

MINNESOTA STATUTES 1953 ANNOTATIONS

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GENERAL PROVISIONS; TOWNS 365.02

362.13 ADDITIONAL POWERS AND DUTIES

The department of business research and development, under the broad terms of the policy declared by the legislature, is authorized to expend a modest amount in contribution to the expense of editors attending meetings in the state where such attendance would result in a benefit to the state. OAG Aug. 5, 1949 (417-A).

362.14 ADDITIONAL DUTIES

Nondiscriminatory state prohibition of exports, a state may not curtail the movement of goods in interstate commerce for the purpose of protecting a local economic interest. 34 MLR 60.

The commissioner of the department of business research and development, under the provisions of Laws 1947, Chapter 587, is empowered to investigate violations, or suspected violations, under sections 325.08, 325.09 and other like sections of the statutes; and to take such steps as are necessary to cause the arrest and prosecution of all persons violating any of the statutes mentioned in section 362.14, subdivision 1, or any other laws respecting unfair discriminatory or other unlawful practices in business, commerce or trade; and sue on behalf of the state for injunctive relief in any court of competent jurisdiction against threatened violations. Possession of these powers may not always justify the use and whether or not prosecutions are instituted is a matter for the sound discretion of the commissioner. OAG Oct. 29, 1947 (417-B-2).

The duty of investigation and enforcement of persons offending by deceptive and misleading advertising is imposed upon the commissioner of business research and development. It is his duty to investigate and determine the facts. OAG Oct. 9, 1951 (417-E).

362.23 PERSONNEL

HISTORY. 1947 c 587 s 18; 1953 c 754 s 5.

362.231 CERTAIN POSITIONS ABOLISHED

HISTORY. 1953 c 754 s 6.

STATE SUBDIVISIONS

TOWNS

CHAPTER 365

GENERAL PROVISIONS

365.01 BOUNDARIES

HISTORY. RL 1851 c 31; PS 1858 c 26; 1860 c 14 art 2 s 1; GS 1866 c 10 s 7; GS 1878 c 10 s 7; GS 1894 s 920; RL 1905 s 621; MS 1927 s 998.

365.02 CORPORATE POWERS

In construing the words "incorporated town" found in Laws 1947, Chapter 421, the word "incorporated" may be disregarded as each town in Minnesota is incorporated. The word "township" designates a geographical subdivision. OAG May 7, 1948 (166-E-4).

A town in a county having the town system of caring for the poor, if authorized by a vote of the electors, may buy a lot outside the town limits and erect thereon a

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house to shelter a pauper whom the town was obligated to support, provided the town officers determine that that is the most practical way of caring for the pauper. OAG Sept. 16, 1948 (339).

Laws 1947, Chapter 296, Section 4, Subdivision 2, does not authorize a town to sell town orders or to issue bonds for the benefit of the purchase of road apparatus. If purchased at all, the apparatus must be purchased under Laws 1905, Chapter 64. OAG Jan. 12, 1949 (382-B).

A town board may grant permission to private individuals to maintain a private sewer along a platted street but may not authorize the maintenance of a sewage disposal plant in a public alley. OAG Oct. 31, 1949 (387-G-6).

When authorized by the town meeting the chairman of the town board and the town clerk may convey real estate owned by, but not needed by, the town and the proceeds should be credited to the general revenue fund. There are no restrictions on who may purchase. If the transfer is to a city and they are unable to agree upon a price, procedure may be had under the petition or the eminent domain laws. OAG March 31, 1949 (440-B).

A town board has no power to appropriate public funds for hospital purposes. Under section 368.01 certain towns possess powers of villages which include the power to provide hospitals. OAG Nov. 9, 1948 (1001-I).

365.03 LIMITATION OF POWERS

Under certain conditions a village may maintain an ambulance. A town may not contribute to the cost of an ambulance owned by a city. OAG Oct. 17, 1952 (225-A).

The governmental powers of towns are limited. There is no specific statute authorizing the town board to install street lights, but where it is necessary for the safety of travel upon the highway at night, or if fire protection is provided, lighting of the streets may be provided as an aid to fire protection and there are various reasons why street lighting might be a necessary expense irrespective of the lack of statutory authorization. If the annual town meeting shall vote authority to the town board to install street lights, and if the annual meeting votes a tax to pay the expense thereof, the town board has authority to install street lighting equipment. OAG Feb. 9, 1948 (396-F-2) (434-B-15).

