

# MINNESOTA STATUTES 1953 ANNOTATIONS

## CITIES, VILLAGES

### ORGANIZATION

#### CHAPTER 410

#### CLASSIFICATION; CHARTERS

### CITIES, VILLAGES

Information by the League of Minnesota Municipalities as of December 31, 1953

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#### Abbreviations:

M-C—Mayor-Council  
 Com.—Commission  
 C-Mgr.—Council-Manager  
 T.—Tuesday  
 Th.—Thursday  
<sup>1</sup>—Odd years  
<sup>2</sup>—Even years  
<sup>3</sup>—Every four years (presidential election year).

Com.-C—Commission-Council  
 bus.—Business  
 sec.—Secular  
 \*—Revised charter; completely replaces earlier charter.  
 \*\*—The council-manager plan was engrafted upon by the 1936 charter by a 1951 amendment.

#### A. Home Rule Charter Cities

City	1950 Pop.	Class	Date of Present Charter	Form of Gov't	Time of Election (annual unless noted)	Officials Take Office
Ada .....	2,121	4	1951*	M-C	T a 1st M Dec. <sup>1</sup>	M a 1st T Jan.
Albert Lea.....	13,545	3	1927*	C-Mgr.	T a 1st M Nov. <sup>2</sup>	M a 1st T Jan.
Alexandria .....	6,319	4	1909	M-C	2nd T Mar.	3rd T Mar.
Anoka .....	7,396	4	1929	C-Mgr.	1st T Apr. <sup>1</sup>	M a 1st T Apr.
Arlington .....	1,313	4	1948	M-C	1st T Dec.	M a 1st T Jan.
Austin .....	23,100	2	1903	M-C	T a 1st M Apr. <sup>2</sup>	3rd T a 1st M Apr.
Barnesville .....	1,593	4	1898	M-C	2nd T Mar. <sup>1</sup>	1st M Apr.
Bemidji .....	10,001	3	1952*	C-Mgr.	T a 1st Dec. <sup>2</sup>	T a 1st M Jan.
Benson .....	3,398	4	1908	M-C	1st T Apr.	2nd M Apr.
Biwabik .....	1,245	4	1941	M-C	T a 1st M Dec.	1st bus da Jan.
Blue Earth .....	3,843	4	1899	M-C	1st T Apr.	M a 1st T Apr.
Brainerd .....	12,637	3	1908	M-C	T a 1st M Dec. <sup>1</sup>	Jan. 2nd
Breckenridge .....	3,623	4	1907	M-C	3rd T Feb.	Mar. 1st
Cannon Falls .....	1,831	4	1905	M-C	1st M Apr.	2nd M Apr.
Chatfield .....	1,605	4	1947	M-C	1st T Dec. <sup>1</sup>	M a 1st T Jan.
Chisholm .....	6,861	4	1934	M-C	T a 1st M Dec. <sup>1</sup>	Jan. 1st
Columbia Hgts... ..	8,175	4	1921	C-Mgr.	2nd M June <sup>1</sup>	M a 1st T July
Crookston .....	7,352	4	1906	M-C	T a 1st Nov. <sup>1</sup>	1st M Jan.
Dawson .....	1,834	4	1911	M-C	2nd T Apr. <sup>2</sup>	3rd T Apr.
Detroit Lakes .....	5,787	4	1903	M-C	3rd T Feb. <sup>1</sup>	Mar. 1st
Duluth .....	104,511	1	1913*	Com.	1st T Apr. <sup>1</sup>	2nd M a 1st T Apr.

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City	1950 Pop.	Class	Date of Present Charter	Form of Gov't	Time of Election (annual unless noted)	Officials Take Office
Ely .....	5,474	4	1917*	M-C	T a 1st M Dec.	T a 1st M Jan.
Eveleth .....	5,874	4	1913	M-C	T a 1st M Nov. <sup>1</sup>	T a 1st M Jan.
Fairmont .....	8,193	4	1927*	M-C	T a 1st M Nov. <sup>1</sup>	Jan. 2nd
Faribault .....	16,028	3	1911	Com.	1st T Apr. <sup>1</sup>	2nd T Apr.
Fergus Falls .....	12,917	3	1903	M-C	1st T Apr.	2nd T Apr.
Fraser .....	134	4	1934	M-C	2nd T Dec.	Jan. 2nd
Gaylord .....	1,229	4	1949	M-C	T a 1st M Dec.	Jan. 1st
Gilbert .....	2,247	4	1941	M-C	T a 1st M Dec.	1st sec da Jan.
Glencoe .....	2,801	4	1909	M-C	2nd T Mar.	3rd T Mar.
Glenwood .....	2,666	4	1937*	M-C	T a 1st M Dec. <sup>1</sup>	M a 1st T Jan.
Granite Falls .....	2,511	4	1936**	C-Mgr.	3rd T Jan.	4th T Jan.
Hastings .....	6,560	4	1907	M-C	1st T Apr. <sup>2</sup>	1st M May
Hopkins .....	7,595	4	1947	C-Mgr.	3rd T May <sup>1</sup>	July 1st
Hutchinson .....	4,690	4	1913	Com.	1st T May	2nd T May
Int'l Falls .....	6,269	4	1910	M-C	T a 1st M Apr.	2nd T Apr.
Jackson .....	3,313	4	1946*	M-C	1st T Apr.	2nd T Apr.
Lake City .....	3,457	4	1909	M-C	1st T Apr.	2nd T Apr.
Lake Crystal .....	1,430	4	1912	Com.	1st T Apr. <sup>1</sup>	2nd T Apr.
Litchfield .....	4,608	4	1943	M-C	T a 1st M Dec.	1st sec da Jan.
Little Falls .....	6,717	4	1920*	M-C	3rd T Mar. <sup>2</sup>	1st T Apr.
Madison .....	2,303	4	1923	M-C	2nd T June <sup>1</sup>	M a 1st T July
Mankato .....	18,809	3	1952*	C-Mgr.	T a 1st M Nov.	Jan. 2
Minneapolis .....	521,718	1	1920	M-C	2nd M June <sup>1</sup>	1st M July
Mtka. Beach .....	376	4	1922	M-C	3rd T June	July 1st
Montevideo .....	5,459	4	1947*	C-Mgr.	T a 1st M Nov. <sup>2</sup>	M a 1st T Jan.
Moorhead .....	14,870	3	1947*	M-C	1st T Nov. <sup>1</sup>	Jan. 1st
Morris .....	3,811	4	1945*	C-Mgr.	T a 1st M Nov. <sup>1</sup>	Jan. 1st
New Ulm .....	9,348	4	1952*	C-Mgr.	T a 1st M Nov. <sup>2</sup>	Jan. 1st
Northfield .....	7,487	4	1907	M-C	2nd T Mar.	3rd T Mar.
Ortonville .....	2,577	4	1943*	M-C	T a 1st M Dec. <sup>1</sup>	M a 1st T Jan.
Owatonna .....	10,191	3	1909	M-C	2nd T Mar. <sup>2</sup>	4th T Apr.
Pipestone .....	5,269	4	1913	Com.	1st T Apr.	2nd T Apr.
Red Wing .....	10,645	3	1904	M-C	4th M Apr.	1st T May
Redwood Falls ..	3,813	4	1941	M-C	T a 1st M Apr. <sup>1</sup>	2nd T a 1st M Apr.
Renville .....	1,323	4	1906	M-C	2nd T Mar.	3rd T Mar.
Robbinsdale .....	11,289	3	1938	M-C	T a 1st M Nov. <sup>2</sup>	1st sec da Jan.
Rochester .....	29,885	2	1922	M-C	2nd T Mar.	1st M Apr.
Rushford .....	1,270	4	1927	M-C	2nd T July	4th T July
St. Cloud .....	28,410	2	1952*	M-C	1st M Apr. <sup>3</sup>	2nd M Apr.
St. James .....	3,861	4	1951*	M-C	T a 1st M Nov. <sup>2</sup>	Jan. 2
St. Paul .....	311,349	1	1914	Com.	Last T Apr. <sup>2</sup>	1st T June
Sauk Centre .....	3,140	4	1918	M-C	1st T Apr.	2nd T Apr.
Sleepy Eye .....	3,278	4	1904	M-C	1st T Apr.	2nd T Apr.
So. St. Paul .....	15,909	3	1905	M-C	1st T Apr. <sup>1</sup>	3rd T Apr.
Springfield .....	2,574	4	1950*	M-C	2nd T Mar.	1st M a 2nd T Mar.
Staples .....	2,782	4	1906	M-C	1st T Apr. <sup>2</sup>	2nd T Apr.
Stillwater .....	7,674	4	1915	M-C	T a 1st M Nov. <sup>2</sup>	1st M Jan.
Tower .....	773	4	1928*	M-C	1st T Feb.	10 da a elec.
Tracy .....	3,020	4	1933*	M-C	1st T Apr. <sup>2</sup>	M a 1st T Apr.
Two Harbors .....	4,400	4	1907	M-C	3rd T Mar. <sup>1</sup>	1st M Apr.
Virginia .....	12,486	3	1909	M-C	T a 1st M Feb. <sup>2</sup>	Apr. 1st
Wabasha .....	2,468	4	1920	M-C	1st T Apr.	3rd T Apr.
Warren .....	1,779	4	1941*	M-C	3rd T Mar. <sup>2</sup>	M a 3rd T Mar.
Waseca .....	4,927	4	1904	M-C	1st T Apr.	2nd T Apr.
Wayzata .....	1,791	4	1946*	C-Mgr.	T a 1st M Dec.	Jan. 1st
W. St. Paul .....	7,955	4	1907	M-C	T a 1st M Nov. <sup>2</sup>	1st M a Jan. 1st
White Br. Lake..	3,646	4	1922	C-Mgr.	3rd T Mar.	1st T Apr.
Willmar .....	9,410	4	1901	M-C	T a 1st M Apr. <sup>1</sup>	10 da a elec.
Windom .....	3,165	4	1949*	M-C	T a 1st M Nov. <sup>1</sup>	Jan. 2nd
Winthrop .....	1,251	4	1907	M-C	1st T Apr.	2nd T Apr.
Worthington .....	7,923	4	1909	M-C	1st T Apr.	2nd T Apr.

