

CHAPTER 373

POWERS, DUTIES, AND PRIVILEGES OF COUNTIES

373.01 POWERS.

Without authority of defendant's board of commissioners a member thereof purchased clay and sand from plaintiff and used same in improving the county highway. The transaction was invalid but made in good faith and without any intention to violate the law. The county benefited by the improvement. The work done was within the powers of the county board. Under the facts disclosed by the evidence plaintiff was entitled to recover in quasi contract an amount equal to the benefit that the county received. *Wakely v Co. of St. Louis*, 184 M 613, 240 NW 103.

In drainage proceedings counties are involuntary corporate subdivisions of the state for governmental purposes and are not liable for the neglect of their officers or agents unless expressly made so by statute. *Nostdal v Co. of Watonwan*, 221 M 376, 22 NW(2d) 461; *Smith v Board*, 46 F. 340.

Organized county of the state of Minnesota is a "citizen" of the state for the purpose of federal court jurisdiction based on diversity of citizenship. *Pettibone v Cook County*, 120 F(2d) 850.

In order for a county to acquire by devise good title to real estate, the statute must be strictly followed. OAG May 1, 1945 (125-A-42).

A county cannot purchase land for re-sale. It may only purchase land to fit a definite need, present or future. OAG June 29, 1945 (125-a-41).

In those counties where the town system prevails for care of the poor, the county board may not contract with an ambulance service company to carry persons injured on the public highway. OAG July 9, 1945 (125-a-17).

County contracts must be made by the board and not by individual members thereof; and contracts involving expenditure of in excess of \$500, even though it involves improvement of court house grounds, can be made only after advertisement for bids. OAG Aug. 10, 1945 (125-A-20).

Dealer who refuses to deliver goods under the terms of his accepted bid, claiming federal OPA rules as a reason, may be sued by the county for breach of contract. OAG Sept. 26, 1946 (707-A-7); OAG Oct. 9, 1946 (707-A-7).

Has a county a right to convey a tuberculosis sanatorium to the state when the state plans to convert it into a school for the feeble-minded? OAG Jan. 5, 1946 (89).

Procedure to be followed in sale of poor farm. OAG July 9, 1946.

Before the county may acquire property for future use, the county board must declare a necessity for the acquisition of such property. If the county is not prepared to build on the property, it may temporarily lease the property. OAG March 7, 1947 (120-a-20).

Neither counties nor municipalities may spend public funds for lobbying to induce favors for their area. OAG April 17, 1947 (107-B).

Legal nature and status of the American county. 14 MLR 141.

Liability of public corporation in quantum meruit. 17 MLR 101.

Distinction between governmental and proprietary function as relating to governmental liability for torts. 26 MLR 336.

373.02 POWERS, HOW EXERCISED.

Work or expense on an improvement must be authorized by the board. A single member cannot act alone. OAG Oct. 10, 1945 (125-a-20).

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373.06 ACTIONS AGAINST COUNTIES.

Where a county at whose behest a county highway was constructed under the provisions of the federal highway act, which provides that the construction must be undertaken by the state highway department, the state highway department was acting as the county's agent, and the county, and not the state is liable for any damages arising from negligence in the construction. *Poynter v Co. of Otter Tail*, 223 M 121, 25 NW(2d) 709.

373.07 SUITS AGAINST COUNTIES; SERVICE; JURORS.

Right to challenge taxpayer called as juror in a case in which the county is interested. 11 MLR 669.

373.09 CLAIMS AGAINST COUNTY; APPEAL.

Section 373.06 in connection with the statutory provisions requiring ordinary claims against a county to be presented to the county board and to be audited and acted on by that board and providing for an appeal from the allowance or disallowance of such claims, makes the remedy of appeal exclusive. *Suhr v Co. of Dodge*, 183 M 299, 236 NW 463.

Plaintiff acquired a claim from one who sold merchandise to defendant county. The statement of claim, duly verified, and the assignment, were filed with the defendant county auditor for audit, and allowance by the county board. The claim was allowed but by mistake the warrant was made payable to and delivered to the assignor who received the money. Plaintiff, notwithstanding the provisions of section 373.06 may sue and recover from the county. *Leuthold v Co. of Redwood*, 206 M 199, 288 NW 165.

373.10 PROCEEDINGS ON APPEAL.

An appeal from the allowance of a claim by a county board vacates the order of allowance and the issue is for trial de novo on the merits, with the burden of proof on the claimant. *Kief v C. E. Mills*, 147 M 138, 179 NW 724.

373.12 JUDGMENTS AGAINST COUNTIES; HOW PAID.

In proceedings to enforce a judgment against a county, obtained on county bonds which are primarily payable from a particular fund, it is not a defense that there are outstanding county warrants, where it is not shown that they are payable out of such fund, or that they are due and payable under state statutes, or that if they were, they are entitled to preference in payment over the judgment. *Clearwater County v Pfeffer*, 236 F. 183.