

MINNESOTA STATUTES 1953 ANNOTATIONS

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SCHOOL BOARDS; POWERS, DUTIES 125.01

which applies to common school districts, probably permits rescindment. The provisions of section 124.01 and 124.09 differentiate. OAG Dec. 29, 1950 (159-A-5).

The duties of a teller are limited to the counting of the votes. He does not have the powers of an election judge. OAG Jan. 22, 1952 (166-F-3).

124.10 ADDITIONAL POWERS OF MEETINGS IN COMMON SCHOOL DISTRICTS

HISTORY. 1877 c 74 subc 2 s 1, 2; 1881 c 41 s 6; 1885 c 57 s 1; 1889 c 166 s 1; 1903 c 38; 1909 c 187 s 2; 1939 c 2 s 4; 1941 c 169 art 5 s 10.

If at the annual meeting a tax was levied for a school lunch program and a revenue has been raised thereunder and if the regulations adopted by the state board of education prescribes rules therefor, a common school district may sue for the funds so raised to sponsor a school lunch program. OAG Dec. 3, 1948 (159-B-11).

When a meeting of a common school district votes to sell school property it is mandatory that the board sell the same. OAG Aug. 9, 1951 (622-I-8).

Where voters at a common school district meeting have voted a certain amount for maintenance, the school board cannot reduce the amount. OAG July 17, 1952 (519-M).

124.12 ELECTIONS IN DISTRICTS CONTAINING TWO OR MORE VILLAGES

As joint independent consolidated school district No. 68 of Faribault and Freeborn Counties contains the villages of Wells and Easton, about ten miles apart, it is mandatory that two voting precincts be established but the thirty-day limit within which the establishment must take place is directory. OAG May 14, 1953 (187-A-6).

124.13 ACCEPTANCE AND OATH OF OFFICE

Within three days following the annual meeting of the school district, the clerk should notify the officers elected of their election, and those elected should qualify, and if they do not qualify a special election may be called to elect successors. The original persons elected may qualify any time before special election was called. OAG July 12, 1950 (161-A-25).

CHAPTER 125

SCHOOL BOARDS; POWERS, DUTIES

125.01 SCHOOL BOARD; MEMBERSHIP; TERMS

HISTORY. 1865 c 13 s 4; 1877 c 74 subc 2 s 2, 4; 1881 c 41 s 6, 10; 1885 c 57 s 1, 2; 1909 c 187 s 2; 1939 c 62 s 4, 5; 1941 c 169 art 6 s 1; 1949 c 716 s 6.

The school board determines policies and can abolish the position of school physician. Contract with a physician can be terminated at the end of the school year without notice to the physician. Hospitals are not permitted to practice medicine. OAG Sept. 2, 1947 (166-A-3).

Since a village council may be called upon to take action on petitions presented by the school board a member of the village council cannot be a member of the school board. OAG Nov. 24, 1947 (358-F).

No constitutional provision is infringed by the practice adopted by a school board whereby each room is provided with a copy of the King James Version of the

Bible from which the teacher is required to read, without note or comment, extracts from the Old Testament selected by the superintendent. Pupils who do not desire to listen thereto are permitted to retire while such extracts are read. No assurance can be given that the court would approve of Bible reading and prayer conducted by the pastors of various churches. OAG Nov. 18, 1949 (170-F-1).

The school board in an independent school district has the power to establish, organize, alter and discontinue grades or schools without calling a special election. OAG Jan. 30, 1950 (161-B-5).

A vocational school may be maintained by a district under authority of section 125.01 and 125.06, subdivision 1. But to receive state aid, it must conform to the provisions of section 128.31. OAG Feb. 20, 1951 (170-C).

Where authorized by the voters and in the best interests of the school district, the board as the manager of the business of the district may sell the schoolhouse or the building formerly used as such and convey the site. OAG March 9, 1951 (166-E-4).

If an enlargement or addition to a schoolhouse is to be built, or a building is to be purchased, authority must be obtained by a vote of the majority of the voters. A school gymnasium is a school building to which the same rule applies; but it is the duty of the board to preserve the property of the district and if rebuilding the gymnasium is the prudent and expedient manner of improving the property and is in the public interest, the district has the right to make such repair, if funds are available. OAG July 2, 1951 (622-F).

The school board of an independent district may accept gift conveyance of land for the purpose of a school forest without the approval of the electors. The approval should be by a resolution duly adopted and incorporated in the minutes of the board. OAG Sept. 19, 1951 (983-E).

While there is no statutory authority whereby a school board may furnish meals to students there is no constitutional or statutory obstacle which prevents the board from adopting sound rules and regulations with respect to furnishing school lunches. OAG Nov. 14, 1951 (159-B-11).

The school board of an independent district may require an employee who handles money to furnish a bond. The premium may be paid out of public moneys belonging to the district. OAG Dec. 26, 1951 (401-B-17).

An independent school district organized under the school reorganization act is without authority to reimburse a citizen's committee for viewing schools and reporting its findings to the board. OAG Feb. 29, 1952 (161-A-12).

125.03 VACANCIES

Section 125.03 is not applicable to the special school district of the city of Minneapolis so as to authorize its board of education to fill vacancies on its school board; such power being vested under the provisions of special acts and the home rule charter in the city council in the city of Minneapolis. Through quo warranto proceedings a writ of ouster was issued against the person selected by the board of education by the city of Minneapolis. State ex rel v Salisbury, 228 M 367, 37 NW(2d) 444.

The resignation of the treasurer of the school board having been accepted by the board cannot be withdrawn. OAG July 20, 1949 (768-N).

While the provision that an officer of the school board must qualify within 10 days after his election is a mandatory provision only, it is grounds for declaring the office vacant and selecting a successor. The officer, however, may qualify at any time before a successor is selected, even though more than 10 days have elapsed. OAG Sept. 12, 1950 (768-G) (451-A-23).

125.04 SPECIAL ELECTION TO FILL VACANCY

HISTORY. 1862 c 1 s 15; 1877 c 74 subc 2 s 3; 1909 c 187 s 4; 1941 c 169 art 6 s 4.

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School officers who have not filed their oath of office are de facto officers nevertheless and their acts are legal. A vacancy on the board may be filled by a special meeting called under the provisions of section 125.04. Posting of notice of a special meeting to fill a vacancy on a school board bars the officers who have previously been elected from qualifying. OAG July 7, 1953 (161-A-25).

125.05 QUORUM

Where all the members of an independent school district board were present at a special meeting, it was immaterial that no notice had been given of the meeting. OAG Feb. 21, 1947 (161-A-16-B).

125.06 BOARDS; POWERS, DUTIES

HISTORY. RL 1851 c 79 s 13; PS 1858 c 69 s 13; 1861 c 11 s 11, 12, 13, 19; 1862 c 1 s 10, 12, 13, 14, 26; 1864 c 3 s 1; 1865 c 13 s 5, 6, 7, 17, 18, 20; 1865 c 14 s 1; GS 1866 c 36 s 10, 14, 26, 58, 59, 70, 71, 73; 1877 c 74 subc 2 s 14; 1877 c 74 subc 7 s 18; 1877 c 74 subc 8 s 1; GS 1878 c 36 s 32, 111, 116; 1881 c 41 s 5; 1881 c 127 s 1-3; 1887 c 125; GS 1878 Vol 2 (1888 Supp) c 36 s 23a, 23b, 23c, 32a; 1893 c 23 s 1, 4; GS 1894 s 3682, 3683, 3684, 3686, 3687, 3697, 3808, 3817, 3897, 3900; 1897 c 205; 1901 c 262 s 6; RL 1905 s 1320, 1321, 1324; 1907 c 445 s 1; GS 1913 s 2746, 2747, 2756; 1915 c 25; 1917 c 112 s 1, 2; 1917 c 417; 1923 c 431 s 1; GS 1923 s 2815-2818, 2825, 2831; 1925 c 98; 1927 c 34; 1927 c 370 s 1, 2; MS 1927 s 2815, 2816, 2816-1, 2816-2, 2816-3, 2817, 2818, 2823-1, 2825, 2831; 1929 c 12; 1933 c 105; 1937 c 80 s 1, 2; 1937 c 167 s 1; M Supp s 2816, 2849-4, 2849-5; 1941 c 169 art 6 s 6; 1941 c 516; 1943 c 118 s 1; 1943 c 266 s 1; 1945 c 365 s 1; 1947 c 633 s 1; 1949 c 388 s 1; 1949 c 732 s 1; 1951 c 582 s 1; 1953 c 27 s 1; 1953 c 222 s 1.

Expenditures of public funds for benefit of sectarian children; public transportation of children to sectarian schools. 31 MLR 739.

The duty of determining whether or not the school district shall provide free transportation of pupils to and from school is imposed upon the board, and the board has no power to submit the question to the voters. *Muehring v School District*, 224 M 432, 28 NW(2d) 655.