Town regulations concerning control of trailer camps may be incorporated into bylaws relating to the subject of zoning. OAG Aug. 29, 1950 (441-H).

A town board has no authority to adopt an enforceable regulation providing for defeasance or forfeiture of title to a cemetery burial lot conveyed under the provisions of section 365.27 for non-user within 30 years from the date of the conveyance. OAG Dec. 13, 1951 (870-I).

A town board has no power to appropriate public funds for hospital purposes. Under section 368.01 certain towns possess the powers of villages, which include the power to provide hospitals. OAG Nov. 9, 1948 (1001-I).

365.05 SALE OF REALTY

When authorized by the town meeting the chairman of the town board and the town clerk may convey real estate owned by, but not needed by, the town and the proceeds should be credited to the general revenue fund. There are no restrictions on who may purchase. If the transfer is to a city and they are unable to agree upon a price, procedure may be had under the petition or the eminent domain laws. OAG March 31, 1949 (440-B).

365.07 TOWN CHARGES

Where a village is incorporated after the levy of town taxes is made by the electors at a regular town meeting these town levies remain and are not affected by the fact of the village incorporation. OAG July 23, 1952 (440-B).

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The levy of a tax to enable a town to carry out a project for the abatement of mosquitoes and other insects must be by the electors of the town at a regular town meeting and not by the town board. OAG March 9, 1950 (519-O).

365.09 TOWN TAXES

HISTORY. 1858 c 75; PS 1858 c 8; 1860 c 14 art 14 s 4; GS 1866 c.10 s 101; GS 1878 c 10 s 105; GS 1894 s 1022; RL 1905 s 689; MS 1927 s 1097.

A town may engage in a campaign of mosquito abatement but the authority to do so rests in the electorate and not in the board of supervisors. Any tax levy for this purpose must be made by the electors at a legal town meeting. OAG March 9, 1950 (519-O).

Where a village is incorporated after the levy of town taxes is made by the electors at a regular town meeting these town levies remain and are not affected by the fact of village incorporation. OAG July 23, 1952 (440-B).

365.10 TOWN MEETINGS, POWERS

HISTORY. 1858 c 75 art 3 s 4; PS 1858 c 8 s 16; 1860 c 14 art 3 s 4; 1863 c 48 s 1, 2; GS 1866 c 10 s 15; 1869 c 28 s 1; GS 1878 c 10 s 16; 1887 c 20 s 1; GS 1894 s 930; 1903 c 36 s 1; RL 1905 s 625; 1909 c 350 s 1; 1913 c 14 s 1; 1921 c 246 s 1; 1925 c 158 s 1; MS 1927 s 1002; 1953 c 70 s 1.

A town meeting has no authority to revive a contract voided under section 365.37. OAG March 29, 1950 (90-D-3-A).

Neither the general powers of a town meeting nor the additional special powers include power to prevent a landowner from maintaining garbage disposal on his farm. OAG March 28, 1950 (225-I-4).

A town may provide a house for a pauper outside of the town limits if that is the most practical way of caring for the poor person, and if authority has been granted to the town board by a vote of the electors. OAG Sept. 16, 1948 (339).

A town has no authority to pay anyone other than an attorney for preparing and circulating a petition for the vacation of a town road; and has no authority to pay anyone other than the town clerk for posting notice of a hearing on petition. OAG June 9, 1949 (377-A-15).

An appropriation by a town meeting for county aid road purposes may not be used for the construction of town roads. OAG March 24, 1950 (380-B-4).

Since the enactment of Laws 1913, Chapter 235, Section 40, and Laws 1921, Chapter 323, Section 33, there is no longer authority in a town to vote a labor tax to be worked out on town roads. OAG June 16, 1941 (422).

