the railroad company. *State v St. Paul M & M Ry. Co.* 98 M 380, 108 NW 261; *C. M. & St. P. Ry. Co. v City of Mpls.* 115 M 460, 133 NW 169; *C. M. & St. P. Ry. Co. v Village of LeRoy*, 124 M 107, 144 NW 464.

General power granted to a municipality to lay out, open, and extend streets authorizes by implication an extension of a street across a railroad right of way when such extension does not necessarily impair it for railroad purposes; and the



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necessity for taking of easement is a legislative question not subject to judicial review. Village of Lamberton v C. & N. W. Ry. Co. 196 M 597, 265 NW 801.

A village does not have power to levy a special tax for the maintenance of its streets. OAG Jan. 5, 1935 (481b-7).

Village may construct curbing and gutters for a trunk highway and pay for the same with certificates of indebtedness, but if it issues bonds there must be a vote of the electors, and the improvement may be paid out of the general fund without an assessment against abutting owners. OAG Aug. 29, 1935 (476a-4).

Subd. 11. A village ordinance prohibiting the keeping of dog kennels without reference to whether such kennels created a nuisance, held invalid. Claesgens v Animal Rescue League, 173 M 61, 216 NW 535.

Ordinance requiring licensing of dogs is valid as against owners of dogs confined to their own premises. OAG Aug. 8, 1939 (146d-4).

Subd. 13. A village may prescribe by ordinance reasonable rules and regulations for the management of its cemetery located outside its boundaries. OAG Aug. 3, 1931.

Improvement of parks may be paid for out of the general funds of a village. OAG Dec. 31, 1937 (476b-10).

Subd. 14. In determining whether a license fee of \$200.00 per annum for a permanent moving picture show is unreasonable, evidence may properly be received as to the character and number of the inhabitants of the village, its situation, the general character of the exhibitions of the kind in question in similar villages, the crowds attracted, and the need of police surveillance. In this case, it was error to receive evidence of the kind of exhibitions carried on by these plaintiffs, and to consider the good quality thereof as controlling on the question of the reasonableness of this, a general ordinance, fixing a license fee for all who might conduct moving picture shows in the village; and it is error to receive in evidence admissions by individuals of the village council that the motive in enacting the ordinance was to accomplish a nonpermissible or unlawful end. Higgins v Lacroix, 119 M 145, 137 NW 417.

Though a lawful business, the exhibition of motion pictures may be licensed and regulated by the state and the political subdivisions thereof in the exercise of the police power. Power v Nordstrom, 150 M 228, 184 NW 967.

A license fee of \$25.00 per day for auctioneers, which villages are authorized to impose by Laws 1905, Chapter 138, is not so large as to be beyond the scope of legislative discretion. Village of Minnesota v Martin, 124 M 498, 145 NW 383.

This paragraph is superseded by Laws 1933, Chapter 7, as to boxing exhibitions. OAG April 17, 1933.

This paragraph gives village authority to license and regulate transient dealers in accordance with section 7340 (329.01).

A municipality may prescribe reasonable conditions as to time when, places where, and manner in which right of farmer to sell produce may be exercised, so long as no license is required, and the conditions are reasonable. OAG Oct. 16, 1935 (477b-21).

Ordinances regulating hawkers and peddlers and solicitors must be reasonable and not prohibitory. OAG Sept. 30, 1935 (477b-21).

A municipality may ordain that the practice of peddlers and solicitors in going upon private premises and homes and soliciting orders without an invitation by occupants thereof is a nuisance. OAG July 2, 1934 (477b-21); OAG Oct. 16, 1935 (477b-21).

A village may regulate hawkers, peddlers, transient merchants, and solicitors but may not prohibit doing business by them within the village, though it is probable that proper ordinances could be passed making it a nuisance to solicit orders upon private premises without invitation or consent of occupants. OAG Oct. 15, 1937 (477b-21).

Selling bread from truck at houses is "peddling" and may be licensed or regulated. OAG Oct. 15, 1937 (477b-21).

Soliciting for dry cleaning is not "peddling". OAG Oct. 15, 1937 (477b-21).