School boards and school districts have only such powers as are granted by statute. *Board of Education v Sand*, 227 M 202, 34 NW(2d) 689.

A grantor conveying land, the title to which has reverted to him upon the happening of the condition specified in the conveyance, is entitled to a building permanently affixed thereto at the time of reversion. A person erecting a building on land to which he has legal title subject to termination upon the happening of a condition subsequent is not entitled under M.S.A., section 559.09 to remove the building after the happening of the condition. *Miller v Common School District*, 231 M 248, 43 NW(2d) 102.

In order to maintain a competitive teaching staff, the board of education in a city of the first class, in the exercise of its power to make reasonable rules and regulations for the administration of the school system, may adopt a rule which requires all tenure teachers to signify individually in writing a reasonable time in advance whether they will be on hand to teach during the next year. Such rule does not impair the tenure statute of any teacher. *Minneapolis Federation of Men Teachers, Local 238 v Board of Education*, M, 56 NW(2d) 203.

The operation of a bus by a school district to transport students from school to their home is a "governmental function." *Rittmiller v School District*, 104 F. Supp. 187.

The power to plat a town site has no relation to the subject of education. The school district is without power to plat surplus land for town site purposes or to facilitate the sale of such land. OAG Dec. 31, 1948 (18-D).

When a school board is authorized by a vote of the people to issue bonds for the purpose of building an addition, it may build a separate structure instead of the addition if in its judgment the public need so require. OAG Oct. 29, 1947 (40-C-2).

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Laws 1953, Chapter 222, is a mandatory provision whereby each individual authorized to receive money and pay it over to the treasury of the district must give a bond. Blanket bonds for all individuals are not authorized. OAG Sept. 15, 1953 (45-F).

A member of the school board may not enter into a contract to transport school children. OAG Sept. 24, 1951 (90-C-7).

Where five questions are submitted on one ballot, and question No. 1 refers to a bond issue, and questions 2, 3, 4, and 5, relate to acquiring separate parcels of land, each question only requires approval of a majority of those voting on each separate question. OAG Nov. 6, 1953 (159-A-3).

Bonds may be issued to refund school district warrants issued prior to Sept. 1, 1927, without a vote of the electorate; but bonds to refund warrants issued since the above date require approval of the voters. OAG Sept. 10, 1947 (159-A-5).

Proceeds of a bond issue authorized by vote of the people can be used only for the purposes authorized. Where the voters authorized a bond issue to build and equip a senior high school building and gymnasium, the money cannot be used to build an elementary school building. OAG Nov. 15, 1947 (159-A-5).

Under section 125.06, subdivision 2, a school board may not build an addition to a school building without a vote of the people granting authority therefor. An election question voted for in the affirmative for the issuance of bonds for building such addition construed to be sufficient authority therefor. OAG Oct. 19, 1951 (159-A-5).

The school board is without authority to pay out money for scholarships and the fact that this money has come from another source than taxation is immaterial. There is no provision no matter what the source permitting the payment out of public money for scholarships. OAG Nov. 16, 1949 (159-A-16).

Money paid to students for magazine subscriptions and kept in the school safe which was burglarized and funds stolen creates no liability on the school district to make good the loss. OAG Nov. 26, 1948 (159-A-16).

It is the duty of a school board to refrain from incurring an obligation on the part of the district for additional contracts, which create an obligation on the part of the school district to pay money in excess of that available in the treasury for the purpose, plus any sums which have been authorized by the people to be provided by the issuance of bonds. Under the provisions of section 475.73, the bonds having been authorized, the money may be obtained either from the state investment board, or by selling the bonds to the public, the board making the best bargain under the circumstances. In an emergency the school board may transfer moneys in the maintenance fund to the building fund to assist in completing the buildings being constructed. OAG Sept. 2, 1949 (159-A-20).

Where an unincorporated baseball club, not in any way connected with a public school, has been permitted to use the school athletic grounds, a contract may be entered into between the school board and the club by which the ball club may make a gift to the school board of \$6,000, being about one-half of the amount necessary to light and equip the grounds for night games. While the school board is without authority to lease the grounds while needed for school purposes, the board does have authority, with the consent of the voters, to accept the gift subject to certain conditions, one of which might be the permission of the club to use the grounds for its purposes at times when not needed by the school. In case of damages arising from tort due to negligence, the school district would not be liable for damages incurred by spectators at games in which the school district did not participate. OAG Oct. 27, 1949 (159-B-1).

A school district may finance its cooperation with a municipality in recreational service by using money raised by taxation or received as a gift. It cannot issue bonds for this purpose. OAG Aug. 11, 1947 (159-B-1).

Upon approval by the electorate of a combined recreational council for village and school district, taxes may be levied by the school board without a vote authorizing a tax levy. OAG Aug. 11, 1947 (159-B-1).

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When authorized by the voters, the board in an independent school district may build an addition to the school house and pay for the construction thereof out of unexpended surplus not needed for other purposes. OAG July 5, 1950 (159-B-2).

A school board may enter into a contract with a city through the city heat commission, whereby the school district agrees to pay the city an agreed amount if the city will lay the mains to the property line of the school site and thereafter service the school from its heating plant. OAG March 6, 1951 (159-B-2).

The school board may not transfer a surplus in the treasury to a building fund for buildings to be erected in the future except when authorized by a vote of the people. OAG Sept. 20, 1951 (159-B-2).

Where the county nurse in the program of services performed by her requests the immunization of pupils attending school and such immunization is ordered by the board, if there are impecunious families who are not able to pay for the service the school board must pay. OAG Feb. 1, 1950 (159-B-7).

A school district may make expenditures for building storm sewers to drain surface waters from school grounds. OAG July 21, 1953 (159-B-8).

Where water mains are reasonably necessary for a school district the school board may pay a private corporation for making the installation. OAG Aug. 3, 1953 (159-B-8).

The authority relating to quasi-school activities is found in section 125.06, subdivision 15. It is doubtful if the subdivision includes a motion picture program for the adults of the community. OAG April 9, 1948 (159-B-11).

A school district may pay the cost of removing high power voltage lines if it is in the best interest of the district. If this involved the vacating of the street, the vacation must be authorized and accomplished in the usual manner. OAG July 30, 1953 (159-B-11).

If the school board is satisfied that encouragement of school games by the pupils adds to the intelligence of the students or improves their health or is beneficial it may make basketball and football curricular activities; it may provide equipment to better protect participants in the games against injury; and the board has the power to decide whether or not admission shall be charged. OAG Dec. 20, 1948 (160-K).

While proper practice at the time of the acceptance of the bid of a contractor for the construction of a school building is for the board, by motion or resolution, to instruct the chairman and the clerk to enter into a contract with the successful bidder, nevertheless if the minutes of the meeting clearly show that a duty was imposed upon the chairman and clerk, performance of that duty will be compelled by mandamus; but if the duty does not clearly appear, the remedy would be that a special meeting be again called upon due notice and the board then makes specific directions to the chairman and the clerk. OAG June 22, 1948 (161-A-8).

The school board is not authorized to pay the expenses of a voluntary committee which assembles facts for the consideration of the board. OAG Feb. 29, 1952 (161-A-12).

Schools closed in conformity with action of the voters may subsequently be reopened by the board. The care, management and control of common and independent school districts is vested in the school board. The annual meeting has no general power of management of the affairs of the district. The school board may reopen a closed school even in the event that the voters vote that the school remain closed. OAG July 26, 1948 (161-B-2).

The determination whether a school shall be kept operating within the school district, or whether the pupils shall be transported to another district for their education, using surplus funds, rests with the school board. OAG Aug. 28, 1952 (161-B-2).

The school board is the manager of the business of the district and it may establish and organize, alter and discontinue, such grades or schools as it may

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deem advisable, and assign to each school and grade a proper number of pupils. Special elections relate only to four subjects: (1) issuance of bonds; (2) designation and purchase of sites; (3) erection of buildings; and (4) establishment of joint recreation programs. The subject is not included in matters for which a special election must be called. Where a petition is presented to the school board requesting the discontinuance of the high school department, the matter rests entirely with the school board. OAG Jan. 30, 1950 (161-B-5).

Where an appeal is taken from an action of the county board detaching land from one school district and attaching it to another, and an appeal is taken from such action by a school district officer, the school board has power when in the best interest of the district to authorize and pay the expense of such appeal. OAG Sept. 22, 1952 (161-C-1).

The only kind of transportation that the school board is authorized to provide is free transportation. OAG Sept. 3, 1952 (166-A).

The school board determines policies and can abolish the position of school physician. Contract with a physician can be terminated at the end of the school year without notice to physician. Hospitals are not permitted to practice medicine. OAG Sept. 2, 1947 (166-A-3).

The school board may grant tuition and transportation only when authorized to do so by statute. It may grant tuition and transportation to another district if the facts come within the conditions of section 125.06, subdivision 12, and the pupil is entitled to such service if the conditions are as set out in section 132.01, subdivision 1. OAG Oct. 23, 1953 (166-A-3).