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## B. Cities Operating Under General or Special Laws

(Total 21)

(All these cities operate under the mayor-council form of government)

City	1950 Pop.	Class	Special Charter or General Act	Time of Election (annual unless noted)	Officials Take office
Canby .....	2,173	4	G.S. 1894, Sec. 1045-1195	1st T Apr.	2nd T Apr.
Chaska .....	2,008	4	Sp.L. 1891, Ch.2	2nd T Mar. <sup>1</sup>	1st M Apr.
Cloquet .....	7,685	4	L. 1895, Ch.8	T a 1st M Nov. <sup>1</sup>	T a 1st M Jan.
E. Gr. Forks.	5,049	4	L. 1895, Ch.8	T a 1st M Nov. <sup>2</sup>	T a 1st M Jan.
Henderson .....	762	4	Sp.L. 1891, Ch.3	1st M Apr.	2nd Wa 1st M Apr.
Jordan .....	1,494	4	Sp.L. 1891, Ch.4	1st W Apr. <sup>1</sup>	2nd W Apr.
LeSueur .....	2,713	4	Sp.L. 1891, Ch.45	1st T Apr.	2nd T Apr.
Luverne .....	3,650	4	G.S. 1894, Sec.1045-1195	1st T Apr.	2nd T Apr.
Marshall .....	5,923	4	G.S. 1894, Sec.1045-1195	1st T Apr.	2nd T Apr.
Melrose .....	2,106	4	L. 1895, Ch.8	T a 1st M Nov. <sup>2</sup>	T a 1st M Jan.
Montgomery ..	1,913	4	G.S. 1894, Sec.1045-1195	1st T Apr.	2nd T Apr.
New Prague ..	1,915	4	Sp.L. 1891, Ch.46	2nd T Apr.	3rd T Apr.
N. Mankato ....	4,788	4	L.1921, Ch.462	T a 1st M Nov. <sup>1</sup>	T a 1st M Jan.
Red Lk. Falls..	1,733	4	L. 1895, Ch.8	T a 1st M Nov. <sup>2</sup>	T a 1st M Jan.
St. Charles ....	1,548	4	Sp.L. 1879, Ch.57	1st T Mar.	2nd T Mar.
St. Peter .....	7,754	4	Sp.L. 1891, Ch.5	1st T Apr.	2nd T Apr.
Shakopee .....	3,185	4	Sp.L. 1875, Ch.6	1st T Apr. <sup>1</sup>	2nd T Apr.
T.R. Falls .....	6,926	4	L. 1895, Ch.8	T a 1st M Nov. <sup>1</sup>	T a 1st M Jan.
Waconia .....	1,569	4	L. 1921, Ch.462	T a 1st M Nov. <sup>1</sup>	T a 1st M Jan.
Waterville .....	1,627	4	G.S.1894, Sec.1045-1195	1st T Apr.	2nd T Apr.
Winona .....	25,031	2	Sp.L. 1887, Ch.5	1st M Apr. <sup>1</sup>	3rd M Apr.

<sup>1</sup> Odd years.  
<sup>2</sup> Even years.

## C. Villages and Boroughs

All villages have a form of government which may be designated as the mayor-council form although the mayor has no power except as a member of the council. Elections are held annually on the first Tuesday after the first Monday in December and officials take office on the first secular day of January. The 1949 legislature enacted a new village code (Laws 1949, Chapter 119) which authorizes villages to adopt any one of three optional forms of village government which are designated Optional Plan A, Optional Plan B, and Optional Plan C. Optional Plan A is the conventional mayor-council form, but the village clerk, treasurer and assessor are appointed by the council, instead of being elected, and the clerk is not a member of the council. To replace him an additional trustee is elected. Optional Plan B, which can be adopted only by villages having a population of more than 1,000, provides for the council-manager form, and Optional Plan C for the commission form.

The only borough in the state is Belle Plaine, which has a form of government very similar to that in villages and holds its annual election on the first Monday in April.

To date the following villages have adopted optional plans pursuant to the law mentioned above:

Village	1950 Pop.	Plan Adopted	Date Adopted
Belview	381	Plan A	December, 1949
Blooming Prairie	1,442	Plan A	December, 1951
Bricelyn	639	Plan A	December, 1953
Chisago City	703	Plan A	December, 1951
Claremont	426	Plan A	December, 1951
Dilworth	1,429	Plan A	December, 1951

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Village	1950 Pop.	Plan Adopted	Date Adopted
Elmore	1,074	Plan A.	December, 1951
Fairfax	1,143	Plan A	December, 1953
Fosston	1,614	Plan A	December, 1949
Fridley	3,796	Plan B	December, 1953
Heron Lake	837	Plan A	December, 1949
Hills	520	Plan A	December, 1949
Lakefield	1,651	Plan A	December, 1949
Lamberton	1,208	Plan A	December, 1950
Lanesboro	1,100	Plan A	November, 1952
Lindstrom	729	Plan A	December, 1950
Madelia	1,790	Plan A	December, 1951
Medicine Lake	284	Plan A	September, 1950
Mora	2,018	Plan A	December, 1949
Morgan	949	Plan A	December, 1949
Morton	794	Plan A	December, 1949
Mound	2,061	Plan B	November, 1949
New Richland	908	Plan A	November, 1950
North St. Paul	4,248	Plan B	June, 1951
Parkers Prairie	900	Plan A	December, 1950
Park Rapids	3,027	Plan A	December, 1952
Pelican Rapids	1,676	Plan A	December, 1950
Richfield	17,502	Plan B	December, 1950
Sacred Heart	745	Plan A	November, 1950
St. Mary's Point	197	Plan A	October, 1951
Wanda	178	Plan A	December, 1950
West Concord	770	Plan A	December, 1952

Plan A villages: 26; Plan B villages: 4.