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The reason for ordinances licensing transient dealers is based on nuisance feature and not because transient merchant is underselling local merchants, and restrictions must be reasonable and not prohibitive. OAG April 21, 1939 (290p).

Subd. 15. A prosecution and conviction, under an ordinance of St. Paul for keeping a house of ill-fame in the city, constitute no bar to a prosecution for the same act by indictment, under General Statutes 1878, Chapter 100, Section 9. *State v Lee*, 29 M 445, 13 NW 913.

Under an ordinance intended for the suppression of the unrestrained traffic in intoxicating liquors, which forbids selling, dealing in, or disposing of the same without a license, a person engaged in such traffic may, under a prosecution for an unlawful disposition of such liquors contrary to the terms of the ordinance, be convicted on proof of a gratuitous as well as other disposition thereof. *State v Deusting*, 33 M 102, 22 NW 442.

A sale of intoxicating liquor by one licensed by the council of a village, during the period of his license, but after the town in which the village is located has voted "no license", is unlawful where there has been no statutory separation of the village and the town and both participate in the election. *State ex rel v McKinnon*, 126 M 505, 148 NW 99.

The power to prohibit the sale of intoxicating liquor within its limits may be given to a city by its charter. The general laws regulating the liquor traffic imposed regulations and restrictions more stringent than those theretofore existing, which the municipalities of the state could not abrogate or lessen; but such municipalities were free to impose any further restrictions authorized by their respective charters or other laws. It is not contrary to the public policy of the state to give the power to prohibit such traffic to a city of the first class, and such power may be given to a city of that class by a home rule charter. *State ex rel v City of Duluth*, 134 M 355, 159 NW 792.

A riparian owner's rights on a body of navigable water are qualified, restricted, and subordinate to the paramount rights of the public use of the waters, not only for navigation but also use for the ordinary purposes of life. The state may delegate to a village powers to regulate navigable waters within the corporate area thereof. The regulations complained of are lawful exercises of the village's governmental power. *Nelson v DeLong*, 213 M 426, 7 NW(2d) 342.

That part of the village ordinance requiring consent of the village council to repair a building is ineffective and unenforceable. *Julius v Lenz*, 215 M 106, 9 NW(2d) 255.

Council may by ordinance prohibit the playing of cards in places where 3.2 beer is sold. OAG March 21, 1939 (733e).

Village may not license places for card playing, the winner to be paid in chips which will be taken in trade by the house. OAG March 28, 1939 (733e).

Subd. 17. Village council cannot by resolution recite facts showing that the recorder is failing to perform the duties of his office and declare the office vacant. OAG Oct. 20, 1931.

It is ground for the removal of a member of water, light, power, and building commission that he sells supplies to the commission or purchases supplies from other members, but the village council has no power to remove the officer, and the officer may recover the value of the supplies to the village. OAG Feb. 11, 1936 (707b-6).

Subd. 19. A non-resident veterinarian may be appointed as an inspector under a village local health board. OAG Dec. 29, 1931.

Village may regulate the buying and selling of junk and the storing of hides and wool under this subdivision. OAG Sept. 7, 1934 (477b-20).

Prohibiting the keeping of turkey ranches within a small village, but permitting families to have a few chickens or turkeys for their own use, would be valid if the turkey ranches were in fact a nuisance. OAG Nov. 5, 1936 (477b-20).

Village may enact ordinance prohibiting undertaking establishment in a purely residential district. OAG June 21, 1937 (477b-20).

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A fence erected by an abutting landowner across a platted but ungraded and seldom used street may be declared a nuisance and may be abated by action or removed by the council. OAG Aug. 18, 1939 (396g-9).

Subd. 20. Village council may extend its water mains and pay for the same by general taxation and the expense could be paid out of the general fund of the village or out of the water-works fund. OAG April 4, 1931.

Subdivisions 20 and 21 are sources of authority of city council in matters of providing for electric lighting of streets and for pumping water, sections 1252, 1253 (455.12) seem to be applicable only to proposed contracts that would include distribution and supplying electric energy to inhabitants. OAG March 20, 1933.

Subd. 21. Conditional sales contract of electric equipment to a village to be paid for out of the net earnings of the sale of electricity after all other charges have been paid, is permissible. OAG Oct. 20, 1932.

