

CHAPTER 367**TOWN OFFICERS****367.03 VACANCIES**

Where a vacancy occurs in the office of the town assessor the town board should fill the vacancy by the appointment of a town inhabitant. Where a vacancy occurs in the office of the town treasurer the board may fill the office by appointment or a special town meeting may be held. OAG March 24, 1952 (440-F) (12-C-2).

The offices of a member of a school board and town supervisor in a township, whose area includes all or part of the school district, are incompatible and may not be held by one person at the same time. If a person holds the two offices, the remaining supervisors and the town clerk of the township have a right to declare a vacancy and to fill same in accordance with the provisions of section 367.03. OAG July 16, 1951 (358-F) (437-A-21).

A town clerk is not a member of the town board nor its board of audit, and has no vote therein except to fill vacancies in the town board. OAG June 8, 1950 (421-A-37).

A person elected to fill a vacancy in the office of town supervisor serves for the unexpired term only. OAG March 19, 1947 (436-O).

Failure to take the oath of office within the time prescribed by law does not ipso facto create a vacancy which will prevent an officer from qualifying thereafter, if it is done before any steps are taken to declare a vacancy. OAG April 3, 1951 (437-A-21).

In case of a vacancy in the office of town supervisor, the majority vote of the board of appointment constituted by section 367.03 is sufficient to fill the vacancy. The report to the auditor under section 212.16 is not required where an annual town meeting is not involved. OAG Sept. 11, 1953 (437-A-21).

As to town offices occupied by persons who become residents of the newly incorporated village, such offices become vacant when the office holders cease to be inhabitants of the election district for which they were elected. The vacancies may be filled by appointment pursuant to section 367.03. OAG Sept. 12, 1951 (440-F).

367.05 COMPENSATION

HISTORY. 1858 c 75 art 11 s 1, 2; PS 1858 c 8 s 71, 72; 1860 c 14 art 12 s 1, 2; 1863 c 46 s 2; GS 1866 c 10 s 82; GS 1878 c 10 s 86; GS 1894 s 1003; 1895 c 13; RL 1905 s 682; 1907 c 402; 1911 c 37; 1913 c 558; 1919 c 384; 1923 c 219; 1927 c 403 s 1, 2; MS 1927 s 1089; 1933 c 411; 1935 c 151 s 2; 1935 c 375; 1937 c 158 s 1; 1937 c 249 s 1; Ex1937 c 16; 1945 c 481 s 2; 1947 c 420 s 1; 1949 c 119 s 110; 1949 c 651 s 1; 1949 c 697 s 1; 1951 c 77 s 1; 1951 c 345 s 1; 1951 c 688 s 1.

A village assessor is paid for his services under section 273.04 and not under section 367.05. OAG July 22, 1947 (12-B-1).

A town board may not increase the pay of the town assessor in excess of the limitation contained in Laws 1947, Chapter 420. OAG Dec. 13, 1948 (12-C-1).

If the assessor's pay is to be fixed at less than \$6 per day it should be done by action at each annual town meeting. OAG March 1, 1949 (12-C-1).

Laws 1949, Chapter 651, provided that the town assessors should be compensated at the rate of \$6 a day for the first two years and at the rate of \$7 per day in each year of service thereafter. This law applies to persons who have previously acted as assessors as well as to those who have served so that a new appointee must serve two years at \$6 for the first two years of service. OAG July 13, 1949 (12-C-1).

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The town board is without authority to fix the annual salary of town assessors. That power resides in the town meeting. OAG April 4, 1950 (12-C-1).

Where a village and a town are not separated for assessment purposes the town assessor acts and the village cannot contribute to the salary of the town assessor. OAG May 17, 1950 (12-C-1).

Where at the annual town meeting the electors resolved that the assessor's salary be \$100 for 1953 and \$150 for 1954, no provision being made for mileage, it is presumed that he must pay his own mileage out of the amount allowed for services. OAG April 21, 1953 (12-C-1).

While Laws 1947, Chapter 531, Section 8, requires the attendance of local assessors at sectional meetings and makes no provision for compensation, the assessors may be compensated under the provisions of section 367.05. OAG March 29, 1948 (414-D-13).

A town clerk is entitled to compensation at the statutory rate for services rendered in connection with the town telephone system. OAG Nov. 21, 1952 (436-C).

