

MINNESOTA STATUTES 1953 ANNOTATIONS

375.01 COUNTY BOARDS

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CHAPTER 375

COUNTY BOARDS

375.01 MEMBERS, NUMBER OF

HISTORY. 1860 c 15 art 2 s 1; 1861 c 6 s 1; GS 1866 c 8 s 84; GS 1878 c 8 s 92; 1885 c 6 s 1; GS 1894 s 657; 1901 c 17; RL 1905 s 419; MS 1927 s 650.

A majority of the board constitutes a quorum, but no business can be transacted except by a majority of the whole board. Where only three members of the board were present and only two of the three voted on the matter the vote was a nullity. OAG Oct. 1, 1947 (390-A-18) (125-A-14).

375.02 COMMISSIONER DISTRICTS

HISTORY. 1860 c 15 art 2 s 2, 3; 1861 c 6 s 1; GS 1866 c 8 s 85, 86; GS 1878 c 8 s 93, 94; GS 1894 s 658, 659; RL 1905 s 420; 1913 c 537 s 1; 1917 c 370; 1923 c 366 s 1; MS 1927 s 651; 1931 c 105; 1933 c 77; 1933 c 363; 1935 c 279; Ex1936 c 76; 1941 c 268; 1943 c 300 s 1.

The term "regular election" refers to the general election in November of each biennium. OAG Feb. 13, 1952 (798-D).

Pursuant to section 600.18 the 1950 federal census was filed in the office of the secretary of state on December 14, 1951. Under the provisions of section 375.02 the county board of Itasca county might have submitted the question of redistricting the county commissioner districts at the 1952 November election. Not having done so they may submit the question to the voters at the general election in 1954. OAG May 20, 1953 (798-D).

375.03 TERMS OF COMMISSIONERS

HISTORY. 1860 c 15 art 2 s 1; 1861 c 6 s 1; GS 1866 c 8 s 88; GS 1878 c 8 s 96; 1885 c 6 s 3; GS 1894 s 661; 1903 c 313; RL 1905 s 421; MS 1927 s 652; 1951 c 102 s 1.

When a vacancy occurs in the office of the county commissioner the appointment should be made pursuant to section 351.06 and not under section 375.03. The appointee holds office until the next general election and until his successor is elected and has qualified. OAG April 28, 1950 (126-H).

Section 351.06 governs the filling of vacancies in the county board, in a county not newly organized, or in which the number of commissioners is not increased, and the appointee holds only until the next election occurring after there is sufficient time to give the notice prescribed by law, and until a successor is elected and qualified. The appointment in such case is not governed by section 375.03. OAG Sept. 2, 1950 (126-H).

375.04 TIE DETERMINED BY LOT

HISTORY. 1860 c 15 art 2 s 4; GS 1866 c 8 s 90; GS 1878 c 8 s 98; GS 1894 s 663; RL 1905 s 422; MS 1927 s 653.

375.05 SALARIES OF COUNTY COMMISSIONERS

HISTORY. 1860 c 15 art 2 s 9; 1865 c 61 s 1; GS 1866 c 8 s 92; 1873 c 44 s 1; GS 1878 c 8 s 100; 1881 c 37 s 1; 1881 c 52 s 1; Ex1881 c 28 s 1; 1885 c 88; 1891 c 62; 1893 c 154; GS 1894 s 665; RL 1905 s 423; 1907 c 204; 1909 c 388; 1911 c 374; 1913 c 308 s 1; 1919 c 242, 487; MS 1927 s 656.

Under the charter of the city of St. Paul, its mayor is not entitled to retain a salary as a member of the county board of Ramsey county. OAG Dec. 29, 1950 (124-H).

The compensation provided in section 375.06, as amended in 1951, is in addition to that provided in section 375.05. OAG May 29, 1951 (124-H).

County commissioners are not entitled to reimbursement for a trip to Washington to testify before a congressional committee. OAG July 14, 1950 (124-J).

375.055 SALARIES IN CERTAIN COUNTIES

HISTORY. 1945 c 526 s 1, 2, 4-6; 1947 c 259 s 1; 1949 c 423 s 1; 1951 c 327 s 6.

Where a special meeting of the board is called in addition to the 12 regular meetings the commissioners are not entitled to a per diem payment for such meeting. OAG Sept. 11, 1947 (124-J).

375.06 COMPENSATION, MILEAGE; CERTAIN COUNTIES

HISTORY. 1907 c 296 s 1; 1911 c 283 s 1; 1913 c 456 s 1; MS 1927 s 657; 1951 c 487 s 1.

The county board may sit as a committee unit and if, as such, its functioning as a committee is within the meaning and intent of section 375.06, then the commissioners are entitled to the per diem authorized thereunder. OAG June 23, 1952 (124-A).