Village may not purchase engine under conditional sales contract to be paid for out of the general fund, but having purchased an engine under a conditional sales contract, it may pay out of the general fund the reasonable value of lighting streets and have such money used to retire payments under the contract. OAG Feb. 11, 1936 (476a-6).

One village council may bind subsequent councils to either grant extension of electric franchise or pay portion of cost of white way constructed by a private utility. OAG Oct. 31, 1936 (707b-14).

A contract of a village for the purchase of electricity over a period of ten years may not be entered into without first advertising for bids. OAG Sept. 10, 1938 (624c-2).

Subd. 23. A village may transfer money from the general fund to the road and bridge fund if outstanding warrants against the general fund have been taken care of and if there is a surplus in that fund over the necessary requirements for the balance of the year; but there can be no transfer from the road and bridge fund to the general fund. OAG Sept. 26, 1931.

Village may transfer balance in general fund to the poor relief fund. OAG Aug. 2, 1932.

A village, on making up its budget, may request a certain gross amount for its general fund and take care of road and bridge expenses out of the general fund, providing the total amount raised for all purposes does not exceed 20 mills. OAG Sept. 26, 1931.

A village has no power to issue warrants falling due at a particular date in the future. OAG Oct. 6, 1931.

Warrants can only be issued in anticipation of the collection of a tax levy already made. OAG March 13, 1939 (469c-11).

A village may not use public money for the erection and operation of a cold storage locker plant. OAG March 9, 1939 (469a-12).

Village council was without authority to lend money to a farmers' elevator and take a note endorsed by the directors, and the claim may not be compromised on account of the insolvency of the directors. OAG May 3, 1933.

A village treasurer has right to pay bonds and interest when due out of funds collected for that purpose, though ordered not to do so by the village council. OAG July 14, 1933.

A village operating under the per capita tax law may levy a tax for tourist camping grounds, providing the entire levy does not exceed the per capita limit. OAG Dec. 14, 1934 (519i).

Where the council wishes to repair streets and is willing to meet the cost out of general funds it may act on its own motion, but if assessments are to be made against abutting owners, it must proceed by petition. 1942 OAG 182, May 23, 1942 (396G-10).

A village has no power to loan money to a school district. OAG Feb. 9, 1944 (476a-8).

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A village has no power to appropriate money to aid in erection of an American Legion hall; to a cemetery association; or to operate a gravel pit. OAG April 20, 1944 (476b-2); OAG June 16, 1944 (870j); OAG Aug. 18, 1944 (477b-34).

### 412.20 MEETINGS OF COUNCIL; COMPENSATION.

HISTORY. R.S. 1851 c. 41 s. 21; P.S. 1858 c. 17 s. 136; 1875 c. 139 s. 4; 1877 c. 61 ss. 1, 2; G.S. 1878 c. 10 s. 207; 1883 c. 73 s. 54; 1885 c. 109 s. 2; 1885 c. 145 s. 54; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 257; 1889 c. 125 s. 2; 1891 c. 102 s. 1; 1891 c. 146 sc. 3 s. 1; 1891 c. 146 sc. 4 ss. 2, 3; 1891 c. 149 s. 1; G.S. 1894 ss. 1272, 1296, 1297; R.L. 1905 s. 728; G.S. 1913 s. 1275; G.S. 1923 s. 1195; M.S. 1927 s. 1195; 1943 c. 99 s. 1.

Meetings of the city council forming part of a taxpayers' committee to investigate the rate of other villages were not entitled to their expenses on the trip. OAG May 4, 1933.

As a general proposition the time for holding regular meetings may be changed by the action of the council alone, but a meeting held at any other time than that fixed for a regular meeting is legal if all members actually attend and participate. OAG April 11, 1939 (471e).

Where all the members of village council are present at a special meeting and take part therein, failure to give notice of the meeting is immaterial. OAG April 25, 1938 (471e).

