

CHAPTER 366

TOWN BOARD; BOARD OF AUDIT

TOWN BOARD

366.01 POWERS

HISTORY. 1858 c 75 art 8 s 1, 2; PS 1858 c 8 s 51, 52; 1860 c 14 art 8 s 1, 3; GS 1866 c 10 s 49, 62; GS 1878 c 10 s 53, 66; GS 1894 c 968, 981; 1895 c 51 s 1; 1895 c 355 s 1; RL 1905 s 651; 1919 c 343 s 1; 1921 c 478 s 1; MS 1927 s 1049; 1929 c 143 s 1; 1935 c 120 s 1; 1939 c 255 s 1; 1941 c 247 s 1; 1949 c 14 s 1; 1951 c 627 s 1; 1953 c 459 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).

The town board may permit a private individual or a corporation to lay water pipes and drains in the public highway in the town. OAG Feb. 26, 1951 (387-G-6).

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 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).

A town board has the power to retain and pay an attorney on a monthly basis even though the services are not in connection with court proceedings. OAG April 19, 1948 (434-A-1).

A town board may not license and regulate the sale of soft drinks in the town. OAG Jan. 24, 1951 (434-A-6).

The chairman of the town board may vote and may make and second motions at meetings of the town board. OAG April 19, 1950 (437-A-1).

The chairman of the town board may not conduct or adjourn a meeting of the board. OAG Oct. 30, 1952 (437-A-12).

The board of supervisors may employ a building inspector and provide for his compensation out of general town funds available. OAG June 3, 1952 (441-H).

Where members of the town board were individually sued for trespass in widening a township road and employed council and an engineer and successfully defended themselves against the payment of damages, the town board is authorized to pay the expense of the two members to the extent of paying the attorney's fee and the engineer's fee out of town funds. OAG April 30, 1951 (442-A-1).

A town may not contribute toward financing a local territorial centennial committee. OAG Feb. 27, 1948 (442-A-2).

A town may not donate funds to an association engaged in advocating the adoption or rejection of a constitutional amendment. OAG July 10, 1952 (442-A-20).

A town board may not license and regulate a roller skating rink located in the town. OAG July 3, 1950 (802-C).

The county board may require a county license for a drive-in motion picture theater located in a town outside of a city or village. OAG April 12, 1949 (802-E).

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366.015 TOWN MAY VOTE ON WEED CUTTING

If action relating to weed destruction on township roads was taken under the provisions of section 20.09, expenses cannot be charged against the abutting property; but if the procedure is under the provisions of section 366.015, charge may be made against the property subject to the exception contained in the statute. OAG July 23, 1951 (322-G).

When a majority of the electors voting on the question of destruction of weeds have voted "yes," the question need not be resubmitted to the electors at each town meeting. The obligation to cut and remove all weeds and grass upon the town road, not a part of any incorporated municipality, is a continuing obligation. OAG Oct. 13, 1953 (322-G).

366.02 POWERS AND DUTIES

HISTORY. 1937 c 256 s 1; MS s 1049-5; 1947 c 456 s 1; 1951 c 196 s 1.

The compensation of a town treasurer is governed by section 366.02, as amended by Laws 1951, Chapter 196. OAG July 27, 1953 (436-C) (437-A-3).

A town board may meet in executive session. OAG April 15, 1952 (437-A-11).

While a town may issue current town orders for an amount of funds on hand, together with the amount which will accrue from taxes levied, it cannot sell warrants to a bank to provide funds for financing the purchase of snowplow equipment. OAG April 2, 1947 (442-B-16).

366.021 ADDITIONAL POWERS AND DUTIES

HISTORY. 1947 c 232 s 1; 1953 c 502 s 1.

366.04 TRANSFER FUNDS

Town orders may be issued on the general revenue fund and registered to raise money to pay salaries of clerks, supervisors and other employees up to the amount of one year's general fund tax, even though at the time of the issuance the general fund of the town is entirely depleted. OAG March 31, 1947 (437-A-3).