Under the controlling section 350.11, when a member of the board uses his own automobile for travel, he is limited to compensation at a rate of five cents per mile. OAG May 29, 1947 (124-J).

The term "regular meeting" of the board refers to the meetings in January and July. OAG July 15, 1947 (124-J).

With reference to the two regular meetings of a county board and the ten additional meetings permitted under the statute, the proper mileage is ten cents per mile. OAG Sept. 11, 1947 (124-J).

As to the allowable 12 meetings a year permitted under the statute, mileage is allowable at the rate of ten cents per mile. This being an emolument rather than an allowance to cover expenses, it is not controlled by section 350.11. OAG Sept. 11, 1947 (124-J).

The compensation of a member of the county board is fixed by section 375.06 and the commissioner is not entitled to traveling expenses on committee work. OAG July 27, 1949 (124-J).

A distinction in law exists between compensation for mileage, which is an emolument of office, and reimbursement for use by an officer of his own automobile, computed upon the basis of mileage traveled. Under the 1951 amendment, county commissioners are entitled to receive ten cents per mile for each mile necessarily traveled for attending meetings, and this notwithstanding the provisions of section 350.11, as amended in 1951, limiting reimbursement rights to seven and one half cents per mile. OAG June 13, 1951 (124-J).

The county board has a right to name a committee of one or more or all of its members for appropriate legal purposes, to authorize the committee to delegate to a member performance of duties assigned by the board to the committee, and if a single commissioner to whom delegation is made by the committee is required to spend time and to travel in the discharge of his official duties while acting as a member of the committee under direction of the county board, the committee member is entitled to compensation prescribed by section 375.06, as amended in 1951. OAG June 15, 1951 (124-J).

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375.07 MEETINGS; QUORUM

HISTORY. 1860 c 15 art 2 s 10, 11; GS 1866 c 8 s 93, 94; 1874 c 74 s 1; GS 1878 c 8 s 101, 102; 1885 c 87, 99; 1887 c 33, 96; 1889 c 172, 173, 180, 182; 1891 c 125;

The official year for the State of Minnesota commences on the first Monday in January of each year and all terms of office terminate at that time. Section 375.07 provides that the county board shall meet at the county seat for the transaction of business on the first Tuesday after the first Monday in January and, since January 1 is a holiday and the county offices are closed, the newly elected county officers should present their bond and oath to the county board at its first meeting on January 2 and when the bonds are approved and filed, the new officers take office. OAG Dec. 11, 1950 (104-A-13).

Dates referring to regular July or January meetings are directory and not mandatory. OAG April 11, 1951 (122-A-5).

A majority of the board constitutes a quorum, but no business can be transacted except by a majority of the whole board. When only three members of the house were present and only two of the three voted on the matter, the vote was a nullity. OAG Oct. 1, 1947 (390-A-18) (125-A-14).

Where the register of deeds presents his resignation to the county board to take effect on July 1 following and his resignation is accepted, the vacancy can be filled by the county board on the date the office is vacated which would be immediately after July 1. The vacancy cannot be filled in advance of that date. OAG June 7, 1951 (373-A-4).

375.08 BOARD TO FILL VACANCIES IN COUNTY OFFICES

HISTORY. RS 1851 c 8 art 4 s 8; RS 1851 c 8 art 7 s 8; PS 1858 c 7 s 54, 90; 1860 c 2 s 6; 1860 c 3 s 4; 1860 c 15 art 2 s 20; GS 1866 c 8 s 102, 116, 128, 168, 187, 206, 224; 1871 c 92 s 1; 1877 c 74 sc 4 s 2; GS 1878 c 8 s 112, 134, 147, 196, 218, 238, 256; GS 1878 c 36 s 59; 1881 c 6 s 1; GS 1878 Vol 2 (1888 Supp) c 8 s 102a; GS 1894 s 669, 679, 712, 725, 786, 816, 837, 855, 3740; RL 1905 s 425; GS 1913 s 687; GS 1923 s 659; MS 1927 s 659; 1939 c 153 s 1.

A vacancy in the office of county coroner is filled by appointment by the county board. The coroner need not be a physician and surgeon. The chief deputy coroner acts until a new coroner is appointed. OAG Aug. 16, 1949 (103-J).

A county attorney may serve and his actions after being appointed are valid up to the time when his appointment is declared invalid and void by a court of competent jurisdiction. OAG April 12, 1948 (121-A-6):

Where the register of deeds presents his resignation to the county board to take effect on July 1 following and his resignation is accepted, the vacancy can be filled by the county board on the date the office is vacated which would be im-

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The offices of a member of the county board and a member of the board of directors of a conservancy district are incompatible. OAG June 6, 1952 (358-A-3).