When a village is detached from a town for assessment and election purposes, it must be ascertained how much money was in the town treasury at the time of the separation by election. The amount of floating indebtedness must be ascertained and deducted. The surplus is divided between the town and the village in proportion to the excess as the total assessed valuation of property within the village bears to the entire valuation of the town and the amount determined should be paid by the town to the village. The determination of the facts is the province of the town supervisors. OAG May 13, 1949 (430-B).

The supervisors have charge of all town affairs not committed to other officers. They do not have power to appeal on behalf of the town from an award in a ditch proceeding and employ counsel to perfect the appeal. This must be done at the annual town meeting or by calling a special town meeting under section 212.03. OAG Dec. 4, 1947 (434-A-1).

The town board has authority to hire an attorney on a monthly basis to furnish services and advice on matters other than legal actions. OAG April 19, 1948 (434-A-1).

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A town is without authority to purchase an option to buy real estate. OAG April 25, 1952 (434-A-6).

A warehouse for the storage of telephone material, snow plows, and other equipment, may be acquired and owned by a town. Such a building must be authorized by a town meeting and the money voted by the town meeting. A tax levy may be laid by the town board to provide the money. A special town meeting may be called for the purpose. OAG Aug. 18, 1952 (434-A-6).

Electors at a town meeting may authorize the town board to purchase or build a town hall or other building for the use of the town and may determine by ballot the amount of money to be raised for that purpose. OAG May 3, 1950 (434-A-6).

The electors at a town meeting may authorize the town board, by vote, to purchase ground for a town cemetery and limit the price to be paid and authorize a tax for the payment thereof. OAG July 14, 1948 (434-B-2).

Town meetings may authorize the town officers to enter into a contract with the school district and if the town pays the expense of electric wiring of the schoolhouse the school district in return permits the use of the schoolhouse. OAG Jan. 20, 1949 (434-C-3).

Where in voting to change the location of the town hall where a two-thirds majority is required, ballots spoiled because of identification marks may not be counted. OAG April 7, 1948 (434-C-5).

The question of the change of the site of the town hall must be submitted to all the voters of the town by ballot. OAG Feb. 9, 1951 (434-C-5).

Where the city of Chatfield and the town of Elmira were joint owners of the combination town and city hall and the city of Chatfield has recently adopted a home rule charter, the town board cannot make a sale of their interest in the town hall until a new site has been designated by a two-thirds vote of the voters. As part consideration for the sale by the town to the city of their interest in the town hall, the furnishing of election facilities to the town might be considered. Under the provisions of section 205.28 the town of Elmira may vote in the city of Chatfield but when elections are held, the voting by the citizens of the town of Elmira must be separated from the voting by the people of the village. OAG Oct. 28, 1949 (434-C-7).

The town board is not authorized to sell the town hall until authority is given it by the electors. OAG July 2, 1952 (43-C-7).

The power to authorize the sale of unneeded personal property belonging to a town rests in the electorate at a town meeting; or the authorizing may be conferred at a special town meeting called pursuant to sections 212.03 and 212.04. OAG Dec. 22, 1947 (437-B-8).

When authorized by the town meeting the chairman of the town board and the town clerk may convey real estate owned by, but not needed by, the town and the proceeds should be credited to the general revenue fund. There are no restrictions on who may purchase. If the transfer is to a city and they are unable to agree upon a price, procedure may be had under the petition or the eminent domain laws. OAG March 31, 1949 (440-B).

There is no statute authorizing a town board to assess costs of a fire call against the property owner where the fire occurred. OAG June 9, 1949 (688-A).

Electors at the annual town meeting have the power to levy taxes. OAG April 20, 1947 (519-O).

A town has no authority to acquire additional land for a town cemetery under the exercise of the power of eminent domain. OAG March 9, 1951 (870-I).

A town has no authority to legislate on the subject of highway traffic regulation. OAG April 10, 1952 (989-A-18).

365.106 COMMEMORATIVE, APPROPRIATION HISTORY. 1951 c 38 s 1.

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365.14 TOWN BUILDINGS

Where the electors at the annual town meeting voted funds for the construction of a town fire hall, the taxes to be collected in 1948, the town, in 1947, could issue anticipation warrants upon the town building fund to the amount that would come into the treasury in 1948 on account of the 1947 levy. OAG March 25, 1947 (442-B-6).