366.05 PROSECUTE BONDS, PENALTIES AND FORFEITURES

HISTORY. 1858 c 75 art 8 s 2; PS 1858 c 8 s 52; 1860 c 14 art 8 s 3; GS 1866 c 10 s 61; GS 1878 c 10 s 65; GS 1894 s 980; RL 1905 s 653; MS 1927 s 1051.

366.10 ZONING REGULATIONS

HISTORY. 1939 c 187 s 1; 1941 c 186 s 1; 1947 c 236 s 1; 1947 c 500 s 1; 1949 c 707 s 1; 1953 c 188 s 1.

Where violation of a zoning ordinance provision was dependent solely upon motive or purpose of the actor, and it did not clearly appear from the ordinance that the village council intended thereby to establish a standard of conduct to measure civil liability for negligence, the trial court properly refused to instruct the jury that violation of the ordinance constituted negligence per se. *Hutchinson v Cotton*, 236 M 366, 53 NW(2d) 27.

If the zoning ordinance of the town of Bloomington cannot be sustained under sections 366.10 or 368.56 the ordinance may be sustained under sections 368.01 and 412.19, subdivision 24. OAG Dec. 4, 1947 (441-H).

Any doubt of the constitutionality of section 366.10, et seq., is based upon the fact that the law limits its application to Hennepin County and that towns in any other county could never come under the application of the law because there never will be another county which had an assessed valuation of \$280,000,000 in 1935. OAG May 28, 1948 (441-H).

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Laws 1947, Chapter 500, does not operate to validate a zoning ordinance if the original ordinance was adopted under an unconstitutional law.

The town of Excelsior is within the classification of Laws 1947, Chapter 236, and property zoning ordinances would probably be valid but care must be taken to properly define "residential district" and "commercial district" by proper descriptive terms each covering a designated territory. OAG Nov. 2, 1948 (411-H).

It is not necessary to have a 30 day notice together with a public hearing thereof prior to adopting a zoning code in the first instance. OAG Feb. 7, 1952 (441-H).

The town board and the zoning board are not authorized to grant permits for the maintenance of billboards or the placing of advertising within the limits of a trunk highway. OAG June 23, 1952 (441-H).

The public hearing and notice required by section 366.15 are not required in respect of the original enactment of the zoning ordinance. A town board is not required to zone the entire town at one time. A town zoning ordinance is not required to be filed in the office of the register of deeds. When a town adopts a plan prepared by the county planning commission for the town the provisions of the plan so adopted by the town become binding on all persons and all property in relation to all matters and things contained therein so far as it affects the town. OAG June 17, 1953 (441-H).

366.12 REGULATIONS

Sections 366.12 and 366.13 are not inconsistent and must be read together and effect given to both. OAG May 14, 1947 (441-H); OAG Feb. 7, 1952 (441-H).

366.19 LICENSES

The county board has authority to require a county license for such drive-in motion picture theatres as are located in a town outside of the city or village. OAG April 12, 1949 (802-E).

BOARD OF AUDIT

366.20 MEETING

The town board may transact general town business at a meeting of the town board of audit if the meeting is duly called for transacting other business. The vote of the justice of the peace sitting as a member of the board of audit would not invalidate an ordinance if the other two members voted for it at a regular or duly called special town meeting. OAG Dec. 12, 1949 (437-B-1).

366.23 ISSUANCE OF DUPLICATE WARRANT

Where a check from the county treasurer to a hospital supply company was lost, the company must furnish an indemnity bond before a duplicate check could be issued. OAG Sept. 11, 1950 (107-A-8).

The phrase "any order or warrant" as used in this section is broad enough to include a check payable to the court reporter for the county's share of the reporter's salary. OAG March 19, 1952 (107-A-8).

366.26 CONTRACT WITH COUNTY FOR SNOW REMOVAL AND BLADING

HISTORY. 1949 c 636 s 1.

The town board may contract with the county board for snow removal and the blading of any town roads within the town. OAG Jan. 8, 1953 (377-A-11).

366.27 FIREMEN'S RELIEF; TAX LEVY

HISTORY. 1951 c 151 s 1.