375.10 VACANCY IN OFFICE OF COMMISSIONER; HOW FILLED

Vacancy on a county board may be filled by the mayor of a city in a commissioner district where there are no organized towns in the district and the district contains a city having a mayor. OAG March 15, 1948 (126-A).

Under the provisions of section 375.10 a vacancy by the death of a county commissioner occurring less than 30 days before election must be filled by appointment. OAG Oct. 17, 1950 (126-H).

375.11 SEAL; AUTHENTICATED COPIES OF BOARD PROCEEDINGS PRIMA FACIE EVIDENCE

HISTORY. 1860 c 15 art 2 s 14; GS 1866 c 8 s 96; GS 1878 c 8 s 105; 1879 c 29 s 1; GS 1894 s 671; RL 1905 s 427; MS 1927 s 661.

375.12 PUBLICATION OF PROCEEDINGS

HISTORY. 1860 c 15 art 2 s 14; GS 1866 c 8 s 96; GS 1878 c 8 s 105; 1879 c 29 s 1; GS 1894 s 671; RL 1905 s 428; 1907 c 447; MS 1927 s 662; 1941 c 507; 1947 c 161 s 1; 1949 c 69 s 1.

375.13 CHAIRMAN

HISTORY. 1860 c 15 art 2 s 15; GS 1866 c 8 s 97; GS 1878 c 8 s 106; GS 1894 s 672; 1903 c 37; RL 1905 s 429; MS 1927 s 663; 1937 c 165 s 1.

375.14 OFFICES AND SUPPLIES FURNISHED FOR COUNTY OFFICERS

HISTORY. 1860 c 15 art 2 s 19; GS 1866 c 8 s 101; 1870 c 44 s 2; 1873 c 45 s 1; GS 1878 c 8 s 110; 1891 c 63 s 1; GS 1894 s 677; 1903 c 151; RL 1905 s 430; 1927 c 346; MS 1927 s 664.

A county board must provide offices at the county seat for the auditor, treasurer, register of deeds, sheriff, judge of probate, clerk of district court, county superintendent of schools, and county highway engineer. The courthouse must be kept open during reasonable hours on Saturday as well as other week days, except holidays. The county board has no control over the office hours of the various county officers. OAG June 22, 1948 (104-A-10).

The county board may subscribe for periodicals relating to highways for the use of the board and county engineers. OAG April 26, 1949 (125-A-52).

The county board may provide the county superintendent of schools with suitable furniture for his office and such books, stationery, and the like, as may be necessary to discharge his duties. As to whether a wire recorder or a film projector is necessary equipment is a question of fact to be determined by the county board. OAG March 28, 1950 (125-B-27).

There is no statutory provision for payment by the county of the travel expenses of a district judge who acts as a juvenile court while attending a juvenile court conference. A claim for reimbursement by the state under section 484.54 is suggested. OAG Aug. 6, 1952 (141-D-7).

If the space allowed to the registrar of titles is inadequate or unsafe and if the registrar is not personally neglectful, he is not responsible for a loss through theft of books and records if he uses the facilities of his office to the best possible advantage. OAG April 17, 1947 (374).

375.15 DAMAGED RECORDS TRANSCRIBED

HISTORY. 1860 c 15 art 2 s 19; GS 1866 c 8 s 101; 1870 c 44 s 2; 1873 c 45 s 1; GS 1878 c 8 s 110; 1891 c 63 s 1; GS 1894 s 677; RL 1905 s 432; MS 1927 s 666.

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In case the records in the office of register of deeds become damaged so as to render any portion of them liable to become illegible or destroyed or lost, the duty of the county board is to provide suitable books and cause the records to be transcribed. Under section 375.15 the fees for this work are fixed by the county board and section 505.04 relates to fees which the register of deeds is entitled to receive when a plan is originally filed in his office and not applicable in the case of damaged records. OAG July 26, 1948 (373-B-15).

Where a book of deed records in the office of the register of deeds had become illegible because of fading ink, compensation under this section was the only method provided for transcribing such records. OAG Sept. 19, 1951 (373-B-18-C).

A county may not construct a creosote timber bridge across a diversion channel of a navigable watercourse and upon private property and thereafter maintain it at the expense of the county. OAG Aug. 11, 1953 (642-B-3).

375.16 APPROPRIATION FOR EXPENSES

HISTORY. RS 1858 c 7 s 17; 1862 c 29 s 1; GS 1866 c 8 s 81; GS 1878 c 8 s 89; 1889 c 171 s 1; GS 1894 s 644; 1903 c 337; RL 1905 s 431; 1907 c 390 s 1; 1919 c 305; MS 1927 s 665; 1947 c 149 s 1.

A county commissioner is not entitled to reimbursement for expenses of a trip to Washington, D. C., to testify before a congressional committee. OAG July 14, 1950 (124-J).