A pupil residing in a district where vocational-technical school or vocational classes are maintained may not attend such school or classes in another district and be transported by his district under authority of section 128.07, subdivision 6; but if the specifications of section 125.06, subdivision 14, apply, he may be transported at district expense. OAG Feb. 13, 1948 (166-A-4).

The school board manages the business of the school district; and when it provides transportation it determines the character of the transportation and makes the contract. A resident cannot force the board to contract with him to transport his own children. OAG Feb. 24, 1948 (166-A-6).

Under the language of the statute the pupil attending school in another district has a right to transportation at the expense of his home district. Where the law provides that a pupil is entitled to transportation, the transportation is a function and duty of the board, under sections 125.06 and 125.14. The parents of pupils transported have no authority to transport the pupils in expectation of being paid therefor unless a contract is made with the school district acting for the school board. OAG Sept. 4, 1951 (166-A-6).

School boards are authorized to furnish free transportation to pupils attending the public schools of the district under certain conditions. It cannot operate a transportation system for others. OAG Sept. 26, 1952 (166-A-7).

A resident of a school district owning land in an adjacent school district is entitled under subdivision 4 to transportation of pupils in his own district where the other district transferred pupils from the other district to the owner's district. OAG May 9, 1949 (166-A-10).

Where a part of a school district lies in one high school area and the remainder of such district lies in another high school area and the grade pupils from the district are transported to but one of such schools for instruction under the contract, such contract is authorized by statute. OAG Nov. 7, 1952 (166-A-10).

Where a consolidation of several school districts into one is effected under sections 122.18 to 122.27, it is the duty of the officers of the school districts so consolidated, within ten days, to turn over all records, funds, credits, buildings, and property to the consolidated district. Before the consolidation took effect the several school districts were separate public corporations. By the consolidation they become one corporation. If the officers of the several districts fail to perform the

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duty the individuals owing that duty still have it to perform even though they are no longer officers. The ten-day provision is directory and if the duty is not performed within the ten-day period, it may be performed later. If the title to the property upon which any school building stands returns to the original owner, the consolidated school district, while still in process, may dispose of the school building and remove it. OAG March 9, 1951 (166-E-4).

Conveyance of real estate after consolidation of a school district is effected by the officers of the newly consolidated district, the former constituent districts having merged in the consolidated districts terminate their governmental existence upon consolidation. OAG March 12, 1952 (166-F-2).

Section 127.07 relates to transportation aid payable to consolidated school districts, county boards of education for unorganized territory, county school districts, and to ten or more township school districts. Based upon the policy indicated by section 125.06, subdivision 12, and irrespective of section 128.07, the state board of education is warranted in paying to a consolidated district, to a county board of education, to a county school district, or to ten or more township districts, reimbursement for transportation of pupils resident in a district to a school in another district, at rates determined by the state board not to exceed \$40 per pupil. OAG Feb. 10, 1948 (168-E).

The school board has the power to decide whether or not dancing will be permitted at the annual high school prom. The submitting of the question to the electorate of the school district would be an unwarranted expenditure of public funds. OAG Feb. 16, 1953 (169-E).

The Minnesota statute is silent in so far as it gives specific power to a common school district to maintain a kindergarten, although it does grant power to an independent school district to maintain one. The statute authorizes school boards to select courses of study and when a kindergarten course is provided in a common school district and such action is not prohibited by law, it is presumed to have exercised its power rightfully. The power of the legislature to impose a system of public school education upon local communities is not limited to the common branches. A common school district is therefore authorized to maintain a kindergarten. This supersedes the opinion of April 9, 1941, filed 169-K. OAG Oct. 21, 1949 (169-K).

The board may establish a two year high school department to teach vocational subjects without, at the same time furnishing academic subjects sufficient to constitute a complete two year high school course. OAG Nov. 6, 1947 (170-C).

A pupil residing in a district without a secondary school may attend secondary school in another district, if the district is willing to receive him. To accommodate the pupil a school must be found in a district in which the board is willing to accept the pupil. OAG Sept. 26, 1950 (170-C).

Teachers are employed to teach school and when they strike they refuse to do the very thing which they have contracted to do. By striking they have broken the contract and a striking teacher who refuses to teach may be discharged. The powers of a school board may not be surrendered or contracted away. OAG April 8, 1948 (172-D).

Unless the contract between the school district and the teacher furnishes a proper basis, the school board cannot give away taxpayers' money by paying the teacher, who has leave of absence for a year because of ill health, a salary or a part salary allowance. OAG April 10, 1951 (174-A).

Under the provisions of Laws 1947, Chapter 633, Section 1, taxes paid by a person liable for tuition of nonresident paupers may be credited as an off-set on payment of tuition when the taxes are paid after the admission of the nonresident pupils. Taxes theretofore paid may not be credited. OAG March 25, 1948 (180-C).

The powers of a school board to furnish instruction in another district under authority of section 125.06 are not limited by the provisions of section 132.02. OAG May 25, 1950 (180-D).

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Where a pupil attends school in an adjoining district under circumstances permitted by law, the home district must pay the tuition to the district furnishing the instruction. OAG June 18, 1953 (180-D).

Where pupils of a district are transported to and instructed in another district, the contract between the districts governs the sum to be paid for such instruction. Section 125.06, subdivision 11, does not apply as to the amount to be paid. OAG April 26, 1951 (180-F).

Tuition paid by the school district of the residence of the pupil to the district where instruction is furnished is based upon the number of pupils in average daily attendance instructed and does not include children who attend parochial schools since they are not in average daily attendance at the public school. OAG June 29, 1951 (180-F).

Agreements made by voters in school districts concerning subjects upon which a school board is empowered to act are not binding upon the school board. OAG Aug. 31, 1951 (180-F).

The fact that the elements prevented a large turnout at an election on the question whether a school district should construct a new high school and gymnasium, did not vitiate the election. OAG Feb. 1, 1952 (187-A-6).

There is no law forbidding public employees to be members of labor unions and no legal reason why a school board should not permit a union to appear as a representative of the employees, and the board may in its discretion provide for seniority rights, wages, dismissals, transfers and tenure, by adopting reasonable rules and regulations, but the board cannot legally enter into a contract with the union. OAG June 19, 1950 (270-D).

Since the enactment of Laws 1947, Chapter 18, all school districts are subject to the public employees retirement act, except that under section 353.01, subdivision 2, school teachers are under the state teachers retirement law and are not eligible to membership under section 353.01, subdivision 2. Janitors, who are new employees and who appear on the payroll after June 1, 1947, automatically become members of the public employees retirement association and old employees who were continued on the payroll on June 1, 1947, have an option to join but are not compelled to do so. Same rule applies to bus drivers and other employees, except teachers and independent contractors. OAG Oct. 29, 1947 (331-B-1).

A school district may not contract with a village to finance the building of a sewer which when built will belong to the village, but be paid for by the school district. OAG May 23, 1952 (387-F).

Vacation of a city street where it crosses and intersects school property is vested under the charter of the city of Columbia Heights in the city council. The school board cannot make a contract to pay damages, if any, occasioned by the vacation of the street. A school board lacks authority to agree to indemnify the city against damage. The school board is a body of limited authority. It has only the powers delegated to it by the legislature. Such authority has not been delegated. The school district and the city are each a separate agency and each an instrumentality of the public and what either of them do will be in the public interest. Neither has the authority to agree to indemnify the other in a matter of this nature. OAG Nov. 1, 1949 (396-C-18).

A school board may require an employee handling money to give a bond. The school board may pay the premium. OAG Dec. 26, 1951 (401-B-17).

Where bonds are issued by a school district under a direct commitment to furnish and equip a high school building and gymnasium and the money not having been used for that purpose, it was later found that under changed conditions it would be in the public interest to use the money for another purpose. The school board may at an election held for that purpose upon a favorable vote by the electorate authorize the use of the money for other school building purposes. OAG Dec. 24, 1947 (622-A-1).

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Where a school district authorized the building of new school buildings and authorized a bond issue, and some of the buildings are built and funds obtained by the bond issue remain unspent, additional buildings may be authorized by the people by their vote for the building of buildings not originally contemplated. OAG Oct. 17, 1952 (622-A-1).

A school board may provide housing facilities for education of its pupils and the housing may be outside the district. OAG Aug. 5, 1947 (622-A-6).

Where in 1889 a school district leased a one-half acre tract and agreed to use the premises for school purposes only, the district probably under the facts could have a right to remove the building from the leased land up to the time of an actual abandonment of the property but the lease of the land itself would lapse if the land was no longer used for school purposes. OAG Aug. 14, 1950 (622-A-6).

A school board may lease property not needed for school purposes. OAG Sept. 17, 1952 (622-A-6).