The term of office of a town supervisor begins and ends on the first secular day in April. The retiring supervisor is authorized to attend meetings up to but not after the first secular day in April and draw his pay accordingly and a newly elected supervisor if he attends such meeting prior to the date of his qualification could not draw any compensation. OAG March 31, 1950 (437-A-3).

367.06 SALARIES

HISTORY. 1927 c 344 s 1; MS 1927 s 1089-1; 1951 c 148 s 1; 1953 c 396 s 1.

The electors at the annual town meeting have no authority to fix the salary of chairmen and supervisors unless due notice thereof had been given. OAG March 31, 1947 (437-A-3).

367.09 Repealed, 1949 c 397 s 2.

367.10 TOWN CLERK; BOND; OATH

The offices of town clerk and member of the school board are not incompatible. OAG March 24, 1948 (358-F).

The offices of town clerk and a member of the school board are incompatible. OAG April 28, 1948 (358-F).

367.16 DUTIES

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).

367.18 AUDITED ACCOUNTS; PAYMENT, FORM

HISTORY. 1860 c 14 art 10 s 6; GS 1866 c 10 s 75; GS 1878 c 10 s 79; GS 1894 s 1002; RL 1905 s 665; MS 1927 s 1070; 1953 c 319 s 3.

367.20 FEES

HISTORY. 1860 c 14 art 11 s 3; GS 1866 c 10 s 79; GS 1878 c 10 s 83; 1889 c 177 s 1; GS 1894 s 1000; RL 1905 s 667; 1917 c 295; 1919 c 447; MS 1927 s 1073; 1951 c 689 s 1.

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The town treasurer is entitled to two percent on the proceeds of a bond issued if such proceeds are paid into the town treasury subject to the limitations contained in section 367.20. OAG March 21, 1949 (455-D).

If there is a deficiency in the amount paid to the town treasurer for his compensation, he cannot collect for more than a six years deficiency. OAG Sept. 26, 1949 (455-D).

367.21 JUSTICE'S BOND

Bonds of town justices must be approved by the town board; bonds of village and city justices must be approved by the council; all bonds of justices of the peace must be filed with the clerk of the district court; and village and city justices must file duplicates of their bonds with the secretary of state. OAG March 21, 1949 (266-A-2).

CHAPTER 368

SPECIAL PROVISIONS

368.01 CERTAIN TOWNS TO HAVE CERTAIN POWERS OF VILLAGES

HISTORY. 1907 c 193 s 1; 1907 c 397 s 1; MS 1927 s 1003, 1004; 1949 c 722 s 1; 1953 c 462 s 1.

Pursuant to section 413.14, any incorporated city of 10,000 inhabitants or less, may validly annex abutting unplatted property, even though such property lies within an unincorporated township which qualifies for the limited village powers conferred by section 368.01. State ex rel v City of Anoka, M, 61 NW(2d) 237.

While under section 368.01 certain towns are given the power and authority enumerated in certain subdivisions of section 412.19, they do not possess all of the powers enumerated in that section. The powers of the town are largely limited to matters peculiarly of local concern and the town should not adopt ordinances relating to offenses which in general are governed by the provisions of state law. OAG June 18, 1947 (43-B-1); OAG July 9, 1947 (43-A-6).

Section 368.01 does not authorize towns to issue licenses for the sale of intoxicating liquor or nonintoxicating malt liquors. OAG July 27, 1951 (217-B-8).

Under section 368.01 a town may adopt an ordinance licensing trailer camps or bulk oil stations. OAG Aug. 26, 1947 (325-A-15).

An improvement project to be financed in part from town funds and in part from special assessments may not, under Laws 1953, Chapter 244, be carried out under a contract between the town and a county, if the amount of the project is in excess of \$2,500. The town having the power of villages, under section 368.01, as amended, which has undertaken an improvement project under the provisions of section 412.401, may proceed to complete the same notwithstanding the enactment of Laws 1953, Chapter 398. OAG June 22, 1953 (379-C-13-D).

If a town builds a storm sewer under sections 368.01 and 412.27 it can only assess cost against property fronting on a street where the sewer is laid. OAG July 23, 1947 (387-G-1).

A town may adopt an ordinance to require the removal of abandoned automobiles from town roads. OAG Dec. 18, 1952 (434-A-6).

A town may adopt a zoning ordinance if it contains a platted portion on which 1,200 or more people reside. OAG Dec. 4, 1947 (441-H).