375.17 PUBLICATION OF FINANCIAL STATEMENTS

HISTORY. 1860 c 3 s 45; 1860 c 45 art 2 s 21; GS 1866 c 8 s 103; 1872 c 59 s 1; GS 1878 c 8 s 113; 1885 c 111; GS 1894 s 680; 1903 c 390; RL 1905 c 205 s 1; MS 1927 s 667; 1933 c 410; 1941 c 370 s 1; 1945 c 170 s 1; 1947 c 235 s 1.

The county board is directed to publish its financial statement once in a qualified legal newspaper within the county. It is also the duty of the board to cause the statement to be prepared in another newspaper of the county located in a different section than is the official newspaper. If there is no qualified paper in the county except in the one location, only one publication may be made. Publication may not be made in a newspaper located in the same location as is the official paper. OAG Jan. 6, 1950 (277-C-1).

Publication of the county financial statement must be made in a newspaper of the county having qualifications specified in the law for a legal newspaper. The law contemplates an addition publication in another newspaper of the county located in a different section of the county than is the official newspaper. This second publication can only be made in a newspaper located in a part of the county other than that in which the official publication is made. OAG Jan. 10, 1950 (277-C-1).

Names of persons receiving old age assistance or aid to dependent children, may not be published. There is no prohibition against publication of the names of persons receiving direct relief. OAG Dec. 20, 1951 (277-C-1).

375.18 GENERAL POWERS

HISTORY. 1860 c 15 art 2 s 23; GS 1866 c 8 s 104; 1869 c 32 s 1; GS 1878 c 8 s 114; 1893 c 180 s 1; GS 1894 s 681; 1899 cc 56, 75, 305; 1901 cc 29, 71; 1902 c 44; 1903 c 355; RL 1905 s 434; 1911 c 89; 1911 c 255; 1913 cc 94, 347, 478; 1915 c 219; 1917 c 347; 1919 cc 125, 139; 1921 c 337; MS 1927 s 668; 1941 c 130; 1947 c 637 s 1; 1951 c 82 s 1.

Although title of a riparian owner on navigable or public waters extends to ordinary low water mark, his title is not absolute except to ordinary high water mark. As to intervening space, his title is limited or qualified. Such riparian owner is entitled to recover damages for overflow caused by trespassing as may occur before what is known as the ordinary high water mark; but plaintiff in the instant case while showing damage by flooding, failed in his proof by not showing location of high water mark. This, together with evidence that the high water which damaged

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plaintiff's lands was not caused by act or failure of the defendants, but by extraordinary and unprecedented rainfall, sustains the finding of the trial court that the owner is not entitled to recover. *Mitchell v City of St. Paul*, 225 M 390, 31 NW(2d) 46.

County governments exercise only such powers as are expressly granted them by the legislature, together with such as may be fairly implied as necessary to the exercise of their express power. *Cleveland v Rice County*, M, 56 NW(2d) 641.

No duty devolves upon the county board to enter the publishing business nor to print, publish, and sell plats prepared by the county assessor. OAG Feb. 17, 1950 (18-D).

A county may not issue bonds to build a courthouse or jail without a vote of the electorate. OAG Sept. 16, 1949 (37-B-3).

County offices are to be open for business for the benefit of the public during all reasonable hours on weekdays. This excepts Sundays and holidays only. OAG June 22, 1948 (104-A-10).

To provide funds for expenditures by a county for airport purposes payments may be made out of the general revenue fund under the provisions of section 360.037, or by transfer of a surplus in the county welfare fund under section 375.18, or by borrowing under section 385.32. OAG April 20, 1948 (107-A) (234-D).

By a unanimous vote the county board may transfer a surplus in a fund not needed in the current year to another fund to supply a deficiency. OAG July 11, 1947 (107-A-1). OAG July 18, 1947 (519-D).

Where the courthouse is in need of repair and the county has no specific fund created for the purpose, and the balance in the revenue fund is insufficient to cover the contemplated expense, the county board has the power by unanimous vote to transfer any surplus there may be in the poor fund, or the road and bridge fund, to the revenue fund to take care of the exigency. OAG Aug. 9, 1948 (107-A-12).

Where a tax-forfeiture proceeding was had and a certificate issued and the land later sold to the state erroneously, which proceeding was thereafter set aside through court proceedings, the county board is without power to allow the claim of the innocent party covering his attorney's fees in clearing the title. The situation does not constitute a claim for slander of title. OAG Aug. 24, 1949 (107-B-4).

The county may permit the use by the municipal court of space in the county courthouse with or without payment of rental by the city. OAG Feb. 20, 1951 (125-A-20) (306-A).

The county board may not submit the question of a courthouse site to the electors. OAG April 21, 1952 (125-A-20).