### 412.21 CONTRACTS; MEMBERS EXCLUDED; BIDS.

HISTORY. 1883 c. 73 s. 51; 1885 c. 145 s. 51; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 254; G.S. 1894 ss. 1269, 1286; R.L. 1905 s. 731; G.S. 1913 s. 1279; G.S. 1923 s. 1199; M.S. 1927 s. 1199; 1935 c. 344 s. 1; 1939 c. 139; M. Supp. s. 1199.

General Statutes 1894, Section 1269, provides that "all contracts for village improvements except expenditures of road and poll tax, shall be let to the lowest responsible bidder after public notice of time and place of receiving bids therefor." In an action brought by a taxpayer to enjoin the village of North St. Paul and its officers from paying out of its treasury money to build a bicycle path, held that, as it did not appear that the money so to be paid out was other than that which might be expended from the road and poll tax fund, a cause of action was not proven. *McLean v Village of North St. Paul*, 73 M 146, 75 NW 1042.

Plaintiff and defendant entered into a contract, which was in every respect fair and reasonable, for the building of a bridge by defendant for plaintiff. Plaintiff had power to make the contract, but by reason of its failure to comply with the provisions of the statute as to the letting of the contract, it was void. Defendant, in good faith, performed the contract on his part and built the bridge in accordance with the plans and specifications therefor. Plaintiff accepted the bridge and voluntarily paid defendant therefor \$500.00 in cash and \$1,300 in its bonds. The bridge was carried away by a flood. This is an action to recover from defendant the \$500.00 and the bonds, or the amount thereof. Held, that plaintiff cannot recover. *Village of Pillager v Hewett*, 98 M 265, 107 NW 815.

Where a municipal corporation received money or property of another under and pursuant to a contract upon a subject within its corporate powers, which contract was entered into in good faith and without purpose to violate or evade the law but, for the failure to comply with the requirements of statutes made essential to a valid contract, was illegal and void, and the money or property so received is retained and subsequently devoted to legitimate municipal purposes, the municipality is liable therefor, and recovery may be had against it as upon an implied contract. *First Nat'l Bank v Village of Goodhue*, 120 M 362, 139 NW 599.

A city accepting water from a well for six years was liable for the contract price, though the contract was let without a proper call for bids and contained terms not included in call and purported to bind the city to the abandonment of a certain mine. *Chisholm Water Supply Co. v City of Chisholm*, 205 M 245, 285 NW 895.

A bid for equipment for a municipal power plant was not vitiated by a condition therein that ouster proceedings would be instituted by the village to remove competition within the immediate future, the franchise of a private utility being due to expire within a short time and bidders, in any event, having the right to

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have competition removed. *Interstate Power Co. v Fairbanks, Morse & Co.* 194 M 110, 259 NW 691.

That the matter of granting a certain franchise for electricity was under public discussion for some time before the council acted did not excuse failure to call for bids. *Casey v Central Elec. & Tel. Co.* 202 M 510, 279 NW 263.

Owner of platted area who installed water and sewer system to induce purchasers to purchase lots, and who represented to purchasers that no future assessments would be made, cannot claim full ownership of the system. The local unit of government may assert its rights. The village under the circumstances cannot raise a question of the validity of the franchise because requirements of section 412.21 were not complied with. *Country Club Co. v Village of Edina*, 214 M 26, 8 NW(2d) 321.

This section does not apply to a village, such as Litchfield, that existed at the time of enactment. OAG July 28, 1932.

This section originated as a part of the general village act of 1885 and applies only to villages organized thereunder. OAG May 7, 1936 (59a-38).

This section does not apply to villages organized under Laws 1885, Chapter 145. OAG Nov. 7, 1936 (707a-15); OAG Nov. 22, 1938 (476b-7); OAG April 24, 1939 (707a-15).

This section does not apply to villages other than those organized under the village act of 1905, and it does not apply to St. Peter, which is organized under Special Laws 1891, Chapter 5. OAG May 3, 1939 (707a-4).

A city council purchasing electrical energy may comply with this section and receive bids, but this is not a necessary prerequisite. OAG Feb. 3, 1932.

Member of village council may enter into contract with water, light, power, and building commission having full charge of construction work. OAG March 19, 1934.

Village treasurer is not a member of the village council so as to preclude him from being interested in a contract with the village. OAG April 5, 1932; OAG Jan. 21, 1938 (707a-15).