## 410.01 CITIES; CLASSES

**HISTORY.** Amended, 1951 c 348 s 1.

Criminal defendant not immune from service of civil process in the county of his residence. 35 MLR 672.

Change in classification of a city from that of third class to second class, if the federal census taken in 1950 discloses that the population was prior to the first Monday in January, 1951, 20,000 or more and less than 50,000, would become effective on the first Monday in January, 1951, due to the change in population, is governed by this section. Jan. 23, 1951 (59-A-13).

The first legislation incorporating a municipality under the name of "Minneapolis" was by a bill incorporating the town of "Minneapolis" under Laws 1856, Chapter 77. The approval was dated March 1, 1856. The city of St. Anthony, now a part of the city of Minneapolis, was incorporated by a Legislative Act approved by the governor on March 3, 1855, and may be found in Laws 1855, Chapter 3. On March 2, 1866, the legislature passed an Act incorporating the town of Minneapolis as the city of Minneapolis which was to include therein the city of St. Anthony, but each city was required to cast a majority for the proposed charter in order to make it effective and the vote resulted in a defeat of the measure. On Feb. 6, 1867, the town of Minneapolis was incorporated as the city of Minneapolis. This is evidenced by Special Laws 1867, Chapter 19. The city of St. Anthony was omitted from the provisions of the 1867 Act and the area of the city was limited to the west side of the Mississippi River. An Act consolidating the city of St. Anthony and the city of Minneapolis as one city occurred on Feb. 26, 1872, and will be found in Special Laws 1872, Chapter 10. OAG March 31, 1953 (59-A-24).

Effective date of 1950 census for the purpose of section 340.353 was on Jan. 1, 1951. OAG Nov. 28, 1951 (218-R).

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410.02 Repealed, 1949 c 114 s 1.

### 410.03 EXISTING CHARTERS PRESERVED

HISTORY. M Const art 4 s 36; RL 1905 s 747; MS 1927 s 1267.

The Minneapolis city charter, chapter 8, section 19, providing for immunity from actions based on "insufficiency of the ground where sidewalks are usually constructed, when no sidewalk is built," has no application to a case where it appeared that plaintiff was injured by a defective plank maintained by the city in a railing guarding the bank of a stream, which railing gave way when plaintiff leaned upon it, causing him to fall down the bank and injure his hip. The evidence of the defective condition of the railing and the existence of the condition for a period of time sufficient to charge the city with notice thereof was sufficient to go to the jury and to justify finding of negligence on the part of the city. *Kowal v City of Minneapolis*, 230 M 361, 41 NW(2d) 580.

Whether seal-coating of an old pavement is an improvement for which assessments may be made is a question for a decision of the city council according to the language of the city charter defining street improvements. OAG Sept. 30, 1949 (396-C-2).

A contract between a city organized under Laws of 1870, Chapter 31, for a public hospital employing a contractor to supervise the obtaining of equipment and material and employing labor and furnishing his own services, is disapproved as permitting the contractor to exercise the discretion placed by law in the hands of the city council. OAG Nov. 8, 1948 (1001-A).

### 410.04 HOME RULE CHARTERS; PATROL LIMITS

HISTORY. M Const art 4 s 36; 1899 c 351 s 1, 2; 1903 c 238 s 1, 5; RL 1905 s 748; 1907 c 375 s 1; MS 1927 s 1268.

Constitutional debt limitations applying to municipal corporations. What constitutes a debt. 34 MLR 360.

Under chapter 4, section 9, of the Minneapolis city charter, which provides that before any ordinance shall be in force it shall be published in the official paper of the city, a zoning ordinance, together with the map to which reference is made therein, was required to be published before it became effective. *Barber v City of Minneapolis*, 227 M 77, 34 NW(2d) 710.

Undisputed evidence that defendant, the owner of certain property, purchased plumbing material and employed labor for its installation; that he otherwise had charge of the work but failed to obtain the necessary permit for the work as required by municipal ordinance; that he caused the drain, waste and vent system thus installed to be walled in before inspection tests had been made and the approval of the municipal plumbing inspector obtained, the evidence was sufficient to sustain the defendant's conviction for violation of a city ordinance. *State v Friedman*, 230 M 167, 40 NW(2d) 912.

The control of streets and sidewalks by a municipality is not limited to the surface, but includes the space above and beneath the surface; and the common council of the city of Minneapolis may prohibit the maintenance of existing signs projecting over the sidewalks, and an ordinance of said city which requires the removal of such signs from a part of Nicollet avenue is not violative of any constitutional provisions. *Gustafson v City of Minneapolis*, 231 M 271, 42 NW(2d) 809.

The negligent driving by thieves while fleeing in defendant's automobile, in which he had left his key in violation of the Minneapolis traffic ordinance, was an intervening efficient cause breaking the chain of causation between defendant's act in leaving his key in the ignition switch and the collision with the decedent's automobile. *Anderson v Theisen*, 231 M 369, 43 NW(2d) 273.

Where the city civil service commission of the city of Minneapolis consolidated the classification of tractor operators with that of construction equipment operators,

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which in effect discontinued the policy of supplying supplementary or emergency tractor operators from the regular truck drivers list, by being detailed as supplementary or emergency tractor operators in seasonable work under procedure or working arrangement established, did not acquire a civil service status as supplementary tractor operators and their assignment to tractor work was an assignment to detail that could be terminated at any time. *State ex rel v Mangni*, 231 M 457, 42 NW(2d) 529.

The phrase "the majority of owners of the property on the line of such streets" as used in section 129 of the St. Paul city charter, refers to a majority of individual owners and not to majority of estates or tracts, or to a major part of the property fronting on the line of the street. *Beck v Council of the City of St. Paul*, 235 M 56, 50 NW(2d) 81.

Where the city charter provides for the election of a municipal judge and there are no nominations by petition or otherwise, a blank space should be left upon the ballot where a voter may express his choice for municipal judge either by writing in the name of the candidate preferred by him, or by attaching a sticker. OAG Oct. 17, 1950 (28-B-3).

The office of alderman in the city of Minneapolis is a public one. A public office is a public trust. Such offices are created for the benefit of the public, not for the benefit of the incumbent. The office is not the property of the incumbent. He has no vested right or interest in it. There is no constitutional or legal restriction on the right of electors of the city to reduce the size of the council. If three-fifths of the qualified voters voting at the election for the amendment of the charter vote at the election in favor of an amendment to the charter, the amendment is legal. Under the terms of the amendment each ward on the second Monday in June, 1953, may elect one alderman from each ward instead of two, as heretofore. OAG July 11, 1951 (58-C).

Under the Rochester city charter the mayor may maintain an action of mandamus against any delinquent city officer. The city attorney must represent the mayor in such action. OAG Jan. 28, 1949 (59-A-5).

The corporation counsel of the city of St. Paul is the legal adviser for the board of education except when the interests of the city and the school board are in conflict. In such case the school board may employ special counsel, whose compensation shall be determined and paid by the board. OAG May 31, 1951 (59-A-5).

The charter of the city of Granite Falls authorizes bonded indebtedness to raise money for improvements of a lasting character. It may issue bonds to finance flood control protection of the city if the improvement is of lasting character, as it appears to be. It is a question of fact. OAG June 16, 1952 (59-A-7).

Under the charter of the city of Faribault, if the cost of a project exceeds \$250, the project must be let on advertisement for bids. OAG July 18, 1950 (59-A-15).

Under the charter of the city of Chisholm, the cost of a special election cannot be paid out of the permanent improvement and replacement fund. OAG May 20, 1952 (59-A-22).