The welfare board submits to the county board an annual budget estimating its needs. The estimate is not binding on the county board. If the county board approves the estimate, a tax is levied accordingly. The county board under the provisions of section 262.01 establishes a poorhouse and by direction of the county board the welfare board operates it. While the county board has power to repair, equip, and put a poorhouse in shape as requested by the county welfare board, it is limited in its expenditures. It may expend available money but cannot contract to spend money it does not have. OAG Sept. 3, 1948 (125-A-36).

Except for charters or special acts of the legislature neither counties, cities, villages nor towns have general powers to make contributions to finance local territorial centennial celebrations. OAG Feb. 27, 1948 (125-B); OAG July 7, 1948 (125-B).

Laws 1951, Chapter 528, confers powers on the county board in the county of Hennepin supplemental to its general powers, to erect and equip jails. OAG May 27, 1953 (125-B).

There is no statutory authority for a combination lockup to be built and maintained jointly by a county and village. OAG June 1, 1948 (127-B).

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A county is not authorized to pay any part of the expense of rebuilding a village jail. A village may fix the price at which county prisoners will be received in jail. There is no statutory authority for county to jointly engage with the village in the construction and operation of a jail or lockup. OAG Dec. 21, 1948 (127-B).

The county board may appropriate funds to provide separate facilities for juveniles. OAG May 1, 1953 (145-B-1).

The city and county are not authorized to enter into a cooperative agreement with the United States agreeing to hold and save the United States free from damages due to the construction and operation of a flood control project authorized by the congressional Flood Control Act of 1950, section 212. OAG June 17, 1953 (205).

The county board may not guarantee an employee a certain number of hours work in a year with base pay and overtime. The powers of the county board are purely statutory. OAG March 24, 1952 (270-G-1).

The county board is without authority to expend money in mining marl on tax-forfeited lands, or to appropriate money for that purpose. OAG Nov. 15, 1947 (311-E).

Claims of the register of deeds against the county for fees due for furnishing veterans free certified copies of service records should be presented to the county board for allowance. OAG Oct. 21, 1949 (373-B-10).

The county board may, pursuant to sections 38.27 and 38.28, levy a tax for aid to agricultural society within county which is a member of the state agricultural society; under section 375.18 (8) county board may make an annual appropriation to the county agricultural society of its county, and under (9) of said section, when the county owns the land and the structures thereon, it may expend county funds for improving the same, and section 395.08 grants further power to certain county boards to make further appropriations to certain organizations, including agricultural societies; county may not assume, nor use its funds, to pay obligations of the county agricultural society. OAG Aug. 16, 1951 (519-A).

A county board of certain counties may levy a tax under sections 38.27 and 38.28 for aid to agricultural societies within certain limitations and certain restrictions. The county board may appropriate only a sum of not to exceed \$1,000 to certain agricultural societies under the provisions of section 375.18, subdivision 9; and under section 395.08 the county board may levy a certain amount for aid to any organization of the state for use in advancing the interest of the county by advertising, improving, or developing the agricultural resources of the county. OAG Sept. 15, 1952 (519-A).

It is the duty of the board of auditors to make a detailed check of the treasurer's tax collection records and report the results of that check to the county board. The duty is mandatory and difficulty of compliance does not justify disregard of the law. The duty is imposed upon the board but the board is not authorized to manage the county business and if the board of audit cannot perform the duties for lack of help and lack of appropriation, the county board may resort to the employment of help or a commission to make the audit. OAG April 28, 1951 (541).

The county board is without authority to appropriate money to erect or repair buildings situated on fair grounds owned by a county agricultural society. OAG March 24, 1950 (772-A-1).

Counties are involuntary political corporations, organized as subdivisions of the state for governmental purposes. Within constitutional limitations, the control of the legislature over counties is absolute. The general powers of the county board are prescribed by statute, and are purely statutory. There is no authority granted by section 375.18 or elsewhere empowering the county to lease fairgrounds owned by the county to private persons for private purposes. OAG Feb. 2, 1948 (772-C-5).

The county board may lease lands to the county agricultural society for the purpose of holding agricultural fairs but the structures and improvements made on the leased land by the society remains the property of the county. OAG April 22, 1953 (772-C-5).

375.19 ADDITIONAL POWERS

HISTORY. 1923 c 24 s 1; MS 1927 s 669; 1947 c 255 s 1; 1951 c 645 s 1.

Where the cost of a hospital will be in excess of the amount previously authorized by the voters, the question should be resubmitted and may be submitted at a special election. The authority of the county board to accept gifts is limited to a gift of real estate. OAG April 5, 1948 (1001-B).

Relatives or the guardian of insane persons may transport them to the state hospital when so committed by the probate court, in which event the county officials are not allowed any compensation. In cases where the county pays the expense there is no provision for reimbursement. OAG Oct. 29, 1952 (248-B-3).