**Village may insure property in company in which member of council is an employee on a straight salary and has no pecuniary interest in the contract of insurance.** OAG July 20, 1934 (471k).

An officer of a village or city may not insure the property of the municipality in a company he represents as an agent. OAG May 24, 1937 (476b-9).

Renewal of insurance after a councilman has qualified and assumed office would violate the statute. OAG April 1, 1939 (90b-4).

The fact that engineers recommend a site for a disposal plant which is owned by the mayor does not alter the rule that a village officer may not contract with village, but this would not prevent a condemnation of the property. OAG March 27, 1939 (90e-6).

Where president of village council is a mere employee of an elevator company, working on a salary basis, and not a stockholder or an officer, and has no financial interest in the elevator company's business, except as a salaried manager, and receives no commission or bonus or other remuneration except such monthly salary, such elevator may sell coal to the village. OAG Feb. 13, 1935 (707b-6).

An employee of a lumber company working on a salary basis and having no financial interest in company's business does not have the "interest" referred to in this section. OAG Jan. 21, 1938 (707a-15).

Village council may not award printing contract to a newspaper of which a member of the council is part owner and publisher, even though such member takes no part in the vote, except where the law requires printing to be done in village and such member owns the only qualified newspaper therein. OAG Jan. 18, 1936 (707b-6); OAG April 25, 1938 (90a-1).

A village operating a municipal liquor store cannot lease a building owned by a member of the council. OAG Jan. 21, 1936 (217b-8).

Village councilman cannot be employed in an exclusive liquor store operated by the village. OAG April 4, 1935 (218g-13).

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It is illegal for members of village council, members of water and light commission, and street commissioners to purchase their coal through the village, even though the village is reimbursed in full for the cost. OAG Oct. 7, 1931.

"Public notice" means whatever is reasonable under the circumstances, and though in a normal situation both posted and public notice should be given, a contract for a new well may be let without advertising for bids where the water supply has become dangerously inadequate. OAG March 13, 1939 (469c-11).

The statutory directions as to time and manner of opening bids are intended for the protection of the public and are mandatory, but after the bids have been opened the officers are entitled to a reasonable time for comparison and calculation necessary to enable them to ascertain who is the lowest or most favorable bidder. OAG June 7, 1939 (707a).

Whether an emergency exists that will relieve a village from advertising for bids, is a question of fact. OAG Jan. 12, 1944 (707a-9).

## 412.22 ORDINANCES, HOW ENACTED.

HISTORY. R.S. 1851 c. 41 s. 25; P.S. 1858 c. 17 s. 140; 1875 c. 139 s. 6; G.S. 1878 c. 10 s. 209; 1883 c. 73 s. 49; 1885 c. 65; 1885 c. 145 s. 49; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 252; 1891 c. 146 sc. 4 ss. 6, 8; G.S. 1894 ss. 1267, 1300, 1302; R.L. 1905 s. 729; G.S. 1913 s. 1276; G.S. 1923 s. 1196; M.S. 1927 s. 1196.

Absent charter or statutory requirement, a resolution of a village council for the construction of a power plant need not be signed, attested, and published. *Davies v Village of Madelia*, 205 M 526, 287 NW 1.

Ordinances, rules, and by-laws passed by the council and the annual financial statement of the clerk must be published in a newspaper selected by the council, but the clerk is not required to publish the minutes of the council proceedings in detail into the financial records. OAG Feb. 10, 1934.

A village council may publish the minutes of all of its regular meetings and pay therefor out of the general funds of the village. OAG Jan. 14, 1936 (218j-8).

## 412.23 EXECUTION OF INSTRUMENTS.

HISTORY. 1883 c. 73 s. 55; 1885 c. 145 ss. 55 to 57; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 ss. 258 to 260; G.S. 1894 s. 1273; R.L. 1905 s. 730; G.S. 1913 s. 1278; G.S. 1923 s. 1198; M.S. 1927 s. 1198.

Mayor of village must sign intoxicating liquor licenses. OAG Feb. 25, 1935 (218g-11).