A school board is the manager of the school district. When necessary the school board may close its present school building and rent the necessary space in a building where there is at present a parochial school. The board must determine from the facts whether or not there is a necessity for so doing. One of the facts to take into consideration is whether or not the school building now occupied is in shape for further occupation. OAG April 26, 1951 (622-A-6).

A school board has the right to make a contract with a public utility for the furnishing of natural gas as a means of heating the school buildings, and while the school board does not have the power to grant an easement and has no power to lease its real property, if the erection of a small building and installation of equipment therein is necessary to the furnishing of the gas, it might be considered merely incidental to the ultimate purpose to be accomplished. A service contract properly drawn may be entered into between the school board and the utility company which would be legal and effectual, notwithstanding that the contract would serve the same purposes as an easement or a lease. The contract must be so drawn as not to create an estate in property. OAG Sept. 15, 1948 (622-A-7).

A school board may not dedicate a strip of land for road purposes to a city without first securing authorization of the voters of the school district. OAG April 9, 1951 (622-A-8); OAG Nov. 3, 1952 (622-A-8).

A school board is authorized, under certain conditions, to permit rooms in the school house to be used for divine worship, Sunday school, public meetings, elections and such other community purposes as, in the judgment of the board, does not interfere with the use of the property. OAG Jan. 18, 1949 (622-A-17).

A public school district board may not lease rooms in public school building for use as a parochial school during the time that public schools are in session. OAG Aug. 7, 1952 (622-A-17).

A school board may contract to sell surplus water from its well but care should be taken in making the contract so that the board retains the power of reasonable cancellation. OAG May 31, 1951 (622-A-19).

The school district may pay to a city one half the cost of constructing a water main when same is necessary for furnishing an ample water supply to the school and for fire protection. OAG Jan. 13, 1953 (622-A-19).

When the voters have authorized a recreational program under the provision of section 471.16, the school board may acquire land without again submitting the question to the voters under section 125.06. OAG Oct. 17, 1947 (622-B).

Although section 125.06 requires the authority by the voters before a school-house site may be acquired by the district this requirement would not apply where the school board has such money available and desires to purchase an athletic field near the schoolhouse site being detached therefrom. Accordingly, the school board may acquire the tract for an athletic field without a vote of the people authorizing the acquisition. OAG Feb. 3, 1950 (622-B).

The authority of a school district to enter into a lease, the rental therefor to be paid by a share of the profits, if any, is not a power that has been expressly granted by the legislature or one that must necessarily be implied in conjunction with the carrying on of its educational purposes. OAG Dec. 3, 1953 (622-E).

Where the public acquires land for a schoolhouse site the law contemplates the absolute ownership by the public and, consequently, land cannot be acquired if subject to a life interest. The right of a school district to acquire land for a schoolhouse site is based upon necessity and even though the present owners of the real estate are of advanced age and the period of their life estate may be short, the school district may not acquire the land subject to such tendency. OAG June 29, 1949 (622-I-1).

The school board may acquire additional ground for a schoolhouse site, not exceeding one block in area, without a vote of the people. OAG Sept. 22, 1947 (622-I-1).

Where a school district desires to acquire an additional tract to be added to the present school site, the word "block" as used in section 125.06, subdivision 2, is a fact question rather than a legal one, and may mean a tract bounded by streets rather than containing any given number of square feet. If the school board shall be of the opinion that the land is all embraced in one block, they may in their discretion so declare and may acquire the property and their action is legal if they have exercised the proper discretion. OAG April 10, 1948 (622-I-1).

The county board has authority to sell blocks 7, 8, 9, as shown on the original plat and the streets intervening between those blocks now vacated, and the school board in its discretion and provided the school needs the property, may acquire the land which the county is willing to convey to it without an authorizing election. OAG Nov. 8, 1951 (622-I-1).

A school board purchasing property to complete a school site may purchase the land with residences on it and may then sell such buildings without approval of the voters. OAG March 31, 1952 (622-I-1) (622-I-8).

A school board with the vote of the people may acquire land adjacent to the school site to fill out the block. OAG Nov. 20, 1952 (622-I-1).

A school board, without a vote of the people, may acquire additions or enlargements to an existing school site so as to complete a block within a city or village or when outside municipal limits not to exceed two acres. If a greater enlargement is attempted a vote of the district is necessary. OAG Dec. 5, 1952 (622-I-1).

Authority granted to the school board by the electors authorizing the acquisition of a site for a school house must identify the land. OAG June 2, 1950 (622-I-2).

A vote of the people is required before the school board may proceed to acquire an additional site for a schoolhouse. OAG June 18, 1953 (622-I-2).

When part of a site acquired for a playground or athletic field is to be used for the construction of a new building, approval of the voters is required. OAG Dec. 31, 1953 (622-I-2).

When the voters have authorized an addition to a schoolhouse site the necessary property may be acquired under the power of eminent domain. OAG Nov. 26, 1952 (622-I-5).

A school board without a vote of the people has authority to sell and convey real estate owned by the district not needed for a schoolhouse site and not suitable therefor. OAG Aug. 17, 1953 (622-I-7).

If a schoolhouse or site is no longer being used it may be sold after authority is granted by the electors. The school board need not advertise for bids. The property must be sold for a valuable consideration and cannot be sold for a mere nominal consideration, even if the sale is to the village. The board does not have

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authority to include a restrictive covenant prohibiting the use of the property for any but a public purpose. OAG Feb. 23, 1950 (622-I-8).

Where the question submitted is the matter of authorizing the school board to dismantle and sell a vacant school building, and also to grant an easement for a strip of school land for public street purposes, the result of the election is determined by a majority vote for or against the specific proposition by the voters voting thereon. Persons present who do not vote at all are not taken account of in determining the vote. OAG May 10, 1950 (622-I-8).

The question of sale of schoolhouses and of buildings on school sites must, under the provisions of section 125.06, subdivision 2, be submitted to the voters. OAG July 2, 1953 (622-I-8).

Unneeded buildings on school sites may be disposed of by the board without specific authority from the voters. OAG Sept. 11, 1953 (622-I-8).

Where, after dissolution, a district is attached to an independent district and the electorate is given the school site of the dissolved district, the property can be sold only after a vote of the people. OAG Sept. 28, 1953 (622-I-8).

A reorganized school district must obtain authority from the voters before disposing of a schoolhouse site or a school building no longer needed. OAG Dec. 21, 1953 (622-I-8).

The school board of a district in which instruction in agriculture is afforded may purchase in the name of the school district a suitable tract of land to be used for the purpose of instruction, experimentation and demonstration in agriculture without applying to the people for authority. OAG Dec. 14, 1949 (622-I-11).

Where land was deeded to a school board for school purposes only and the school located on the land has been discontinued, and the school maintained in another location, the school board may take counsel as to their title to the land. If advised by competent counsel that the district no longer has any interest in the property, the school board may execute a quit claim deed to the property to those to whom the property has reverted. A vote of the electorate is not required. OAG Feb. 17, 1950 (622-I-17).

Where property was conveyed to the school district on condition that if the district should cease to use the tract for school purposes the district would convey the property back to the grantor, the district is not required to remove foundations or trees or place the land in the same condition as it existed when the grantor conveyed the land to the district. OAG Aug. 31, 1951 (622-I-17).

Under section 125.06, subdivision 2, a school board may not build an addition to a school building without a vote of the people granting authority therefor. OAG May 25, 1951 (622-J).

A schoolhouse site must be designated by the voters. OAG Feb. 26, 1951 (622-J-11).

If a school district has no need for a segregated tract across the street from the schoolhouse, and the voters having granted authority to do so, the district may sell the property. There seems to be no authority for leasing it. There is no authority in the law for providing a residence for the superintendent of schools. OAG March 17, 1949 (622-K).

The school district may employ day labor to accomplish improvements and repairs on a school building. Materials purchased in excess of \$1,000 in value must be purchased on bids. Where day labor is involved, section 471.01 must be observed. OAG June 29, 1951 (707-D-4).

If the school board is of the opinion that upon consideration of all the facts the act of the school superintendent in striking a pupil was done in good faith for purposes of discipline, while in discharge of his duty, and that the act was done in connection with the matter for the benefit of the school and excessive force was not used, the board has the power and right to reimburse the superintendent for his litigation expenses. OAG June 28, 1950 (768-A).

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Extra compensation to a school superintendent for work in lieu of his vacation not provided for in the contract cannot be paid. OAG June 15, 1950 (768-K).

Under the power of eminent domain, a school district may take needed property from a county agricultural society; but the legislature has not directly, or by implication granted like authority to a city. OAG Aug. 4, 1952 (817-F).

The rule that property devoted to one public use cannot be taken for another public use without express authority therefor does not apply to property which has not actually been put to prior use and is not shown to be actually and presently needed therefor. OAG Feb. 15, 1951 (817-O).