375.191 AMBULANCE SERVICE

A county having a population of less than 50,000 may contract for the use of an ambulance for accident cases. OAG Oct. 5, 1951 (225-A).

375.192 REDUCTIONS IN ASSESSED VALUATION OF REAL PROPERTY

HISTORY. 1949 c 76 s 1; 1949 c 485 s 1.

Upon written application by the owner of property, the county board has power to re-classify the property as a homestead if it has erroneously been otherwise classified. OAG June 13, 1950 (232-D).

375.195 SALE OF PUBLIC PROPERTY, CERTAIN COUNTIES

HISTORY. 1945 c 465; 1947 c 181 s 1-4.

A county is not authorized to zone unless it falls within the class specified in MSA, Chapter 396. No authority exists for a city or village to enforce its zoning ordinance outside of the corporation limits. Town board in Lyon county has no authority to zone. OAG Sept. 21, 1949 (59-A-32).

Home occupations, which include any use customarily conducted entirely within a dwelling and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof, is not prohibited by ordinance. The selling of insurance to a limited degree, the issuance of drivers licenses, and service as a notary public are not prohibited. OAG June 16, 1948 (477-B-34).

375.197 STATE CONFERENCE OF CHARITIES

HISTORY. 1905 c 267 s 1.

375.21 CONTRACTS OF COUNTY BOARDS IN CERTAIN COUNTIES

Rights of federal government to funds due contractor under public works contract for taxes owed by contractor as against surety on contractor's bond. 32 MLR 645.

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

Whether a variance gave the bidder a substantial advantage or benefit is not the sole test for determining if such variance is material. Unless the bid responds to call and specifications in all material respects, it is not a bid but a new proposition. So tested, bid which specified receiver attenuated at 65 decibels for spurious image response, where specifications called for receiver attenuated at 85 decibels for spurious response it constituted a new proposal and hence was properly rejected. *Sutton v City of St. Paul*, 234 M 263, 48 NW(2d) 436.

Where specifications required that a certified check at five percent of total bid be attached to and submitted with bid, and where total bid equalled the sum of \$69,610, including bid on one unit of selective call equipment for mobile units as

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specified, certified check in the sum of \$3,500 was sufficient to comply with specifications. *Sutton v City of St. Paul*, 234 M 263, 48 NW(2d) 436.

A county board may enter into an agreement with one bonding company to write all bonds for its officers and employees if such officers and employees (treasurer excepted) consent; and the county, need not advertise for competitive bids on furnishing such bond. OAG Dec. 5, 1950 (45-D).

It is not necessary for a county or a village to advertise for bids on the purchase of workmen's compensation insurance. OAG March 15, 1951 (125-A-28).

Where a purchase was made by the county board of education and the contract was let on a competitive bid, the transaction must be executed as made. The contractor is not entitled to increase the price because he furnishes a better article than that he sold. OAG May 11, 1948 (166-B).

The county board is authorized to provide the sheriff with radio telephone facilities if required in the performance of his duties. Radio telephone facilities provided as a utility service does not come within the meaning of section 375.21 so as to require competitive bidding. OAG Jan. 28, 1953 (390-A-17).

The legislature, in enacting section 282.02, provided for the exclusive method of publication of sale for tax-forfeited lands. The provisions of section 375.21 are not applicable. OAG Dec. 28, 1950 (419-B).

A county may purchase a building for county purposes without advertising for bids. OAG June 12, 1953 (469-A-12).

Where the railroad and warehouse commission by order imposes upon a railway company the duty to erect and construct an overhead bridge and imposes the duty upon the county to pay 50 percent of the cost, the construction being done by the railway company and the county having no duties except to pay one half of the costs thereof, the provisions of section 375.21 are not applicable. OAG May 1, 1949 (642-B-9).

A contract for the construction of a county garage must be awarded to the lowest responsible bidder in accordance with the provisions of section 375.21. No authority exists by which a county garage may be built on a cost plus ten percent plan. OAG July 7, 1948 (707-A-7).

Where an unusual storm prevented the county board from meeting and receiving bids pursuant to an advertisement therefor and the auditor continued the hearing until the following week, no bids being opened in the meantime, bidders prevented from reaching the meeting because of the storm may submit bids before the time at which the hearing adjourned and such bids may be considered by the board if it so decides. OAG April 4, 1949 (707-A-7).

Where the county contracts for two jobs involving a total purchase of more than \$1,000 worth of gravel and if the contract is with one contractor, contract requires advertising for bids but on contracts of less than \$1,000 the law does not require advertising. OAG May 25, 1949 (707-A-7).

Section 375.21 prevents county having less than 75,000 inhabitants from buying property for construction and repair of roads of the value of more than \$1,000 without advertising for bids as there required. This applies to private transactions as well as transactions with the state. OAG Aug. 12, 1949 (707-A-7).