365.15 FIRE PROTECTION AND APPARATUS

HISTORY. 1927 c 30 s 1; MS 1927 s 1027-1; 1953 c 57 s 1.

Villages may furnish fire protection beyond their corporate limits. Contracts therefor must be in writing. Income derived therefrom should be paid to the village and not to the volunteer fire department. OAG Dec. 15, 1953 (688-A).

Proposed contract between city of White Bear Lake, village of New Brighton, village of North St. Paul, and towns of Mounds View, New Canada, and Rose relating to mutual fire fighting assistance would not be legal since some of the towns do not own or control their fire equipment or personnel. OAG Feb. 18, 1948 (688-K).

The question of authorizing expenditure for fire protection or apparatus must be voted on at the annual meeting. The annual levy a town may make for a set purpose is limited to five mills. The town board may transfer money from the general revenue fund to the fire fund. Action at the annual town meeting should be by resolution in writing and the amount to be raised stated in the resolution. OAG Feb. 24, 1948 (688-K).

Oral voting of \$1,500 for a fire truck by a town meeting is not in accordance with the requirements of the statute. OAG April 20, 1950 (688-K).

Subject to tax limitations contained in section 275.09 the town electors determine annually the amount to be expended for fire protection. A contract for fire protection between a village or a city on the one hand and a town on the other may not exceed one year. OAG Nov. 26, 1952 (688-K).

A contract between a town and village for fire protection must be in writing, section 412.201. It may be made by a town with any adjacent city or village, section 365.18. A contract may be made by a town for fire protection under the provisions of sections 365.15 to 365.19 but subject to the limitations prescribed in section 88.04. OAG March 10, 1953 (688-K).

365.16 TAX LEVY; CONTRACTS; CONTROL OF APPARATUS

HISTORY. 1927 c 30 s 2; MS 1927 s 1027-2; 1953 c 57 s 2.

The electors must vote by ballot for the raising of a fund for fire protection. A voice vote is not sufficient. OAG June 11, 1947 (688-K).

The question of authorizing expenditure for fire protection or apparatus must be voted on at the annual meeting. The annual levy a town may make for a set purpose is limited to five mills. The town board may transfer money from the general revenue fund to the fire fund. Action at the annual town meeting should be by resolution in writing and the amount to be raised stated in the resolution. OAG Feb. 24, 1948 (688-K).

365.18 TAX LEVY; CONTRACTS WITH ADJACENT CITY OR VILLAGE

HISTORY. 1927 c 30 s 4; Mason's 1927 s 1027-4; 1943 c 389 s 1; 1947 c 435 s 1; 1953 c 57 s 3.

Proposed contract between city of White Bear Lake, village of New Brighton, village of North St. Paul, and towns of Mounds View, New Canada, and Rose relating to mutual fire fighting assistance would not be legal since some of the towns do not own or control their fire equipment or personnel. OAG Feb. 18, 1948 (688-K).

A town may use money apportioned to it from the liquor tax to aid in fire protection. See Laws 1949, Chapter 204. OAG April 20, 1949 (688-A).

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Fire protection contract between a village and a township automatically covers all the property within the township. OAG Dec. 22, 1952 (688-K).

A contract between a town and village for fire protection must be in writing, section 412.201. It may be made by a town with any adjacent city or village, section 365.18. A contract may be made by a town for fire protection under the provisions of sections 365.15 to 365.19 but subject to the limitations prescribed in section 88.04. OAG March 10, 1953 (688-K).

A town may enter into a contract with a municipality to furnish fire protection upon such terms and conditions as may be mutually agreed upon. OAG July 29, 1953 (688-K).

365.19 TAX LEVY, LIMIT

HISTORY. 1927 c 30 s 5; MS 1927 s 1027-5; 1953 c 57 s 4; 1953 c 156 s 1.