There is a possible liability upon school districts for reimbursement of expenses necessarily resulting from injuries to school children sustained while attending a class in manual training. OAG April 20, 1949 (844-F-3).

School districts are not liable for negligence in the performance of their public governmental functions. School districts are not liable for injuries suffered on the school playgrounds. OAG Nov. 7, 1951 (844-F-4).

School districts are not liable for injury to a student where free transportation is furnished by the district. OAG April 2, 1951 (844-F-6).

A school district acts through its board. If and when the board is determined to acquire land for a school forest, its determination should be evidenced by a resolution incorporated in the minutes. Whether the land is to be acquired from the state by action of the tax commissioner, or from another source, is immaterial so far as the action of the school is concerned. The resolution should describe the land to be acquired. It should state the purchase price, if any. If the land is to be acquired from the commissioner of taxation, the procedure must conform to the procedure which the law requires before a conveyance is made. Approval of the commissioner of conservation should be obtained under the provisions of section 89.41. OAG Sept. 19, 1951 (983-E).

When a reorganized district acquires property previously built by a component district for garage purposes, the board may use such property for other purposes or it may lease the garage building for a period of seven years provided the contract be reasonable and provident. OAG Aug. 24, 1953 (125.06).

125.061 EDUCATIONAL ACTIVITIES, SPORT ACTIVITIES

HISTORY. 1953 c 380 s 1, 2.

Laws 1953, Chapter 380, authorizes the payment of meals and lodging of students engaged in educational activities outside the school district but does not authorize the purchase of equipment or supplies. OAG July 9, 1953 (159-A-16).

125.062 EASEMENTS GRANTED TO CITY FOURTH CLASS IN CERTAIN CASES

HISTORY. 1953 c 409 s 1.

125.065 PURCHASE OF BUSES

HISTORY. 1941 c 333; 1945 c 373 s 1; 1949 c 601 s 1; 1951 c 677 s 1.

Subdivision 6 is inapplicable to coverage of an independent school district's automobile by a policy obligating the insurer to pay all sums which the district became legally obligated to pay as damages for accidental injury arising from ownership and maintenance or use of the automobile, since the law authorizes the school district boards to "insure the protection of children." *Schulte v Hartford Accident & Indemnity Co.*, 102 F. Supp. 681.

A school district was immune from liability for damage resulting from the negligent operation of the school bus and had not waived its immunity by procuring an insurance policy, pursuant to statutory authority, covering damages arising

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from the operation of the bus. *Rittmiller v School District (Wabasso)* 104 F. Supp. 187.

A bus used in connection with a Sunday school is not a "school bus" within the meaning of the statute exempting school buses from the annual license tax. *State ex rel v Fogo*, 82 Ohio Appeals 238, 79 NE(2d) 914.

Two common school districts may jointly engage in transportation of pupils to a third district for instruction. OAG July 3, 1950, 66-A-4.

The relationship of husband and wife does not preclude the husband from making a contract with the school district for transportation of pupils when the wife is a member of the school board. OAG Sept. 17, 1953 (90-C-6).

A contract for transportation with a son of a board member is not prohibited unless the board member is financially interested in the contract. OAG Oct. 24, 1951 (90-C-7).

Section 125.065 authorizes the school board to enter into contracts with the state or any political division thereof, or any individual for removal of snow from roads and this would include the purchase and use of a snow plow. Under section 475.14 the school district may borrow money to buy or assist in buying a snow plow. OAG Feb. 7, 1948 (159-A-5).

The legislature having specified the exact kind of insurance that a school district may buy for protection against losses growing out of the operation of automobiles all kinds of insurance other than those specified are excluded. OAG Dec. 12, 1947 (159-B-4).

A school board does not have the right to purchase insurance to protect other than school children in the district. School funds may not be expended to purchase insurance to protect pupils coming from outside the district. As to whether or not an insurance company might deny liability under its policy on the ground of illegality of contract is entirely a judicial question. OAG Nov. 17, 1949 (159-B-4).

There being no statutory authority a joint recreation commission cannot purchase insurance to cover team members being transported in privately owned cars. OAG June 12, 1950 (159-B-4).

A school district cannot purchase liability insurance except in cases where authorized by statute. OAG Jan. 23, 1952 (159-B-4).

A school district while acting in a governmental capacity is not liable to suit in damages by a workman but is liable for workmen's compensation and the district may purchase insurance against liability of employees resulting from the operation of a vehicle. OAG July 17, 1952 (159-B-4) (844-F-6).

A school district may carry insurance on school buses for the protection of school children and employees. OAG Aug. 26, 1952 (159-B-4).

While officers of the school district and the employees thereof are engaged in the discharge of the business of the district, and are not guilty of any violation of law, they are not liable for damages resulting from an error of judgment. OAG Jan. 14, 1953 (159-B-4).

The school board in Lake County school district has general charge of the business of the district which includes management of its schools. The board makes all the decisions concerning the policy of the district. It decides where the school shall be, who shall teach therein, the manner in which such school shall be heated, the janitor service which shall be furnished, and what the bus routes shall be. It will decide whether board and room will be furnished to certain pupils, or whether they shall be transported by bus. OAG Dec. 4, 1952 (161-A-9).

A school district furnishing transportation for pupils is not required to furnish separate transportation for an individual pupil who does not present himself in conformity with the bus schedule. OAG March 19, 1953 (166-A).

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Where a bus owner contracted to furnish transportation by bus over a bus route, he is not obliged to furnish other means of transportation when the roads are impassable and not open to bus travel. OAG April 9, 1948 (166-A-2-D).

A school district may provide transportation services for resident and nonresident pupils. It may use such transportation equipment for the transportation of nonresident pupils upon permission from the state board of education. OAG July 11, 1950 (166-A-4).

A school district may lend a bus and hire a driver and operate same to provide transportation for its pupils. OAG July 12, 1951 (166-A-9).

The school board has no authority to spend school district funds for removing snow from a road not used for a regular bus route. OAG Jan. 23, 1952 (377-A-11).

A school district which includes in its area all or parts of six different townships may enter into contract for snow removal with any of said towns. OAG May 14, 1953 (377-A-11).

Under the provisions of section 125.09 a consolidated district is authorized to provide transportation for pupils. This includes the right to purchase buses, as provided in section 125.065. Buses may be purchased part cash and part payable in installments. The rate of interest on deferred installments cannot be greater than four percent per annum. The net debt limitation should not be exceeded. A purchase may be made without the vote of the electors. OAG June 16, 1949 (622-D).

Streets of Minneapolis are not rural roads or highways within the meaning of section 125.065 relating to school buses. OAG Aug. 8, 1950 (622-D).

Where the chassis of a school bus is privately owned and the body furnished by the school district, the entire bus is subject to taxation. OAG Oct. 4, 1949 (632-E-12).

There is no provision of law that prevents private owners who own and operate school buses from engaging in other types of passenger hauling, provided the buses are constructed and used in compliance with the law relating to school buses. OAG Oct. 27, 1949 (633-B-11).

125.07 ADDITIONAL POWERS AND DUTIES OF SCHOOL BOARDS IN COMMON DISTRICTS

HISTORY. 1877.c 74 subc 2 s 6, 7; 1931 c 109 s 1; 1931 c 188 s 1; 1941 c 169 art 6 s 7; 1947 c 74 s 1, 2; 1951 c 379 s 7.

A school building in a common school district to cost a sum in excess of the amount of bonds authorized may be paid from a surplus in the general fund only when the voters so authorize. OAG Sept. 25, 1951 (159-A-18).

Where no money has been voted for that purpose, a common school district may not spend money for establishment or operation of a skating rink. OAG Dec. 29, 1952 (159-B-1).

It is the duty of the school clerk to issue orders on the treasurer for the disbursement of district funds and each order shall state the fund on which the order is drawn. Teachers' salaries have preference. Money applicable for teachers' wages from the current school fund cannot be used for any other purpose, nor can the teachers' wages be paid from any fund except that raised and apportioned for that purpose. Money raised by taxation on a levy by a school district for one purpose cannot be used for another purpose. In a common school district the voters determine the amount of the tax levy and the purpose thereof; but in an independent school district the school board determines the amount of the tax levy and levies the necessary taxes. There is no limitation on expenditures as there is on a common district. The board in an independent district may use the money in the treasury of the district received under a general tax levy and not under a levy certified for a particular purpose, for such purposes as it considers to the interest of the district. An independent district does not make up a budget or certify a budget to the county auditor. OAG Oct. 7, 1948 (159-C-6).

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Change of boundaries of a school district to absorb adjoining district does not affect a tax levy in the district absorbed but not certified to the county auditor. The levy may still be certified by the clerk in the present district. OAG Aug. 30, 1948 (519-M).

Where voters at a common school district meeting have voted a certain amount for maintenance, the school board cannot reduce the amount. OAG July 17, 1952 (519-M).