Where bids are received on items of equipment which are not capable of precise or exact specifications, a municipality may exercise a reasonable discretion in determining who is the lowest responsible bidder and, in so doing, may consider, in addition to the bid price, the quality, suitability, and adaptability of the article to be purchased for the use for which it is intended. OAG Aug. 13, 1952 (707-A-7).

This section requires bids preliminary to the letting of certain contracts, but this does not strictly apply where the contract is for personal service, such as the employment of an attorney, the services of an architect, or other contracts where highly skilled work is required. OAG Aug. 23, 1952 (707-A-7).

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Repairing a courthouse clock damaged by lightning is work of a professional or personal nature and section 375.21 does not apply. OAG Aug. 23, 1952 (707-A-7).

No contract for work or labor or for construction or repair of roads where the estimate cost exceeds \$1,000 may be made without first advertising for bids. OAG July 27, 1950 (707-B-4).

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 after due notice new bids are received, bids for escalator clauses must not only be based upon specifications setting out standard bases of adjustment, but a maximum cost be stated in each bid. OAG Nov. 14, 1947 (707-B-7).

Where the county board entered into a contract on behalf of the county with a contractor to gravel a road and litigation involving the contract is pending, and the season for graveling is drawing to a close, and if the graveling is not completed this season the roads will suffer great deterioration, such situation and conditions generally constitute an emergency as defined in section 375.21, and if a new contract is let the requirements of the statute in case the estimated cost exceeds \$1,000 must be strictly complied with, including advertising, three weeks publication, and 15 days posted notice. OAG July 28, 1948 (707-D-2).

The matter of repair of public roads contracts involving expenditure of more than \$1,000 is governed by the provisions of section 375.21. Section 162.18 does not modify the provisions of section 375.21 but sets out the procedure when the payroll system is employed. Section 162.18, subdivision 8, does not authorize the county to rent equipment for the construction and repair of highways in an amount exceeding \$1,000 without complying with the requirements of section 375.21. OAG June 25, 1952 (707-D-2).

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).

375.23 ASSESSMENT AND ROAD DISTRICTS IN UNORGANIZED TERRITORY; ASSESSORS; OVERSEERS OF ROADS

HISTORY. 1860 c 15 art 2 s 27; GS 1866 c 8 s 105; GS 1878 c 8 s 119; 1883 c 50 s 1; GS 1894 s 691; RL 1905 s 442; 1909 c 250 s 1; MS 1927 s 770; 1945 c 528 s 1.

375.26 GIFTS, ACCEPTANCES

HISTORY. 1925 c 13 s 1; 1933 c 59; 1939 c 30; 1949 c 481 s 1; 1951 c 158 s 1.

The county board is without authority to accept a gift for hospital purposes if conditions are attached to the gift to the effect that the hospital should not be leased or the operation thereof surrendered to a hospital association. OAG March 30, 1953 (1001-B).

375.31 MOTOR VEHICLES, DAMAGE FROM OPERATION

HISTORY. 1931 c 330 s 1; Mason's Supp s 672-1; 1951 c 131 s 1.

A county hospital constructed and operating under section 376.01 constitutes a proprietary business for which the county may be held liable; and the county may expend funds for insurance to indemnify against damage caused by the negligent or tortious acts of its hospital agents or employees. OAG Dec. 20, 1948 (125-A-28).

When the county is engaged in the performance of a governmental function through its officers, agents and employees, no liability results to the county by reason of the negligence of or torts committed by those officers, agents or employees in the performance of a governmental function. There are instances where the county might be held liable for the negligence of its employees. Whether the county may expend funds for insurance to indemnify against damages caused by the neg-

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ligence or torts committed by county employees is a question of fact and depends upon whether liability on the part of the county results from such negligence or torts. OAG Dec. 20, 1948 (125-A-28).

375.32 INSURANCE POLICIES; PREMIUM, PAYMENT

HISTORY. 1931 c 330 s 2; Mason's Supp s 672-2; 1951 c 131 s 2, 3.

Where a criminal prosecution is pending in the municipal court and the testimony of the witness residing outside of the boundaries of the county is required, the county attorney may apply to the court for subpoena under section 357.32 and 634.06. OAG March 30, 1951 (196-N).

375.33 FREE COUNTY LIBRARIES

HISTORY. 1919 c 445 s 1; MS 1927 s 673; 1943 c 94 s 1; 1947 c 64 s 1; 1949 c 266 s 1; 1951 c 217 s 1.

A law to be general need not operate alike upon all provided the legislature make the necessary classifications. Should the law result in inequality, it is still constitutional. *Hassler v Engberg*, 233 M 487, 48 NW(2d) 343.

The library board may adopt a resolution authorizing a member or members of the board to attend regional or state meetings, if it determines that such attendance will be of benefit in the public interest. OAG Nov. 13, 1950 (285-A).