The city council of Chaska has authority to expend public funds to secure an engineering survey and report on the probable cost of a system of dikes to restrain an overflow of flood waters of the Minnesota river and to engage upon the erection of such system if it is deemed advisable and necessary for the protection of the life and property of the inhabitants of Chaska. OAG June 20, 1952 (59-A-22).

In construing a zoning ordinance relating to fire limits it is a question of fact whether a building of sheet metal construction is the equivalent of stone, brick, hollow building tile or concrete. There is no provision for appeal from the decision of the building inspector to the city council. OAG Nov. 8, 1948 (59-A-32).

The city of Fergus Falls, under section 74 of its charter, may not purchase any property the value of which is in excess of \$3,000 without submitting the question to the voters for their approval. OAG May 12, 1950 (59-A-38).

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If the city of New Ulm is in need of a power-operating shovel, it may rent the machine and the monthly payments thereon may be applied on the purchase price thereof. OAG July 12, 1950 (59-A-38).

Where a city owns property no longer needed for public purposes and desires to sell such property, in making the sale proceedings must be in accordance with the terms of the city charter, and where the charter requires that if the value of the property is greater than \$300 there must be an advertisement for proposals for the purpose, such charter requirement must be fully complied with and the lots should be advertised for sale separately. The council cannot establish values on individual lots, pass a resolution thereon and proceed to sell each lot in accordance with the resolution. The provisions of the charter must be complied with. OAG Oct. 26, 1948 (59-A-40).

A provision in the charter of the city of Gilbert requires that the approval of the voters must be obtained authorizing the sale of a tract of unplatted land even though sold in separate parcels. OAG May 11, 1949 (59-A-40).

Where a city operating under a home rule charter owns 320 acres of land which it is not using for governmental purposes, it may lease the land, making the best arrangement possible to the financial advantage of the city. If this land is not presently used for governmental purposes, it is liable for payment of taxes. OAG June 28, 1950 (59-A-40).

Verified claims need not be filed for wages or salaries of regulation employees of a city except for the wages of day-labor employed pursuant to an emergency provision of the city charter. OAG April 7, 1949 (59-A-41).

Verified claims need not be filed for salaries the amount of which has been fixed by the council pursuant to the city charter; but verified claims should be filed for insurance premiums. OAG March 7, 1949 (59-A-41).

Under charter provisions city employees may be granted sick leave, but those not using the sick leave benefits may not receive compensation in lieu thereof. OAG Sept. 26, 1950 (59-A-41).

Under the charter of the city of Hopkins warrants may be issued in anticipation of taxes to be collected when terms of the charter are observed. OAG March 12, 1949 (59-A-49).

Under the charter of the city of Worthington, warrants may be signed by a rubber stamp facsimile of the mayor's signature and the warrant is valid when the stamp is affixed by the mayor's authority. OAG April 27, 1949 (59-A-49).

Where a city enters into a contract in good faith, but the contract is invalid because the requirements of the law with respect to competitive bidding are not met, after the award has been made by the council but before the formal contract is entered into, the city may be restrained from the going forward with the contract; but if the city has accepted the parking meters and benefited thereby, the meters must be paid for whether under the contract or by quantum meritu, and the moneys once paid to the contracting company cannot be recovered by the city. OAG Sept. 29, 1950 (59-A-53).

Surplus revenue from parking meters may be expended to improve the streets of the city of Owatonna as proposed and when authorized by ordinance. OAG June 10, 1952 (59-A-53).

Under the Owatonna city charter the mayor is not ex officio a member of a city board unless a statute or an ordinance establishing the board specifically so provides. OAG April 10, 1952 (61).

The council of a city operating under a home rule charter cannot delegate its legislative duties to a board, but it may delegate to a board the right to adopt rules relating to the exercise of the ministerial duties of the board. OAG June 21, 1950 (62).

Under the charter of the city of Austin real estate brokers may be licensed. Ordinances controlling the licensing of brokers should be reasonable and should define a real estate broker. OAG Nov. 17, 1948 (62-C).

# MINNESOTA STATUTES 1953 ANNOTATIONS

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## CITIES, VILLAGES; CLASSIFICATION, CHARTERS 410.04

The city council by adopting a proper resolution may increase, decrease, or change the membership of any committee. Committeemen serve without term. Their term is indefinite. The city council may regulate its proceedings in any manner not in conflict with the charter, statutes, or ordinances. OAG Nov. 5, 1948 (63-A-1).

Under the charter of the city of Litchfield the mayor has the right to vote in the event of a tie vote of the council. Vetoes ordinances should be reconsidered by the council at its first meeting but the matter of overriding the veto may be adjourned to a definite, reasonable time. OAG March 3, 1949 (63-A-4).

Employees of a newspaper corporation, having no financial interest in the paper and receiving no gain or advantages in the newspaper contract, may hold office as a councilman and as a member of the public utilities committee in New Ulm, a home rule charter city. OAG June 16, 1952 (90-E).

An officer of the city of Ely may not contract with the city for insurance except as authorized by its charter. OAG May 28, 1952 (90-E-3).

The classification system of the Civil Service Act relating to Ramsey county deals with positions, and not with persons. A salary plan in conformity with the statute likewise deals with positions, and not with persons. The plan proposed for employees of the county engaged in the building and mechanical trades singles out certain positions within a grade for the purpose of a salary increase and violates section 4(d) of the Act, which requires equal pay for equal work for each class of position. OAG Feb. 14, 1949 (120).

Under the city charter of the city of Austin, the city treasurer is absolutely liable for any loss of city funds and may designate the depository. Under the statute depositories are designated by the city council and where two depositories are designated and qualify, the city council cannot compel the treasurer to deposit any particular amount in either depository. OAG Dec. 8, 1948 (140-B-6).

In a city having a home rule charter, under charter provisions a special election on a proposed ordinance may be held at the time the general election is held. OAG Oct. 13, 1950 (185-B-2).

Under the charter of the city of Austin the granting of a beer license is by resolution of the city council which must be submitted to the mayor and his approval and he has a right to veto the same. OAG Jan. 13, 1950 (217-B-1).

The charter of the city of Austin does not permit the city to levy an occupation tax on off sale retail dealers in liquor. OAG Feb. 4, 1949 (218-K).

A charter provision fixing a maximum rate on official city printing and publications at less than the full legal rate prescribed by section 331.08 is valid and binding upon the city council in awarding the contract. Section 331.08 fixing the maximum fee does not prohibit publishers from charging a lesser fee. OAG March 19, 1949 (277-A-11).

The income or appropriation of the library board for use in operating a public library and the appropriation to the library board to be used for recreational activity constitute separate and distinct funds and each fund must be directed to the end intended by its appropriation. The library board must keep the funds separate and it cannot pay any other recreational expense out of funds intended for the use of the library. OAG March 9, 1950 (285-A).

The municipal court of the city of Winona, organized under Special Laws 1885, Chapter 115, is without power in criminal cases to compel the attendance of witnesses outside the county but within the state. OAG June 20, 1952 (306-B).

Under its charter the city of Wabasha may designate as its official newspaper one not published in the city. The only requirement is that the newspaper be one of general circulation in the city. OAG May 15, 1950 (314-B-2).

A private property owner or occupant having plumbing work done on his premises is a "person installing work" within the meaning of the city ordinance of the city of Owatonna relating to plumbing work. OAG April 20, 1949 (338).



# MINNESOTA STATUTES 1953 ANNOTATIONS

## 410.04 CITIES, VILLAGES; CLASSIFICATION, CHARTERS

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The city of St. Peter under authority conferred by Special Laws 1891, Chapter 5, may employ a qualified accountant to audit the city books and said accountant need not be a certified public accountant. OAG April 22, 1949 (353-A-3).

The chief of police of Wayzata is subordinate to the city manager. The city manager is subordinate to the city council, of which the mayor is a member. Considerations of public policy forbid the appointment of the mayor of Wayzata to the position of chief of police even though he served without salary. OAG Feb. 16, 1949 (358-E-1).