Money obtained by the issuance of bonds issued by a school district cannot be used for a purpose other than that specified in the question submitted to the people when such purpose is plainly stated in the electorate when the bonds were authorized. OAG July 30, 1948 (622-A-1, 622-K).

A common school district may acquire a dwelling for use of teachers when the provisions of section 125.07, subdivision 2, are strictly observed. The question may be submitted at a special election. The statute does not contemplate lease but requires ownership by the district. OAG March 12, 1949 (622-K).

125.08 ADDITIONAL POWERS AND DUTIES OF SCHOOL BOARDS IN INDEPENDENT DISTRICTS

HISTORY. 1865 c 13 s 6, 17; 1871 c 4 s 2; 1877 c 74 subc 7 s 6, 18; 1885 c 57 s 3; 1901 c 136 s 1; 1915 c 360 s 1; 1919 c 496 s 1; 1941 c 169 art 6 s 8; 1947 c 377 s 1; 1947 c 495 s 1; 1949 c 112 s 1.

When a member of the board of education is an officer of the only newspaper in the district, and the board does not unanimously award the contract for publishing minutes to that paper, then such contract may be awarded to some other paper in the county. OAG July 19, 1952 (90-C-8).

The school board is without authority to pay out money for scholarships and the fact that this money has come from another source than taxation is immaterial. There is no provision no matter what the source permitting the payment out of public money for scholarships. OAG Nov. 16, 1949 (159-A-16).

Where an unincorporated baseball club, not in any way connected with a public school, has been permitted to use the school athletic grounds, a contract may be entered into between the school board and the club by which the ball club may make a gift to the school board of \$6,000, being about one-half of the amount necessary to light and equip the grounds for night games. While the school board is without authority to lease the grounds while needed for school purposes, the board does have authority, with the consent of the voters, to accept the gift subject to certain conditions, one of which might be the permission of the club to use the grounds for its purposes at times when not needed by the school. In case of damages arising from tort due to negligence, the school district would not be liable for damages incurred by spectators at games in which the school district did not participate. OAG Oct. 27, 1949 (159-B-1).

Special school district No. 8, Olmsted county, is without authority to pay rental for the purchase price of caps and gowns for graduating high school students; nor has the district authority to pay the dues of teachers for memberships in M.E.A. or N.E.A. but salaries may be increased to include the amount thereof. OAG Oct. 22, 1948 (159-B-10).

The Minnesota Statute is silent insofar as it gives specific power to a common school district to maintain a kindergarten, although it does grant power to an independent school district to maintain one. The statute authorizes school boards to select courses of study and when a kindergarten course is provided in a common school district and such action is not prohibited by law, it is presumed to have exercised its power rightfully. The power of the legislature to impose a system of public school education upon local communities is not limited to the common branches. A common school district is therefore authorized to maintain a kindergarten. This supersedes the opinion of April 9, 1941, filed 169-K. OAG Oct. 21, 1949 (169-K).

Where a school is closed and pupils transported to another district, transportation need not be furnished for a kindergarten pupil when the district furnishing the

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transportation did not maintain a kindergarten at the time of the closing. OAG Oct. 23, 1953 (170-D).

Where the school district and a publisher of a newspaper agree upon publication of the proceedings of the board at 50c a folio, and thereafter a statute was passed permitting \$1.20 a folio, the publisher must keep his contract and charge only 50c a folio. OAG June 3, 1947 (277-E).

Meetings of the school board should inform the taxpayers as to the expenditure of money including the salary paid to teachers and the books of the clerk may be examined. OAG June 2, 1948 (277-E-1).

Where an independent school district levies taxes to pay outstanding orders representing money spent for maintenance, such levy should be reported to the auditor as maintenance and not as debt service. It is necessary to keep within limit provided by Laws 1947, Chapter 228 relating to the tax that may be imposed on agricultural land. OAG Dec. 22, 1947 (519-M).

Laws 1949, Chapter 716, Section 10, establishes an over-all tax limitation upon an independent school district converted from a class one special school district and certain school districts may not levy an annual tax for the purpose stated in section 125.08 in excess of \$18.50 per capita of people resident of the district, Laws 1917, Chapter 166 and Laws 1947, Chapter 241 to the contrary notwithstanding. OAG June 3, 1949 (519-M).

Where several school districts are reorganized under the provisions of sections 122.40 et seq., and a former component district has failed to levy taxes, such tax levy may be made by the board of the reorganized district in behalf of the former component district as the performance of a duty devolving upon the former component district before the reorganization became effective. OAG Sept. 2, 1949 (519-M).

Where several districts have been consolidated into a reorganized school district and a six-member board elected, the reorganized district becomes an independent school district. In an independent school district the school board levies the taxes. It is the duty of the board to provide by levy of tax the necessary funds for the conduct of the schools of the district, the payment of indebtedness, and all proper expenses. It follows that if the money now in the treasury of the new district plus the taxes levied by the former component districts is not sufficient to provide the necessary funds for the conduct of the schools of the new district, the payment of indebtedness and all proper expenses of the district, then it is the duty of the board to provide additional funds by tax levy. The board merely adopts a resolution levying the necessary tax and is not concerned with the question as to how the tax is spread. That is the duty of the county auditor. OAG Oct. 17, 1949 (519-M).

The basis of taxation is necessity; and where a school district issued and sold its bonds and made a tax levy as required by section 475.61 to provide money for the payment of the bonds when they should mature, there is no authority to raise money by taxation for the payment of the obligation before maturity. OAG Sept. 29, 1950 (519-M).

When constituent districts have failed to levy taxes sufficient to maintain schools until July 1 next following reorganization, such constituent districts may levy taxes for the purpose and issue tax anticipation certificates. OAG Jan. 7, 1952 (519-M).

An independent school district may receive bequests, donations or gifts for any proper purpose and apply the same to the purpose designated, no election being necessary. OAG Dec. 10, 1947 (622-I-9).

Where the clerk of the school board is an officer of a corporation which publishes the only newspaper in the school district, and the board does not unanimously vote to grant contract for publishing proceedings to that paper, the board must seek to secure bids from other papers published in the county. OAG Sept. 18, 1953 (707-A-12).

125.09 ADDITIONAL POWERS OF SCHOOL BOARD IN CONSOLIDATED DISTRICTS

HISTORY. 1901 c 262 s 6; 1905 c 326 s 9; 1907 c 304 s 1; 1911 c 207 s 6; 1915 c 238 s 8; 1915 c 358 s 1, 8; 1933 c 50 s 1, 2; 1941 c 169 art 6 s 9.

Where the proposed purchaser of a school building from a consolidated school district was the husband of a school board member, in the absence of the showing that the member was interested individually in the purchase directly or indirectly, the sale of the building to the husband was authorized. OAG Aug. 31, 1951 (90-C-6).

Where a grade or high school is not maintained in the resident district and school children attend school in another district, it is mandatory for the resident district to furnish transportation at its expense for the children involved. OAG Sept. 4, 1951 (166-A-8).

In a consolidated school district transportation or board must be furnished where the child lives more than two miles from the school; but may require the child to walk a reasonable distance to reach such transportation. What is a reasonable distance is a fact question. OAG Nov. 2, 1951 (166-A-11).

An independent school district has no authority to provide housing for the superintendent of schools although there is a provision authorizing other school districts to do so. OAG May 15, 1947 (622-A).

Under the provisions of section 125.09 a consolidated district is authorized to provide transportation for pupils. This includes the right to purchase buses, as provided in section 125.065. Buses may be purchased part cash and part payable in installments. The rate of interest on deferred installments cannot be greater than four percent per annum. The net debt limitation should not be exceeded. A purchase may be made without the vote of the electors. OAG June 16, 1949 (622-D).

The board in a consolidated school district may sell a building for which it no longer has use, if it deems advisable and for the best interest of the district, without first obtaining authority from the voters of the district. OAG Sept. 7, 1951 (622-I-8).

Before a school board is a reorganized district disposes of surplus property it must comply with the provisions of section 125.06, subdivision 2, by securing authority from the voters. OAG Dec. 3, 1952 (622-I-8).

Title to a school site may be acquired by a consolidated school district without authority being first granted by a vote of the people, but approval must be secured from the commissioner of education. OAG Feb. 5, 1953 (622-I-13).

A residence may be constructed for the superintendent of schools in a consolidated school district which does not contain within its limits an incorporated city or village. OAG Sept. 9, 1949 (622-K).

Consolidated districts are the only districts authorized to furnish dwellings for school teachers. OAG Jan. 22, 1953 (622-K).

No authority is required from the voters before the sale and conveyance of school district property not needed by the district. There need be no advertisement for bids. The chairman and clerk of the district may execute the conveyance. OAG Jan. 11, 1952 (688-I-8).

125.091 ADDITIONAL POWERS OF SCHOOL BOARD IN ALL DISTRICTS

A school district within the scope of Laws 1947, Chapter 575, having a fiscal year ending June 30 may, during the present fiscal year, issue certificates due not later than Dec. 31, 1951. OAG Oct. 4, 1948 (159-C-14).