Where property in a city is already taxed for support of free public library in the city, the county board has no authority to levy a tax under section 375.33 for the purpose of establishing and maintaining a county library service. OAG Feb. 26, 1952 (285-A).

Under the authority of subdivision 1, the board may exercise the powers conferred without reference to the provisions of subdivision 4; but under subdivision 4 when there is no free library in the county it is the duty of the county board to appoint a library board. The county may make contracts with one or more library boards. OAG May 18, 1951 (285-A).

The county library board of Stearns County has no authority to rent an automobile on an annual rental basis for the purpose of maintaining a portable circulating library. OAG Oct. 21, 1952 (285-A).

A free county library for which a tax is levied for maintenance under the provisions of section 375.33 and which is supported jointly by a village and county tax levy if under control of the library board having power to adopt bylaws and regulations for the government of the library and the control of the rooms and building. They may, in their discretion, permit or deny the use of the library meeting room to civic or other organizations. The only limitation on their authority is that their acts be not unreasonable or arbitrary. OAG Dec. 5, 1947 (285-B).

A county may not pay members of the county library board for services or disbursements. OAG May 22, 1948 (285-B).

Where a county has levied a 1-mill tax for library purposes it cannot disburse to the village the proceeds of the library tax paid by its inhabitants so that the village may use said proceeds for the library village. OAG Nov. 20, 1952 (285-B).

A member of the county library board may not be appointed librarian. OAG June 5, 1953 (285-C).

A county board may levy up to two mills for county library purposes if the assessed valuation does not exceed \$20,000,000; but the county cannot spread a library tax against property in a city in which there is no free public library. OAG June 21, 1948 (285-B); OAG July 15, 1948 (519-B).

Section 375.33, as amended by Laws 1947, Chapter 64, does not authorize the county board to submit to the voters of the county the question as to the amount of tax to be levied for a free county public library. OAG Sept. 10, 1948 (519-D).

375.383 WAR RECORDS, PUBLICATION

HISTORY. 1945 c 571 s 1; 1953 c 699 s 15.

375.40 COUNTY BOARD MAY LICENSE EXHIBITIONS AND SHOWS

In section 375.40 the county board is authorized to license and regulate identical shows and exhibitions of any nature except those prohibited by section 616.40. Section 375.40 does not apply to shows, carnivals, contests, and exhibitions held within the incorporated limits of a village, borough, or city. OAG Oct. 14, 1948 (290-B).

A license for a service to show granted by the county board under section 375.40 permits the circus to operate and show. Section 366.01 does not apply to circuses and section 366.19 is inoperative because a town board has no authority to license a circus. OAG Aug. 8, 1952 (290-B).

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

A town may license a drive-in motion picture theater. It may be possible that a county has concurrent power. OAG Aug. 17, 1949 (850-E).

Towns having the powers of villages may license outdoor theaters under section 368.01. County boards may authorize outdoor theaters under section 375.40. OAG June 12, 1952 (850-E).

375.43 SALARY INCREASES

HISTORY. 1951 c 327 s 1-5.

The minimum salary of the supervisor of assessments of Rock County is \$3,500, plus the cost of living increases granted to elective officers of that county. OAG June 10, 1953 (12-F-1)..

Under Laws 1953, Chapter 596, the cost of living increase provided by Laws 1951, Chapter 327, applies to the salary of a county supervisor of assessments. OAG July 13, 1953 (12-F-1).

Notwithstanding that this section was entitled "salary increases; county commissioners, auditors, assessors, county attorneys, judge of probate, in certain counties" all elective county officers having fixed salaries, including the judge of probate but excluding the clerk of the district court, would be within the coverage of this Act in those counties wherein the Act was operative. OAG June 14, 1951 (104-A-9).

Under this section increase of salaries of county officers becomes effective from the date specified by the county board in the resolution granting the increase. OAG Dec. 19, 1951 (104-A-9).

Based upon the cost of living index the county board has the authority to provide for an increase of salaries to certain elective officers of the county, including the judge of the probate court but excluding the clerk of the district court, in such amount as the county board shall determine not exceeding twenty points above the respective existing salaries and in no event shall the increase amount to an excess of \$500. OAG June 9, 1952 (104-A-9).

The salary of a sheriff may not be excluded from the increase granted under Laws 1951, Chapter 327, by reason of a previous increase. OAG March 6, 1953 (390-A-18).

As Laws 1953, Chapter 451, disregarded entirely the decision of the Supreme Court in the case of Hamlin v Ladd, 217 M 249, it is held to be ineffective, and the county board has authority to fix the salary of the sheriff in accordance with the provisions of section 375.43 notwithstanding the enactment of chapter 451. OAG June 18, 1953 (390-A-18).