A city may install a sewer to be paid for partly by assessment against abutting property and partly out of the general revenue fund but even though the city intends to annex property outside by adjoining the city and extending the sewer through such annexed property, it has no power to assess property outside the city limits and may not postpone the assessment until the property is annexed. OAG Nov. 29, 1949 (387-B-1).

Under the city charter payment of the cost of sewer extension may be paid partly from assessments and partly from the general fund. Part of the cost may be paid from sale of certificates of indebtedness to cover the expense of building through private property or through a railroad right-of-way or when passing public parks and the like. OAG Dec. 5, 1949 (387-B-1).

Sewer may be paid for out of general fund or public utility fund by four-fifths vote of council members; ordinance requiring a petition for assessment of benefits may be amended by four-fifths vote of council members; charter can be amended so as to provide that sewer may be laid and benefits assessed without petition of abutting property owners. OAG Oct. 3, 1950 (387-B-3).

Where property that has not been assessed for benefits upon the construction of a water and sewer project, it may be connected with the water main or the sewer upon the payment by the property owner of a connection charge of a uniform amount based upon a lineal running foot. OAG June 28, 1950 (387-B-6) (624-D-3).

The city may refuse to accept more than two million gallons daily discharge from the Hormel factory into the city sewage system and may decline to accept any more or it may accept two million gallons daily under its contract and make an additional charge for gallonage over and above the two million daily stated in the contract. OAG Dec. 19, 1949 (387-B-9).

Under the charter of the city of International Falls the council may grade a street and pay the expenses thereof out of the general revenue fund. OAG Sept. 18, 1950 (396-C-5).

A city charter must in all things be consistent with and subject to the laws of the state, and where the city of Rochester provides a certain date for meeting of the board of review in tax cases, the charter provisions must yield to the provisions of section 273.071 which provides that the supervisor of assessments or county assessor has the power to fix such date. OAG June 28, 1950 (406-C).

The federal government built 18 housing units in a city of the third class operating under a home rule charter and appointed the city recorder as agent to manage the property and collect the rents and paid him \$1,000 a year. When the property transferred to the city, the city recorder might continue to do the work but under the charter of the city he would not be permitted to draw any salary. If the city council so determines it may appoint another officer to care for the property, collect the rent, and fix his compensation. OAG Dec. 7, 1949 (430).

The International Falls home rule charter requires that the cost of replacing sidewalk be assessed against property benefited. OAG June 30, 1952 (480-A).

The city of Ely may levy a tax under Laws 1949, Chapter 215, but may not exceed the per capita tax limitation nor a limit of 40 mills on the assessed valuation. OAG Sept. 27, 1949 (519-C).

Under the charter of the city of Redwood Falls the council may not levy a tax for a permanent improvement fund which, when added to the taxes levied for other

# MINNESOTA STATUTES 1953 ANNOTATIONS

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## CITIES, VILLAGES; CLASSIFICATION, CHARTERS 410.04

general or municipal purposes, will exceed 40 mills on the dollar of the assessed valuation. OAG Sept. 24, 1951 (519-C).

The Hastings special school district organized under Laws 1866, Chapter 29, may purchase and sell school sites without a vote of the people. OAG Jan. 24, 1949 (622-I-7).

A utility board is an independent body free from control by the city council and the council should not take part by appointing one of its members to the utility board. OAG Dec. 23, 1948 (624-A-3).

Appointments to the utilities commission should be made by the city council. The powers of the commission may be modified by an amendment, if the amendment is adopted in the manner prescribed by the state constitution. OAG Feb. 2, 1949 (624-A-3).

The provisions of the city charter of Rochester, providing for the establishment of a public utility board, appointment of members, and prescribing duties and powers, prevail and supersede the provisions of sections 442.03 to 442.25 relating to boards of municipal works in cities of the second class. OAG April 14, 1949 (624-A-3).

Under the city charter, all obligations authorized to be incurred by the water and light commission may be approved and paid by the commission without presentation to the council for audit and approval. OAG March 18, 1949 (624-A-6).

Under its charter the city of Wayzata must keep a separate account for each utility. An unencumbered balance in one utility fund may be transferred to another utility fund in the manner and by the vote prescribed in its charter. OAG Aug. 2, 1950 (624-A-6).

Under the charter of the city of Willmar six votes are required for a valid appointment to the board of water and light department of that city. OAG Sept. 29, 1950 (624-C-1).

Under the provisions of the charter of Fergus Falls the purchase of electricity or electric energy by the city at wholesale to be re-sold to the inhabitants of the city, where such contract involves an expenditure in excess of \$3,000, the matter must be submitted to the electors for their approval before the contract may be entered into. OAG May 3, 1950 (624-C-2).

The city of Litchfield, operating as a fourth class city under a home rule charter and owning two electric utility rural lines, may not sell them to the local R.E.A. without an election. In the instant case, the covenant in the resolution authorizing the issuance of revenue certificates which are now outstanding would not prevent the sale of the rural lines provided the charter and statutory requirements are complied with. OAG Oct. 28, 1948 (624-C-10).

Under the provisions of the charter of the city of Faribault it is within the discretion of the council to extend the water main to a school without an assessment of the property benefited; it may accept prepayment of water bills from the water customer; and if the agreement is made to furnish water and to accept prepayment of water bills, the water user is not entitled to a refund upon discontinuing the water services where the city stands ready and willing to furnish the water agreed upon. OAG June 5, 1950 (624-D-3).

A home rule charter may contain a provision for a board of water and light commissioners and provide for the qualifications of its members. OAG Nov. 13, 1950 (624-E-2).

Section 455.29 provides that a municipality shall have power to sell electricity to customers outside of such municipality after a favorable vote of two-thirds of the governing body and a favorable vote of the majority of the electors and as to whether or not the electric light lines may be extended beyond the city limits depends upon the wording of the city charter. OAG Dec. 29, 1949 (642-C-12).

Where a city charter requires a bid to be accompanied by cash or certified check, the deposit of a bond is not compliance therewith. OAG Sept. 20, 1949 (707-A-3).

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 410.05 CITIES, VILLAGES; CLASSIFICATION, CHARTERS

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Under the provisions of its charter the city of Rochester may not accept a higher bid in order to obtain a certain type of equipment. OAG March 14, 1950 (707-A-4).

Where a city is required by charter to advertise for bids for equipment except in case of emergency the fact that the water department is self-sustaining makes no difference. Where services are required of a highly technical nature such condition may be considered an emergency and may be excepted from the rule requiring the advertisement for bids. OAG Aug. 9, 1950 (707-A-4).

There is no statutory or charter provision requiring the city of Owatonna, or its hospital board, to advertise for bids for the purchase of billing machines for the municipal hospital. OAG May 21, 1952 (707-A-4).

Under the Red Wing charter, payment to be made for an earned vacation on the retirement of an employee must be authorized in advance and as a part of his salary basis. If there is no such arrangement between the city and its employees, the payment for a service that has not been rendered would be a gratuity and illegal. OAG Sept. 18, 1951 (785-D).

The provisions of a city charter stating "No officer's salary shall be increased or diminished during his term of office" does not apply to a supervisor of nurses who is not required to take an oath of office or has no definite term. The provision in the charter does not prevent the increase of the nurse's salary during the fiscal year. OAG Oct. 31, 1950 (905-A).

## 410.05 BOARD OF FREEHOLDERS

HISTORY. Amended, 1949 c 210 s 1.

Upon evidence that certain improvements were of a value in excess of \$50 based upon inadequate information is insufficient to support the trial court's finding of defendant's violation of the Minneapolis city charter and ordinances which require permits from the city building inspector for improvements costing in excess of \$50; and the state's assertion, made here for the first time, that the stairway erected by the defendant without a permit constituted a structural change requiring a permit regardless of the cost thereof is a new theory of the case and cannot be considered as a basis for affirmance by the appellate court. *State v Gustavson*, 234 M 124, 47 NW(2d) 552.

