

**CHAPTER 413****FORMATION; CHANGE IN TERRITORIAL LIMITS OR NAME****413.05 SEPARATE ELECTION AND ASSESSMENT DISTRICT.**

Where a duly incorporated village had not been separated from the town for election or assessment purposes under the provisions of section 365.44, attempted election of a village assessor at the organization election was void. OAG May 13, 1946 (484-E-4).

Where a village is created within a township any question as to the manner of distribution of taxes to the town and village respectively is a matter of form rather than substance. The main thing is that each receive its proper proportion. OAG Nov. 26, 1946 (440-B).

**413.06 JOINT REAL ESTATE.**

Where a petition has been filed for the incorporation of a village, a town hall included in the village boundaries must be a part of the village. As to the use and ownership, section 413.06 probably applies. OAG Dec. 17, 1946 (484-E-4).

**413.07 APPORTIONMENT OF MONEY AND DEBT; TAXES.**

Notwithstanding the provisions of section 413.07, the legislature may change the boundaries of a municipality without apportioning its indebtedness and providing for the enforcement of the liability thereof. Laws 1907, c. 221, held to be valid. *Hunter v City of Tracey*, 104 M 378, 116 NW 922.

It is wholly within the power of the legislature, there being no constitutional limitation, on the division or dissolution of a municipal corporation, and the transfer or division of its territory to other units, to apportion its indebtedness between such others, and determine the proportion each shall bear. *Pepin v Sage*, 129 F 657.

Where a village was incorporated out of a portion of a town; and an agreement had been made as to valuation of each, and division of taxes agreed upon, the manner of payment was mechanical rather than legal, and the end being accomplished, the exact procedure was immaterial. OAG Nov. 26, 1946 (440-B).

**413.08 EXTENDING BOUNDARIES.**

The courts cannot question the wisdom of statutes regulating the formation of municipalities or in the change in their boundaries, or the expediency of the conditions imposed. The functions are exclusively legislative. *State ex rel v Village of Gilbert*, 127 M 452, 149 NW 951.

"Owner" under this section includes mortgagor but not mortgagee, and vendee but not vendor under a contract for deed. 1942 OAG 97, April 29, 1941 (484-E-1).

An ordinance of annexation becomes effective when a certified copy thereof is filed with the secretary of state. OAG Dec. 3, 1946 (484-E-1).

**413.10 ADJACENT VILLAGES CONSOLIDATED.**

The name of the consolidated village, its boundaries, and the continuance in office of the chosen council, constitutes a sufficient statement until the next election. Other details are unnecessary. OAG Feb. 13, 1946 (484-E-1).

**413.12 ANNEXATION OF TERRITORY.**

Notwithstanding all statutory requirements for the annexation of territory have been observed the courts may determine whether such territory is so condi-

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tioned as to be capable of annexation. Quo warranto is the proper procedure by which to test the legality of the annexation. In testing the legality of annexation of territory to an incorporated village, the attorney general may proceed either in the district or in the supreme court. State v Village of Kinney, 146 M 311, 178 NW 815.

Where territory is annexed to a city less than 30 days before an election the residents residing in the annexed territory cannot vote at the city election. OAG Nov. 1, 1945 (64-N).

## **413.14 TERRITORY ANNEXED TO VILLAGES AND CITIES OF 10,000 AND LESS.**

Under the provisions of this section it is the duty of the council to determine whether a majority of the owners of property in the territory to be annexed have signed the petition. OAG July 2, 1945 (59-A-1).

Provided all county boards of the several counties having title to land occupied by a sanatorium join in a proper petition, said land may be annexed by the city it adjoins. OAG Oct. 15, 1945 (59-a-1).

A tract which merely corners upon a city does not abut thereon so as to authorize annexation. OAG Dec. 24, 1946 (59-a-1).

## **413.143 TERRITORY ANNEXED TO CITIES OF FOURTH CLASS.**

Land lying a quarter of a mile from the limits of a city is not subject to annexation. OAG Oct. 24, 1945 (59-A-1).

## **413.16 INCORPORATION WITHIN CITY LIMITS OF LAND OF STATE INSTITUTIONS.**

Reference to "state institutions" in section 413.16 means those under the jurisdiction of the director of public institutions. It does not refer to sanatoriums administered by a commission selected by joint county action. OAG Oct. 15, 1945 (59-A-1).

## **413.19 ANNEXATION OF TERRITORY TO CITIES OF THIRD CLASS.**

Land not adjoining the city limits may not be annexed by the city of Albert Lea. OAG Oct. 24, 1945 (59-a-1).

Land separated from the village limits by a railroad right of way may not be annexed unless the railroad right of way is also annexed. OAG Jan. 30, 1946 (59-A-1).

## **413.29 DETACHMENT OF TERRITORY FROM CERTAIN VILLAGES.**

A finding by a legislative body that the public interest is promoted by vacation of a plat, vacation of streets or alleys, detachment of territory and the like, of or from a municipality can be set aside on appeal only if the action is arbitrary or the result of abuse of discretion. Only a limited jurisdiction is conferred on the courts. Independent School District v Meeker County, 143 M 169, 173 NW 850; Cavert v Co. of Renville, 153 M 360, 190 NW 545; In re Hull for Vacation of Plat, 163 M 439, 204 NW 534, 205 NW 613.

That the village will contain less than 320 acres after the detachment does not prevent the detachment. OAG May 10, 1943 (469-A-3).

## **413.30 DETACHMENT OF LANDS FROM CITIES OF FOURTH CLASS.**

If the court finds the land contains less than 40 acres, is unplatted, used exclusively for agricultural purposes, and if detached will not affect the symmetry of the settled portion of the city, the court under the language of L. 1907, c. 221, has no discretion in the matter and must allow the detachment. Jones v City of Red Lake Falls, 116 M 454, 134 NW 121.