365.20 MAY PROVIDE FIRE PROTECTION, POLICE PROTECTION, AND USE OF ROADS, STREETS, AND GROUNDS FOR WATER MAINS IN CERTAIN TOWNS

The governmental powers of towns are limited. There is no specific statute authorizing a town board to install street lights, but where it is necessary for the safety of travel upon the highway at night or, if fire protection is provided, lighting of the streets may be provided as an aid to fire protection and there are various reasons why street lighting might be a necessary expense irrespective of the lack of statutory authority. If the annual town meeting votes authority to the town board to install street lights and votes a tax to pay the expense thereof the town board may install street lighting equipment. OAG Feb. 9, 1948 (396-F-2) (434-B-15).

To purchase a site for a fire hall requires a vote of the electorate of a town, similarly for any form of extensive fire protection. OAG July 29, 1947 (688-O).

365.22 CONDUCT OF ELECTION

Vote on levies for police protection must be at a town meeting and not by ballots at the poll. OAG March 25, 1952 (519-O).

365.26 CEMETERIES

HISTORY. 1899 c 264 s 1, 2; RL 1905 s 629; MS 1927 s 1011; 1943 c 464 s 1; 1949 c 249 s 1; 1951 c 493 s 1.

A town board may acquire a cemetery by gift or purchase within its corporate limits when authorized to do so by its electors. It may cause the cemetery to be platted into lots, streets, or walks without the consent of all interested parties. It is doubtful if the town board has authority to exercise the power of eminent domain in matters of this kind. OAG May 10, 1948 (870-I).

Where part of a town cemetery is leased or sold, that part may be used for the burial of other bodies than the dead of the town unless the contract of sale or lease provides otherwise. OAG June 1, 1948 (870-I).

A town may not acquire additional land for a town cemetery under the power of eminent domain. OAG March 9, 1951 (870-I).

A town board may not adopt an enforceable rule providing for defeasance or forfeiture of a title to a cemetery burial lot conveyed under section 365.27 for non-user within 30 years from the date of the conveyance. OAG Dec. 13, 1951 (870-I).

The Groveland Cemetery Association is a public cemetery association. It was not created by the town of Bridgewater nor the village of Dundas. There is no statutory provision whereby a town may grant financial aid for maintenance of a cemetery other than a cemetery acquired by the town as prescribed in section 365.26. OAG March 9, 1953 (870-I).

There is no statutory authority under which a township and a village may jointly purchase or acquire cemetery land, but any town may acquire by purchase or gift land within its limits to be used as a cemetery (section 365.26). A village may purchase and hold cemetery grounds within or without the village limits (section 412.19, subdivision 13). A village may receive by grant, gift, devise or bequest in accordance with the terms of a trust real property for cemetery purposes (section 501.11(7)). Any public cemetery association which owns a cemetery within or partly within a village may transfer such cemetery to the village together with the funds and property of such association whether such funds be a trust character or otherwise (section 306.025). Provision is made for a village or town entering into an agreement with another village or town for maintenance of a cemetery under certain specified conditions (section 471.24). It would seem that by taking advantage of the above cited statutes some practical arrangement could be, in the instant case, worked out. OAG April 8, 1949 (870-J).

365.27 SALE OF LOTS; PROCEEDS

Where part of a town cemetery is leased or sold, that part may be used for the burial of other bodies than the dead of the town unless the contract of sale or lease provides otherwise. OAG June 1, 1948 (870-I).

Section 525.14 applies to descent of lots in town cemeteries, subject to the restriction that it can only be used for burial of dead of the town in accordance with this section. OAG Oct. 29, 1951 (870-I).

365.37 CONTRACTS, OFFICERS

HISTORY. 1877 c 136 s 1; GS 1878 c 10 s 46; GS 1894 s 960; RL 1905 c 688; 1911 c 164 s 1; MS 1927 s 1096; 1951 c 74 s 1; 1951 c 379 s 4.

Where the contract is let and performed in good faith but without compliance with the statutory provisions governing the letting of contracts, the town is nevertheless liable for benefits actually received. *Kotschevar v North Fork*, 229 M 234, 39 NW(2d) 107.

A town meeting may not revive a contract voided under section 365.37. OAG March 29, 1950 (90-D-3-A).

It is better practice to enter into a formal written contract covering terms and conditions, but the acceptance of a proposal by a bidder on a town road contract by a resolution of the town board constitutes a valid contract. OAG March 29, 1950 (90-D-3-A); OAG April 14, 1952 (707-A-14).