The members of a charter commission should be freeholders. A member of the state legislature should not be a member of a charter commission. OAG Sept. 29, 1947 (58-G).

A change in a city charter cannot be made by a referendum to the voters except as provided in section 410.12. If the terms of office of the members of a charter commission have expired, a new charter commission should be appointed by the district judges. This new charter commission may initiate proceedings for an amendment to the city charter. OAG Sept. 7, 1950 (58-G).

Mayor or members of the city council may be appointed to and may become members of the charter commission pursuant to Laws 1949, Chapter 210. OAG Nov. 3, 1949 (358-E-1).

## 410.06 COMPENSATION; EXPENSES

The charter commission is authorized to direct the municipality to pay a reasonable amount of compensation as determined by such commission for services of attorney and stenographer in framing amendment or revision of the home rule charter. OAG Oct. 10, 1952 (58-J).

## 410.07 FRAMING CHARTER

The legislature has express power under the constitution to enact general laws which are paramount home rule charters. *Ramaley v City of St. Paul*, 226 M 406, 33 NW(2d) 19.

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## CITIES, VILLAGES; CLASSIFICATION, CHARTERS 410.07

A municipality though operating under a home rule charter is merely a department of the state, a political subdivision created as a convenient agency for the exercise of such governmental powers as may be entrusted to it; and pursuant to Minnesota Constitution, Article IV, Section 36, the legislature may, by the enactment of general laws, modify or withdraw any powers entrusted to a city with a home rule charter. *Minneapolis Street Ry. v City of Minneapolis*, 229 M 502, 40 NW(2d) 353.

Amendments to a city charter should be proposed by a charter commission having its full complement of 15 members, or by a majority of the commission having a full complement of 15 members. OAG Sept. 28, 1950 (58-G).

Where a city charter requires the publication of claims allowed against the city by showing the name of the claimant, the amount of the claim, and its general nature, a detailed statement need not be published. OAG May 8, 1947 (59-A-12).

Hopkins, a city of fourth class, operating under a home rule charter, may not cover its officers and employees under a blanket fiduciary bond. OAG Dec. 14, 1953 (45-A).

Where a law enacted by the legislature and a provision of a city charter are in conflict the law prevails. OAG April 2, 1948 (58-C).

The office of a member of the school board and a member of the park board are incompatible. OAG April 8, 1948 (58-C).

Sections of a proposed charter amendment relating to a change in the boundary of the city of Rochester are permissible do not contravene sections 410.07 and 410.08, or other statutory or constitutional provisions. OAG Sept. 18, 1953 (58-C).

Laws 1953, Chapter 398, provides an alternative procedure for making local improvements and levying special assessments supplementary to that provided by home rule charters, unless by a charter amendment adopted since the enactment of chapter 398, one method or the other is made exclusive. OAG Dec. 10, 1953 (58-C).

Where litigation arose over an ordinance passed over the mayor's veto and relating to the grading of certain streets and assessment and levy therefor, the city attorney must represent the city rather than the mayor. OAG Sept. 5, 1947 (59-A-5).

On the question whether a city should issue \$50,000 worth of bonds to improve its airport, expand it, and buy land, the city was required to obtain only a majority of those actually voting on the question. OAG Feb. 15, 1950 (59-A-7).

Charter provisions relating to competitive bidding apply to contracts for the installation of parking meters where the cost exceeds \$500 even though the proposed plan contemplated that one-half the proceeds from the parking meters during the trial period was to be applied on the list price. OAG Aug. 15, 1947 (59-A-15).

The council of a charter city may use general revenue funds to pay damages incurred in taking lands for a public street. OAG July 12, 1948 (59-A-22).

Funds created by ordinance for erection of a city hall cannot be used for construction of a fire hall. OAG July 23, 1948 (59-A-22).

Where the charter of the city of Mankato required payment for the construction of a dike along the river to be made out of the permanent improvement fund, the city had no right to assess abutting properties. OAG Jan. 18, 1952 (59-A-22).

The city of Austin may re-zone property if the provisions of the ordinance are complied with. OAG Jan. 29, 1952 (59-A-32).

Provisions in a new charter providing for the placing of the management of the electric light and power plant in the hands of an officer other than the water, light, power and building commission would be valid. OAG Sept. 15, 1947 (59-A-36).

Real estate conveyed to a city for park purposes cannot be sold by the city. OAG June 6, 1947 (59-A-40).

In view of the charter provisions of the city of New Prague, that city may sell any property of the city when deemed for the interest of the city or its inhabitants.

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 410.07 CITIES, VILLAGES; CLASSIFICATION, CHARTERS

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The city has the right to sell a hospital and the land on which it is situated, if the council deems it for the interest of the city and its inhabitants. OAG Oct. 19, 1951 (59-A-40).

Where a city charter confers on the city council the power to prescribe conditions of employment of city employees, the council may by ordinance make reasonable provisions for sick leave; such provisions to be effective prospectively. OAG Sept. 11, 1947 (59-A-41).

A city may close drive-ins where they are not necessary for access to abutting property. OAG Sept. 22, 1947 (59-A-53).

Under Special Laws 1887, Chapter 5, the common council of the city of Winona may install parking meters without a vote of the electorate. OAG July 18, 1949 (59-A-53).

Where the Redwood Falls city charter authorizes the creation of a fund for general activities of the city, a surplus in the parking meter fund may be transferred to that general fund. OAG July 11, 1950 (59-A-53).

If the city charter permits, part of a public building not required for public use or when not interfering with the public use thereof, may be rented on the best terms obtainable. OAG July 18, 1952 (59-B-10).

A municipality has the right to regulate the keeping of animals, birds, or bees, within its corporate limits but that right to regulate does not include the right to prohibit. An ordinance prohibiting maintenance of animals, birds or bees within the village limits would be invalid. OAG Nov. 5, 1951 (62-B).

Where the city council is authorized by the charter to pass ordinances in protection of the public health, comfort and safety, it has authority to require license of a building contractor. OAG May 22, 1947 (62-E).

Under the city charter of the city of Minneapolis there is no deputy to the city attorney or confidential appointee. When an appointment of a first assistant is to be made, the city attorney must certify the existence of the vacancy to the civil service commission. It is their duty to certify "the name standing highest on the appropriate list." Generally statutes take precedence and control over charter provisions. The provisions of sections 197.45 and 197.46 control and create in a veteran applicant for the position, a veteran's right and preference. OAG Feb. 3, 1948 (85-A) (120).

The city council has power under its city charter to adopt an ordinance to restrain the running at large of dogs. OAG Jan. 30, 1952 (146).

The Minneapolis school board and the teachers employed are subject to the city charter provisions. OAG April 6, 1948 (174-B).

Unencumbered balances in a city general revenue fund, water bond fund, and water operation's fund, may be borrowed and credited to the liquor dispensary fund, and reimbursement may be made out of the first moneys coming into the dispensary fund. OAG June 26, 1947 (218-R); July 10, 1947 (218-R).

An ambulance owned by a city of the fourth class, operating under a home rule charter, may be used for the transportation and care of an indigent person, and in certain emergency cases, but may not be used for general ambulance service. OAG Dec. 14, 1953 (225-A).

The city council determines the conditions of employment and the hours of labor of all city employees. OAG July 28, 1948 (270-D).

It is for the city council to determine whether or not a municipal office keep open on Saturday. In exercising its discretion the council must see that municipal offices are open at all reasonable times for the discharge of public business. OAG July 28, 1948 (270-D).

The authority of the city to contract must be found in its charter or in the general laws of the state. OAG July 18, 1952 (270-D).

# MINNESOTA STATUTES 1953 ANNOTATIONS

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## CITIES, VILLAGES; CLASSIFICATIONS, CHARTERS 410.07

The charter may authorize more than one official newspaper. OAG Oct. 9, 1948 (277-A-10).

Where a city operating under a home rule charter constructed a combined armory and municipal building, it may insure the city's interest in the building but cannot insure the interest of the state as represented by the armory. OAG April 5, 1948 (310-B-6).