Emergency tax anticipation certificates issued by a school district; the fiscal year of which begins July 1 and ends June 30 in the calendar year next following may, at the time of the general tax levy, include a sum sufficient to retire warrants

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issued that year by following the procedure set forth in Laws 1947, Chapter 575. OAG Nov. 16, 1948 (519-M).

125.10 POWER OF EMINENT DOMAIN IN CERTAIN CASES

Applies to school sites only and does not apply to land for recreational activities. OAG Aug. 10, 1948 (622-B).

Unless the land used for recreational activities is a part of a school site, such land may not be acquired by a school district through eminent domain; nor can the landowner be required against his will to convey the land by deed except through judgment of the court. OAG Aug. 10, 1948 (622-B).

125.11 CONDEMNATION OF CERTAIN TRACTS IN SCHOOL DISTRICTS

Where the owner made a plat of his land and therein dedicated a part thereof as a public square for public use, use of the land dedicated as a public square for a high school athletic field and playground, though a "public use" would be unlawful as inconsistent with and destructive of the uses intended by the dedicator. *Headley v City of Northfield*, 227 M 458, 35 NW(2d) 606.

The rule that property devoted to one public use cannot be taken for another public use without express authority therefor does not apply to property which has not actually been put to prior use and is not shown to be actually and presently needed therefor, and the property not devoted to prior public use could be taken by eminent domain for a schoolhouse site. OAG Feb. 15, 1951 (817-O).

125.13 LANDS FOR USE IN AGRICULTURAL EDUCATION

Since section 471.15 does not expressly provide for a vote of the people, school districts may by eminent domain acquire land for recreational facilities. OAG Nov. 7, 1947 (622-B).

The school board of a district in which instruction in agriculture is afforded may purchase in the name of the school district a suitable tract of land to be used for the purpose of instruction, experimentation and demonstration in agriculture without applying to the people for authority. OAG Dec. 14, 1949 (622-I-11).

125.14 DISCONTINUANCE OF SCHOOLS IN CERTAIN DISTRICTS; TRANSPORTATION OF PUPILS

Where a school board provides transportation, the pupil does not have the option to use other transportation. OAG Sept. 3, 1947 (168-E).

A school board under section 125.14, upon authorization by the voters, may discontinue its school or certain grades therein and provide tuition and transportation so the pupils may attend in another district. OAG Sept. 29, 1947 (168-E).

A school district is not authorized to furnish transportation for a teacher. OAG Nov. 7, 1947 (159-B-4).

Where a school district discontinues its schools it is its duty to provide for transportation of the pupils to the school in an adjoining district. In the instant case, the district provided for bus service, the bus route being within four and one-half miles of the home where the four children resided, the father claiming inability to himself transport the children the four and one-half miles and return each school day, cannot be prosecuted for violating under section 132.14. It is the plain duty of the school board to furnish more ample facilities. OAG Nov. 13, 1947 (169-B).

An independent school district may receive bequests, donations or gifts for any proper purpose and apply the same to the purpose designated, no election being necessary. OAG Dec. 10, 1947 (622-I-9).

The school board is obliged to furnish transportation to pupils of a district when the schools of a district are closed and tuition is furnished in the nearby or

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adjoining district. Mandamus will lie to enforce this provision. OAG Dec. 10, 1947 (166-A-10).

When as provided in section 125.14 instruction in another district and transportation is provided for resident pupils and the parents of a child elect not to send the child to the school provided but instead thereof transport the child to a school of the parents' selection, such parent has no claim against the school district for dues or transportation expense. OAG April 10, 1948 (166-A-6) (180-D).

Schools closed in conformity with action of the voters may subsequently be reopened by the board. The care, management and control of common and independent school districts is vested in the school board. The annual meeting has no general power of management of the affairs of the district. The school board may reopen a closed school even in the event that the voters vote that the school remain closed. OAG July 26, 1948 (161-B-2).

Money obtained by the issuance of bonds issued by a school district cannot be used for a purpose other than that specified in the question submitted to the people when such purpose is plainly stated in the electorate when the bonds were authorized. OAG July 30, 1948 (622-A-1) (622-K).

Where the school in the district is closed the family of a pupil may not move to another district and collect board and lodging from the home district. There is no provision in the statute that a common school district may pay board and lodging. OAG Nov. 18, 1948 (166-A-3).

The annual school meeting may provide for closing the school in its own district and provide for instruction of pupils in an adjoining or nearby district and for transportation of the pupils. OAG Nov. 18, 1948 (166-A-3).

When the resident district provides proper transportation and the father of the children prefers to transport his children without the consent or agreement with the school board, he must transport them at his own cost. OAG Dec. 3, 1948 (166-A-6).

The school board is the manager of the business of the district and it may establish and organize, alter and discontinue, such grades or schools as it may deem advisable, and assign to each school and grade a proper number of pupils. Special elections relate only to four subjects: (1) issuance of bonds; (2) designation and purchase of sites; (3) erection of buildings; (4) establishment of joint recreation programs. The subject of discontinuing grades or schools is not included in matters for which a special election must be called. Where a petition is presented to the school board requesting the discontinuance of the high school department, the matter rests entirely with the school board. OAG Jan. 30, 1950 (161-B-5).

Where the driver of a school bus is an employee within the Workmen's Compensation Act, the school district must provide workmen's compensation insurance covering the bus driver. OAG Feb. 28, 1951 (523-F).

Tuition paid by the school district of the residence of the pupil to the district where instruction is furnished is based upon the number of pupils in average daily attendance instructed and does not include children who attend parochial schools since they are not in average daily attendance at the public school. OAG June 29, 1951 (180-F).

Under the language of the statute the pupil attending school in another district has a right to transportation at the expense of his home district. Where the law provides that a pupil is entitled to transportation, the transportation is a function and duty of the board, under sections 125.06 and 125.14. The parents of pupils transported have no authority to transport the pupils in expectation of being paid therefor unless a contract is made with the school district acting for the school board. OAG Sept. 4, 1951 (166-A-6).

The determination whether a school shall be kept operating within the school district, or whether the pupils shall be transported to another district for their education, using surplus funds, rests with the school board. OAG Aug. 28, 1952 (161-B-2).

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Where a part of a school district lies in one high school area and the remainder of such district lies in another high school area and the grade pupils from the district are transported to but one of such schools for instruction under the contract, such contract is authorized by statute. OAG Nov. 7, 1952 (166-A-10).

125.15, 125.16 Repealed, 1945 c 373 s 2.

125.165 Obsolete.

125.17 Repealed, 1945 c 373 s 2.

125.18 CONTRACTS

HISTORY. 1913 c 244 s 1, 2; 1941 c 169 art 6 s 18; 1949 c 105 s 1; 1953 c 72 s 1; 1953 c 618 s 1.

Municipal corporations; liability on ultra vires contracts; quasi-contract; ratification. 34 MLR 46.

Where the board purchased a bus on competitive bids and the contractor furnished a later model than the one called for in the contract, the contract must be performed as made and the board was without power to pay an added amount for the new model. OAG May 11, 1948 (166-B).

Where a school district has authorized the building of a schoolhouse and provided funds therefor, and before construction of the building the voters, under authority of section 122.28, adopt a resolution to dissolve the contract, the power of the school board to erect the building is not affected. OAG May 13, 1952 (622-J-5).

No authority is required from the voters before the sale and conveyance of school district property not needed by the district. There need be no advertisement for bids. The chairman and clerk of the district may execute the conveyance. OAG Jan. 11, 1952 (688-I-8).

If the school board wishes it may, in its invitation for bids, provide that a certified check need not accompany the bid. OAG May 6, 1953 (707-A-3).

Where an independent school district advertises for bids before purchasing and receives several bids which meet the specifications, one bid being by a bidder in whom the board has confidence because of previous dealings, and the low bid coming from a bidder with whom the school district has not previously dealt, the board is not justified in rejecting the low bid because of a doubt concerning the quality of the product to be furnished by the low bidder, unless the doubt is founded upon sufficient evidence that the low bidder is unable to furnish the quality of product specified in the specifications. OAG March 16, 1948 (707-A-12).

Where the estimated cost or value of the thing to be purchased exceeds \$500, the purchase is competitive and the school district must advertise for bids or proposals. OAG Dec. 3, 1948 (707-A-12).

When the lowest bid for the construction of a schoolhouse had been accepted the contract is complete. Permitting the bidder to amend his bid on account of his alleged error in computation is in effect permitting a bidder to bid without advertising. He would have the benefit of competitive bids before he makes his amended bid. Any additional work during the progress of the construction must be incidental to the work contemplated when the contract was let. OAG Nov. 4, 1949 (707-A-12).