Town officers may not be financially interested in a contract with the town. OAG March 21, 1952 (90-D-4).

A town board may not incur an expenditure in excess of \$500 for road construction without advertising for bids and awarding the contract to the lowest responsible bidder. OAG Oct. 13, 1953 (310-H-1-A).

A town cannot purchase \$15,000 worth of road equipment without calling for bids. OAG Aug. 1, 1952 (382-B).

A town supervisor cannot properly act as a surety on the bond of the town assessor. OAG April 10, 1951 (401-B-21).

Advertising for bids is not required in order that a town may contract for construction and maintenance of town roads in the cases where payment is to be made from a road tax. OAG March 17, 1949 (707-A-14).

A town must advertise for bids where the expense involved amounts to \$100 or more. OAG June 7, 1948 (707-A-14); OAG March 21, 1950 (707-A-14).

As long as the specifications in the instant inquiry did not contain a uniform form of escalator clause upon which all of the bidders might bid, the letting of the contract to any bidder whose bid contains such an unenacted clause would be improper. If new bids are received after due notice, bids for escalator clauses must not

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only be based upon specifications setting out standard bases of adjustment, but a maximum cost must be stated in each bid. OAG Nov. 14, 1947 (707-B-7).

A stipulation in a contract for payment of a certain sum per day for each day delayed in completing a contract as liquidated damages is enforceable. It must bear some reasonable proportion to the loss actually suffered. It must not be a penalty. OAG Nov. 14, 1947 (844-A-3).

365.40 ACTIONS, IN WHAT NAME

NOTE: Superseded by Rule 4.03(e) to extent inconsistent.

365.42 TAX TO PAY JUDGMENT

Where the town failed to pay the federal communication taxes collected for telephone service charges, if the federal government takes a judgment against the town for the taxes due, and if the town is without sufficient funds to pay the judgment, the town board must add to the tax levy for that year, the amount of such judgment. OAG June 27, 1950 (510-O).

365.43 YEARLY ASSESSED TAXES, LIMIT DEBTS AND EXPENDITURES

HISTORY. 1860 c 14 art 14 s 11; GS 1866 c 10 s 107; 1869 c 22; GS 1878 c 10 s 111; GS 1894 s 1028; RL 1905 s 690; GS 1913 s 1190; GS 1923 s 1098; MS 1927 s 1098.

Where the electors at an annual town meeting authorized a tax levy of \$1,500 for road and bridge purposes, and additional \$5,000 for post-war construction on a particular road, and the maximum allowed by law under the 15 mill levy would produce only \$3,795.28, the amount of \$3,795.28 was available for the post-war construction of such road. *Kotschevar v North Fork Township*, 229 M 234, 39 NW(2d) 107.

A town board cannot issue tax anticipation warrants against a levy made in March, 1951, until same is in the process of collection. OAG July 26, 1951 (442-B-6).

No valid contract results if awarded without competitive bidding as prescribed by sections 160.39, 164.22, 365.37, 365.43; but where the town and the contractor acted in good faith, a recovery is permitted to the extent that the municipality accepted and benefited by the labor and material used in connection with the making of a road improvement. OAG May 6, 1947 (707-14).

365.44 SEPARATION FROM VILLAGE

HISTORY. 1893 c 195 s 1; GS 1894 s 1209; 1895 c 260 s 1; RL 1905 s 691; MS 1927 s 1099; 1949 c 96 s 1.

The electors residing in a village not separated from the town may vote at all town elections. OAG March 18, 1952 (434-B-27).

Where a village is incorporated within a town, the town and village do not become separated for assessment and election purposes upon the incorporation of the village. To effect such separation proceedings must be taken under section 365.44 or section 413.05. The town continues to own its town hall although it is located in the village. OAG Sept. 2, 1947 (434-C-3) (440-B).

365.45 DISSOLUTION OF TOWNS

The county board by resolution may dissolve a town but under Laws 1937, Chapter 419, the dissolution becomes effective upon the approval of the freeholders of the town. A town may be dissolved under section 365.45 where the electors of the town may themselves dissolve the town, probably by placing the question on the ballot under section 212.03. OAG April 27, 1949 (441-B).