A home rule charter city may employ a qualified person as an auditor who is not an employee of the public examiner's office or a certified public accountant. OAG Sept. 14, 1948 (353-A-3).

The mayor and members of the city council may accept membership in the paid city fire department provided they serve without compensation. OAG May 16, 1947 (358-E-4).

A city of third class having a home rule charter containing express provisions on making local improvements was not controlled by the general statutory provisions relating to local improvements. OAG Feb. 13, 1952 (387-B-10).

Where a city charter is adopted containing a general fund provision that it shall have all powers possessed prior to the adoption of the charter subject to the restrictions in the charter, powers not inconsistent with the charter are continued. OAG June 16, 1947 (396-C-10).

When a city paves a street, and it becomes necessary to remove old curbing and install new, installation of such curbing is incidental to the paving project and assessment can properly include the cost of new curbing. OAG Feb. 1, 1952 (396-C-10).

Municipalities may not spend public funds in lobbying to induce favors for their area. OAG April 17, 1947 (476-A-2).

Where the city charter authorizes the council to regulate by ordinance "trade and commerce" second-hand automobile dealers may be licensed even if dealers in new class are not. OAG Aug. 22, 1947 (477-B-17).

The city of Ortonville may purchase insurance in either nonassessable or assessable mutual companies if the amount of the contingent liability is within the debt limits. OAG Feb. 1, 1951 (487-C-1).

The fact that at time of enactment, Laws 1947, Chapter 368, applied only to the city of South St. Paul does not render the act unconstitutional. OAG June 13, 1947 (519-E).

The city of Faribault by ordinance may provide for the sale of lost or abandoned automobiles found on its streets. The officer may deliver a certificate of sale to a purchaser who could then present the certificate and obtain registration. OAG July 31, 1950 (622-E-29).

Under its charter the city of Wayzata must keep a separate account for each utility. An unencumbered balance in one utility fund may be transferred to another utility fund in the manner prescribed by the charter. OAG Aug. 2, 1950 (624-A-6).

The city of Litchfield operates under a home rule charter and established a public utility commission having exclusive power over the light, steam, and water system of the city. If new water mains are to be installed and the cost assessed to abutting property owners, the city and not the public utility commission makes the assessment therefor; and if the land required cannot be obtained at a reasonable price, the power to institute condemnation proceedings is vested in the city and not in the commission. OAG Aug. 3, 1949 (649-A-3).

The Minneapolis city charter includes among the city's powers and duties the right to control the streets and buildings upon or within the University Campus, and this includes enforcement of the traffic laws and all protection from fire and fire hazards. OAG March 5, 1948 (688-K).

Where the city charter requires a check or cash for five percent of the amount bid, that requirement must be complied with. OAG July 14, 1949 (707-A-3).

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 410.08 CITIES, VILLAGES; CLASSIFICATION, CHARTERS

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On the purchase and installation of new filters for a filtering plant the city of Redwood Falls was required to call for bids. OAG Jan. 9, 1952 (707-A-4).

The city of Austin may not employ its own crew on public improvement work. OAG Jan. 25, 1952 (707-D-1).

A city authorized by its charter to own and operate utilities may condemn realty and, in conjunction with the federal government, may establish a harbor for small boats. OAG Sept. 9, 1947 (817-M).

Where the city charter authorized condemnation of private property for public use, proceedings might be instituted under the provisions of M.S.A., Chapter 117, to condemn a seldom-used spur track for free parking purposes. OAG July 25, 1947 (871-F).

**410.08** Repealed, 1953 c 278 s 1.

## 410.09 REGULATION OF FRANCHISES

The expense of installation of a lift in a sewer system in Barnesville should be assessed against benefited property as prescribed in the charter. OAG Dec. 27, 1947 (387-B-1).

Where a city charter provided that every franchise should contain conditions set forth in the charter and every franchise should be deemed to include those conditions whether actually stated in the franchise or not, a proposed ordinance granting a natural gas company the right to sell and distribute gas for heat, illuminating and other purposes in the city, and providing that the entire provisions of the chapter of a city charter dealing with franchises should apply and be deemed included in the franchise, the charter conditions formed a part of the franchise granted by the ordinance whether specifically stated therein or not. OAG Feb. 23, 1951 (624-B-1).

Under the charter of the city of Benson and on the question of granting a non-exclusive natural gas distribution franchise, the question of granting the franchise must be submitted to the vote of the electorate. The franchise itself is not required to be submitted. OAG Sept. 23, 1952 (624-B-1).

The purchase of fire fighting equipment by a city of the fourth class, operating under a home rule charter, where the cost is over \$500, must be by advertisement for bids. OAG July 24, 1951 (688-C-1).

The charter commission appointed by the district court to draft a city charter is a permanent body. A superseding body as such cannot be appointed. The membership of the commission may change by the appointment of new members but the organization, as such, remains from its inception. The adoption of a charter amendment may be at either a general or special election. The constitutional provision regarding amendment to charters is not self-executing. It requires legislative machinery for carrying its provisions into effect. Provisions relating to the adoption of a new charter and those relating to an amendment differ. Provisions are amendatory. In this case it is the duty of the council of St. James to call a special election to vote on the proposed amendment within 90 days of the delivery of the proposed amendment since there is to be no general election within six months after delivery of the proposed amendment to the council. OAG April 2, 1948 (58-C).

The city council need not submit a proposed charter amendment of doubtful validity until ordered to do so by the court. OAG May 11, 1948 (58-C).

If there appears to the city council to be no good reason why it should, before a judicial decision on the question involved, incur expense incident to a city-wide election where the constitutionality of the proposed amendment is doubtful, the council may in its discretion refuse to submit the question until ordered to do so by the court. Should the question of an amendment to the city charter be proposed it must be accepted by three-fifths of the qualified voters voting at the next general election. The primary election is not the general election. OAG May 11, 1948 (58-C) (531).

The provisions of 410.10 apply to the submission of charter amendments as well as to the original charter. When proposed amendments have been delivered to the

# MINNESOTA STATUTES 1953 ANNOTATIONS

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## CITIES, VILLAGES; CLASSIFICATION, CHARTERS 410.11

mayor of the city it is the duty of the city council to submit the proposed amendment to the electorate, and this is a continuing duty until performed. OAG Aug. 25, 1948 (58-C).

The statute is mandatory and declares that upon the delivery of the draft of the charter, the council, or other governing body, of the city, shall cause the proposed charter to be submitted. The proposed amendments shall be submitted as in the case of the original charter. The council, or other governing body, of the city, has no supervisory or veto powers over the proposed amendments. OAG Sept. 22, 1951 (58-C).

A proposed amendment to the home rule charter which has been once submitted to the voters and rejected may be subsequently submitted in conformity with the limitations contained in the constitutional provision as prescribed in article IV, section 36, as construed in *Leighton v Abel*, 225 M 565. OAG Sept. 14, 1953 (58-C).

A special election for a new or amended charter may be held on the same day as the state primary election. OAG April 16, 1948 (58-I).

If the governing body fails to call an election for amendment of the city charter under the provisions of section 410.10, mandamus will lie. OAG April 16, 1948 (58-I).

A special election on a charter amendment may be called even though a general election is to be held within six months after the delivery of the draft of the amendment to the city council. OAG Oct. 3, 1951 (58-I).

Under its charter the city of Virginia may establish a building line, punish violations of a building line ordinance, and enforce obedience to the ordinance by injunction. OAG Jan. 19, 1949 (59-A-9).

In view of the ordinance of the village of Hibbing relating to the use of funds it is doubtful if parking meter funds can be used to widen streets. OAG Sept. 15, 1953 (59-A-53).

In the absence of a charter requirement there is no obligation on the city council to have its proceedings published. The matter is entirely within the discretion of the council. OAG April 16, 1948 (277-B-1).