## 412.24 CONTROL OF STREETS.

HISTORY. 1885 c. 145 ss. 33, 43; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 ss. 236, 246; G.S. 1894 ss. 1250, 1261; 1897 c. 234; R.L. 1905 s. 732; G.S. 1913 s. 1280; G.S. 1923 s. 1200; M.S. 1927 s. 1200.

A village which, as constituted, remained a part of the town in which it was situated for certain purposes, was reincorporated in pursuance of a vote of the electors thereof under Laws 1885, Chapter 145, did not thereby become a separate organization for all purposes, and the provisions of the General Statutes, relating to towns and township organizations, remains in force as respects such villages, in so far as they are applicable and except as contravened by the statutory provisions which constitute the village charter. In respect to roads and bridges, the town officers have no jurisdiction or authority within the limits of the village so reincorporated, and the latter is not liable to be taxed for the expenses of town roads and bridges. *Bradish v Lucken*, 38 M 186, 36 NW 454.

## 412.25 VACATING STREETS.

HISTORY. 1883 c. 73 s. 29; 1885 c. 145 s. 29; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 232; 1891 c. 146 sc. 10 ss. 1, 2; G.S. 1894 ss. 1246, 1354, 1355; Ex. 1902 c. 57; R.L. 1905 s. 733; 1909 c. 381 s. 1; G.S. 1913 s. 1281; G.S. 1923 s. 1201; 1927 c. 57 s. 1; M.S. 1927 s. 1201.

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## 412.26 VILLAGES INCORPORATED UNDER R.L. 1905, CHAPTER 9

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A resolution of a village council unconditionally vacating a public street, not shown to have been the result of proceedings duly had as required by law, held void and of no effect. State ex rel v G. N. Ry. Co. 114 M 293, 131 NW 330.

### 412.26 ASSESSMENTS FOR BENEFITS.

HISTORY. 1885 c. 145 ss. 27, 28; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 ss. 230, 231; G.S. 1894 ss. 1244, 1245; R.L. 1905 s. 734; G.S. 1913 s. 1283; G.S. 1923 s. 1203; M.S. 1927 s. 1203.

### 412.27 STREET IMPROVEMENTS; ASSESSMENTS.

HISTORY. 1885 c. 145 s. 30; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 233; 1893 c. 185 s. 1; G.S. 1894 s. 1247; 1895 c. 72; 1899 c. 90; R.L. 1905 s. 735; 1911 c. 324 s. 1; G.S. 1913 s. 1284; 1915 c. 153; G.S. 1923 s. 1205; 1925 c. 309 s. 1; M.S. 1927 s. 1205.

### 412.28 ADDITIONAL TAX; INSTALMENTS; BONDS.

HISTORY. 1885 c. 145 s. 30; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 233; 1893 c. 185 s. 1; G.S. 1894 s. 1247; 1899 c. 90; R.L. 1905 s. 736; G.S. 1913 s. 1285; G.S. 1923 s. 1206; M.S. 1927 s. 1206.

A village organized under this act may cause a sidewalk to be built and buy material therefor without petition from the adjacent owners and without assessment first made on adjacent property. This section does not limit the general power conferred by Laws 1885, Chapter 145, Section 21. Bradley v Village of West Duluth, 45 M 4, 47 NW 166.

### 412.29 MODE OF ASSESSMENT OF BENEFITS AND COST OF STREET IMPROVEMENTS; COLLECTION.

HISTORY. 1885 c. 145 ss. 28, 31, 32; 1889 c. 123 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 ss. 231, 234, 235; 1889 c. 123 s. 2; G.S. 1894 ss. 1245, 1248, 1249; R.L. 1905 s. 737; G.S. 1913 s. 1286; G.S. 1923 s. 1207; 1925 c. 309 s. 2; M.S. 1927 s. 1207.

### 412.30 TAXPAYER'S APPEAL.

HISTORY. 1901 c. 221; R.L. 1905 s. 739; G.S. 1913 s. 1301; G.S. 1923 s. 1223; M.S. 1927 s. 1223.

Where by one resolution a village council allows three claims of same claimant which might have been combined in one claim or joined in one action, a single notice of appeal by the requisite number of taxpayers is sufficient. In re Appeal of Maki from Allowance by Village of Aurora of Claim of Geo. H. Lommen, 188 M 78, 246 NW 531.