The right of a school district to authorize, without advertising for bids, changes in or extras to an accepted bid is governed by the type of changes or extras to be made or included. The general rule is that they must be merely incidental and of minor importance. OAG March 7, 1950 (707-A-12).

Where bids were secured, the board of education could not authorize the addition of several additional classrooms and toilets without securing new bids. OAG May 9, 1950 (707-A-12).

The school district accepted the bid of the lowest bidder and awarded the contract at \$134,650. A bidder's bond had been furnished. Under the terms of the bid

the successful bidder must, within ten days after the award, furnish a performance bond. This was not furnished and the school board was obliged to award the contract to the next lowest bidder for \$148,500. The school board has a claim for damages against the initial bidder which is the duty of the school board to enforce by legal process under the terms of section 574.26. OAG March 2, 1951 (707-A-12).

When the school board comes to award a contract it is not mandatory that the contract be awarded ipso facto to the lowest bidder. The statute requires that the bid be awarded to the lowest responsible bidder. It thus becomes the duty and responsibility of the board to make its determination as to who is the lowest responsible bidder. In determining who was the lowest responsible bidder the board may consider the character of the bidder's work on previous contracts. The board cannot act arbitrarily. If the board in exercising its judgment awards the contract to a bidder other than the lowest bidder, it must base its decision upon facts tending reasonably to support its determination. OAG Sept. 25, 1951 (707-A-12).

A requirement that performance bonds should be performed locally is not permissible in contracts for schools. OAG Aug. 18, 1952 (707-A-12).

To permit the low bidder to amend his bid after the bids were opened would be making a contract in disregard of the bids. If the school board shall decide that it will not attempt to hold the low bidder to the bid he submitted then all bids must be rejected and the school board should advertise again. OAG April 21, 1953 (707-A-12).

A school board may award a contract pursuant to bid at an executive session. OAG Aug. 6, 1953 (707-A-12).

The school district may employ day labor to accomplish improvements and repairs on a school building. Materials purchased in excess of \$1,000 in value must be purchased on bids. Where day labor is involved, section 271.01 must be observed. OAG June 29, 1951 (707-D-4).

125.181 RENTAL CONTRACTS AND CONTRACT FOR TRANSPORTATION OF PUPILS

HISTORY. 1953 c 601 s 1.

125.182 REVIEW BY STATE BOARD

HISTORY. 1953 c 601 s 2.

125.183 HEARING ON PETITION

HISTORY. 1953 c 601 s 3.

125.184 REQUISITES AND CONTENTS OF STATE BOARD'S DECISIONS

HISTORY. 1953 c 601 s 4.

125.185 REVIEW OF STATE BOARD'S DECISION BY DISTRICT COURT ON CERTIORARI

HISTORY. 1953 c 601 s 5.

125.186 EFFECT OF PROCEEDINGS; COSTS AND DISBURSEMENTS

HISTORY. 1953 c 601 s 6, 7.

125.22 Repealed, 1953 c 50.

125.23 CHAIRMAN, POWERS AND DUTIES

Where the minutes of the meeting of the board clearly show that a contract was awarded and the chairman and clerk instructed to sign the contract, such duty

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is enforceable by mandamus; but the duty must clearly appear, otherwise a special meeting must be called upon due notice and definite instructions given to the officers of the district. OAG June 22, 1948 (161-A-8).

125.24 COMMON SCHOOL DISTRICT; BOARD MEMBERS, COMPENSATION

HISTORY. 1861 c 11 s 12-14; 1862 c 1 s 13-15; 1865 c 13 s 14; 1877 c 74 subc 2 s 15, 18; 1877 c 74 subc 7 s 14; GS 1878 c 36 s 33, 36, 107; 1907 c 445 s 3; 1911 c 240 s 1; 1941 c 169 art 6 s 24; 1949 c 691 s 1.

Laws 1949, Chapter 691, Section 1, enables the annual school meeting in a common school district to fix the compensation of school board members. This law applies beginning with the 1949 annual meeting and is retroactive. The salary having been established is effective during the school year and cannot be modified until the next annual meeting. OAG July 29, 1949 (161-A-6).

Any salary change of board members takes effect upon the adoption of the resolution. OAG Sept. 22, 1952 (166-A-6).

125.25 CLERK; DUTIES

The position of secretary to the clerk of a school district may be abolished if the action be taken in good faith and for a legitimate purpose. The purpose to evade the Soldiers' Preference Act would not be a valid purpose. OAG Sept. 22, 1947 (85-F).

It is the duty of the school clerk to issue orders on the treasurer for the disbursement of district funds and each order shall state the fund on which the order is drawn. Teachers' salaries have preference. Money applicable for teachers' wages from the current school fund cannot be used for any other purpose, nor can the teachers' wages be paid from any fund except that raised and apportioned for that purpose. Money raised by taxation on a levy by a school district for one purpose cannot be used for another purpose. In a common school district the voters determine the amount of the tax levy and the purpose thereof; but in an independent school district the school board determines the amount of the tax levy and levies the necessary taxes. There is no limitation on expenditures as there is on a common district. The board in an independent district may use the money in the treasury of the district received under a general tax levy and not under a levy certified for a particular purpose, for such purpose as it considers of interest to the district. An independent district does not make up a budget or certify a budget to the county auditor. OAG Oct. 7, 1948 (159-C-6).

The offices of village clerk and clerk of the school board are incompatible. OAG July 21, 1953 (358-E-7).

125.26 COMPENSATION OF CLERK IN COMMON SCHOOL DISTRICTS

The compensation of the clerk and treasurer of a common school district as provided in sections 125.26 and 125.30 is in addition to the compensation under section 125.24. The compensation of board members of a common school district is determined at the regular school meeting. OAG July 16, 1953 (161-A-6).

125.28 TREASURER; DUTIES

HISTORY. 1862 c 1 s 14, 16; 1877 c 74 subc 2 s 17, 18; Ex1881 c 30 s 1; 1907 c 445 s 2; 1931 c 187 s 1; 1941 c 169 art 6 s 28; 1943 c 455 s 1; 1953 c 319 s 1.

The person or agency authorized by law to perform a treasurer's duties cannot lawfully become a depository of public money except upon qualifying by furnishing a depository bond or security which the law requires of depositories. OAG June 9, 1952 (140-F).

A common school district, so long as it keeps within its budget, may issue warrants for school teachers' salaries when available funds will be presently in the hands of the treasurer. OAG Aug. 19, 1948 (159-C-1).

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A school district may issue warrants on anticipated income until such time as moneys from tax levies and state aid are received. Limitation on the issuance of the warrants may be found in section 471.69. OAG Feb. 28, 1950 (159-C-1).

125.29 TREASURER'S BONDS

HISTORY. 1861 c 11 s 30, 31; 1862 c 1 s 15; 1865 c 13 s 14; 1877 c 74 subc 2 s 16; 1907 c 95; 1941 c 169 art 6 s 29.

The provisions of section 125.29 do not apply to the special school district of the city of Minneapolis. OAG July 15, 1949 (451-A-4).

125.30 COMPENSATION OF TREASURERS OF COMMON DISTRICTS

The compensation of the clerk and treasurer of a common school district as provided in sections 125.26 and 125.30 is in addition to the compensation under section 125.24. The compensation of board members of a common school district is determined at the regular school meeting. OAG July 16, 1953 (161-A-6).

125.325 SCHOOL DISTRICTS; DESTRUCTION OF RECORDS

HISTORY. 1953 c 257 s 1-3.

125.33 INSURANCE; PROTECTION OF CHILDREN, INSTRUCTORS AND AUTOMOBILE OWNERS

HISTORY. 1949 c 637 s 1.

School districts are not liable for negligence in the performance of their public governmental functions. School districts are not liable for injuries suffered on the school playgrounds. OAG Nov. 7, 1951 (844-F-4).

125.34 SCHOOL DISTRICTS; ISSUANCE OF BONDS FOR BETTERMENT OF SCHOOLHOUSES

HISTORY. 1953 c 433 s 1.

125.35 ISSUANCE BY RESOLUTION WITHOUT VOTER APPROVAL

HISTORY. 1953 c 433 s 2.

125.36 TAX LEVY

HISTORY. 1953 c 433 s 3.

125.37 BETTERMENT DEFINED

HISTORY. 1953 c 433 s 4.

CHAPTER 126

ACTIONS AND PENALTIES

126.02 ACTIONS AGAINST DISTRICTS

HISTORY. RS 1851 c 79 s 15, 16; PS 1858 c 69 s 15, 16; GS 1866 c 36 s 78; 1873 c 1 s 119; 1877 c 74 t 8 s 2; GS 1878 c 36 s 117; GS 1894 s 3818; RL 1905 s 1458; GS 1913 s 2996; GS 1923 s 3098; MS 1927 s 3098; 1941 c 169 art 7 s 2.

A school district is not liable for the tort of its officers, agents, or employees done in their governmental capacity. OAG Feb. 26, 1951 (159-B-3).