This section does not apply to a village organized under Laws 1885, Chapter 145. OAG May 22, 1933; OAG April 17, 1936 (476a-5).

Waiting period of ten days applies to a claim for merchandise sold to municipal liquor stores. OAG Jan. 10, 1936 (476a-5).

### 412.31 FINANCIAL REPORT.

HISTORY. 1875 c. 139 s. 3; G.S. 1878 c. 10 s. 206; 1883 c. 73 s. 20; 1885 c. 145 ss. 20, 44; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 247; G.S. 1894 s. 1262; R.L. 1905 s. 740; G.S. 1913 s. 1302; G.S. 1923 s. 1224; M.S. 1927 s. 1224.

### 412.32 TAX LEVY.

HISTORY. 1885 c. 145 ss. 34, 39; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 ss. 237, 242; G.S. 1894 ss. 1251, 1257; R.L. 1905 s. 741; G.S. 1913 s. 1303; G.S. 1923 s. 1225; M.S. 1927 s. 1225.

General Statutes 1894, Sections 1251, 1557, read together provide that within a specified time (which is before the meeting of the state board of equalization) the village council shall by resolution determine the specific amounts of corporate

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taxes to be assessed on the taxable property of the village, and the last section provides that at a subsequent time (after the meeting of said board) the county auditor shall calculate and fix the rate per cent thereof, which "shall be determined from the amount of property as equalized by the state board of equalization each year." A resolution of the council, which provides for levying "a corporation tax of one and one-fourth per cent on the assessed valuation of all real and personal property in the village" is illegal and void. The council should have stated the specific amount of such tax, and not the rate per cent. In re Cloquet Lbr. Co. 61 M 233, 63 NW 628.

Village may levy an amount for corporate taxes which shall not exceed two per cent of the assessed valuation of property taxable in the village, but not to exceed the per capita limit prescribed by section 2061 (275.11). OAG Oct. 10, 1936 (519q).

Section 1933-9 (450.19) places a limitation on the expenditures of taxes for tourist camp purposes and is not a grant of power to levy a special tax in addition to general taxes. Internat'l Harv. Co. v State, 200 M 242, 274 NW 217.

An existing shortage on account of the failure of the county auditor to extend the amount certified in previous years for village corporation taxes cannot be replaced by levying of an amount in excess of the legal maximum by the village council. OAG Oct. 23, 1935 (481a-2).

Tax for band purposes authorized by section 1933-17 (499.09) may be levied in excess of the two per cent limit fixed by this section. OAG July 5, 1929.

The time within which levy may be made by village for band of other purposes is directory and not mandatory. OAG Dec. 23, 1935 (519h).

## 412.33 DISSOLUTION, HOW ACCOMPLISHED.

HISTORY. R.S. 1851 c. 41 ss. 73, 74; P.S. 1858 c. 17 ss. 188, 189; 1883 c. 73 ss. 56, 57; 1885 c. 145 ss. 56, 57; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 ss. 259, 260; G.S. 1894 ss. 1274, 1275; R.L. 1905 s. 742; G.S. 1913 s. 1304; G.S. 1923 s. 1226; M.S. 1927 s. 1226.

## 412.34 SETTLEMENT OF AFFAIRS.

HISTORY. R.S. 1851 c. 41 ss. 75, 76; P.S. 1858 c. 17 ss. 190, 191; 1885 c. 145 s. 57; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 260; G.S. 1894 s. 1275; R.L. 1905 s. 743; G.S. 1913 s. 1305; G.S. 1923 s. 1227; M.S. 1927 s. 1227.

## 412.35 FUNDS OF DISSOLVED VILLAGE CORPORATIONS.

HISTORY. 1917 c. 193 s. 1; G.S. 1923 s. 1228; M.S. 1927 s. 1228.

## 412.36 MONEY IN HANDS OF TREASURER OF ILLEGALLY CONSTITUTED VILLAGE TO BE PAID INTO TOWN TREASURY.

HISTORY. 1915 c. 57 s. 1; G.S. 1923 s. 1176; M.S. 1927 s. 1176.