The provision of the Northfield city charter requires publication in the official paper of the proposed improvements and because of the entire failure to give such published notice the city council lacked jurisdiction or authority to make the improvements and to levy a special assessment therefor. OAG Sept. 15, 1953 (396-C-2).

In the city of International Falls, a city of the fourth class, operating under a home rule charter, the cost of repairing or reconstructing sidewalks must be assessed against abutting property in the manner provided for in the city charter. The cost cannot be paid out of the general revenue fund. OAG Oct. 3, 1951 (480-G).

Under the home rule charter of the city of Breckenridge the cost of the installation of a white way, there being ample funds in the water and light fund, the cost may be paid therefrom. OAG Sept. 29, 1953 (624-C-15).

Cities possess only the power of taxation granted to them by the constitution, by the statutes, or by the charter. Where the city charter states "the common council shall have power annually to levy taxes on all taxable property in the city as follows" the right of the city to tax is limited to an ad valorem tax on real or personal property. OAG Nov. 4, 1947 (519-C).

The police civil service commission has no authority to expend or appropriate moneys for the operation of the police department. OAG Feb. 28, 1950 (785-E-1).

### 410.11 HOW ADOPTED; JUDICIAL NOTICE

One duplicate certificate with complete text of an amendment to a home rule charter should be filed with the secretary of state and one copy recorded with the register of deeds and thereafter deposited among the archives of the municipality. OAG Oct. 21, 1952 (58-C).



# MINNESOTA STATUTES 1953 ANNOTATIONS

## 410.12 CITIES, VILLAGES; CLASSIFICATION, CHARTERS

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### 410.12 AMENDMENTS

**HISTORY.** 1899 c 351 s 11; 1903 c 238 s 6; RL 1905 s 756; 1907 c 199 s 1; 1911 c 343 s 1; MS 1827 s 1286; 1939 c 292; 1943 c 227 s 1; 1949 c 122 s 1.

The provisions of section 410.12 relating to the submission of amendments to a home rule charter are mandatory. OAG April 2, 1948 (58-C).

The provisions of section 410.12 apply to the submission of charter amendments as well as to the original charter. When proposed amendments have been delivered to the mayor of the city the city council must submit the proposed amendment to the electorate, and this is a continuing duty until performed. OAG Aug. 25, 1948 (58-C).

Amendments to the Minneapolis city charter reducing the size of the council while aldermen elected under the prior provision were still in office was proper. OAG July 11, 1951 (58-C).

The statute is mandatory and declares that upon the delivery of the draft of the charter, the council, or other governing body, of the city, shall cause the proposed charter to be submitted. The proposed amendments shall be submitted as in the case of the original charter. The council, or other governing body, of the city, has no supervisory or veto powers over the proposed amendments. OAG Sept. 22, 1951 (58-C).

Charter amendments may be accomplished by a general amendment. It is unnecessary to amend each section.

The form should be similar to the following: "Shall the charter of the City of South St. Paul be amended by transferring to, vesting in and imposing upon the City Recorder all the powers and duties now vested in the City Treasurer and abolishing the office of City Treasurer?" OAG Nov. 15, 1951 (58-C).

This section is not applicable to an amendment of the home rule charter in the nature of a revision submitted under section 410.24. OAG Aug. 4, 1952 (58-C).

A change in the provisions of a city charter cannot be done by referendum to the voters except as provided in section 410.12. If the terms of office of the members of the charter commission have expired, a new charter commission should be appointed by the district judges who may initiate the proceedings for the amendment. OAG Sept. 7, 1950 (58-G).

Amendments to a city charter should be proposed by a charter commission having its full complement of 15 members, or by a majority of the commission having a full complement of 15 members. OAG Sept. 28, 1950 (58-G).

If the governing body fails to call an election for an amendment of the city charter under the provisions of section 410.10, mandamus will lie. OAG April 16, 1948 (58-I).

A special election for a new or an amended charter may be held on the day fixed for holding the state primary election. OAG April 16, 1948 (58-I).

An amendment to a city charter must receive a three-fifths majority of the aggregate vote cast at such election by voters voting on the amendment after excluding fraudulent, unintelligible, and blank ballots therefrom. OAG Sept. 7, 1948 (58-I).

Where the vote on the amendment to the city charter is held at the time of the general state election, a three-fifths vote is required only of those voting on the charter amendment. The election on amendments to the charter is in effect a special election. When more than one amendment is submitted, the three-fifths must be computed on each amendment based upon the highest vote for any amendment. OAG Nov. 13, 1950 (58-I).

A special election on a charter amendment may be called even though a general election is to be held within six months after the delivery of the draft of the amendment to the city council. OAG Oct. 3, 1951 (58-I).

# MINNESOTA STATUTES 1953 ANNOTATIONS

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## CITIES, VILLAGES; CLASSIFICATION, CHARTERS 410.18

Under Special Laws 1887, Chapter 25, the city of Chatfield and the town of Chatfield constituted one election district and one assessment district. A home rule charter adopted by the city of Chatfield on September 30, 1947, constituted a separation of the city from the town and the city and the town are now separate election and taxing districts. OAG Oct. 24, 1947 (58-L) (519-C).

Publication of proposed amendments to the charter of a city of fourth class operating under a home rule charter must conform to the amendment of the Constitution, Article IV, Section 36, proposed by Laws 1941, Chapter 55, and adopted November 3, 1942. OAG Aug. 3, 1948 (58-M).

The proposal to amend the city charter and the notice of election containing the proposed amendment should each be published four weeks. OAG June 14, 1949 (58-M).

When a city desires to amend its charter the Constitution requires a publication of the proposed amendment once each week for four successive weeks. Section 410.12 requires publication of a notice of election containing the complete amendment. Sections 205.63, 212.68, and 212.70 define the requirements for the election procedure. OAG Sept. 7, 1950 (58-M).

In the publication of proposed amendments to a city charter, Minnesota Constitution, Article IV, Section 6, requiring publication once each week for four successive weeks must be followed. OAG Aug. 13, 1948 (58-M).

Proposed charter amendments, under section 410.12, require four full weeks of published notice. OAG Nov. 8, 1951 (58-M).

In the absence of a charter requirement there is no obligation on the city council to cause its proceedings to be published. It is entirely within the discretion of the council. OAG April 16, 1948 (277-B-1).

Changes which the legislature may make in its housing act after 1919, do not become a part of the Minneapolis city charter. The repeal of the State Housing Act would not result in the deletion of the Housing Act from the Minneapolis city charter. OAG Oct. 28, 1947 (430).

### 410.15 SUCCESSION; SUBSISTING RIGHTS

Where village incorporators relying upon an incorrect official county map, inadvertently include in their petition land already incorporated in an adjoining city, such inclusion is illegal and void ab initio; and, although this mistake does not vitiate the entire incorporation proceeding, a writ of ouster must issue as to the area illegally included. State ex rel Northern Pump Co. v Village of Fridley, 233 M 442, 47 NW(2d) 204.

Upon the adoption of a new home rule charter under the provisions of Minnesota Constitution, Article IV, Section 6, existing agencies may be dissolved and their duties taken over by other agencies. The indebtedness of the city, or any department thereof, continues. The new charter may continue the stipulation that obligations of a utility are to be paid out of the earnings, or it may provide that said obligations become a general obligation of the city. OAG Sept. 15, 1947 (59-A-36).

The police civil service commission has no authority to expend or appropriate moneys for the operation of the police department. OAG Feb. 28, 1950 (785-E-1).

### 410.18 DISTRIBUTION OF ADMINISTRATIVE POWERS

Before a de facto officer may be deprived of the power to perform the duties of an office of which he has possession without being a usurper and through no fraud, he must be deprived of that power by quo warranto proceedings. The acts of a de facto officer are as valid as the acts of an officer de jure. Upon the death of the comptroller of the city of Minneapolis and the appointment by the city council of the deputy comptroller to perform the duties of the comptroller, he may serve upon the board of tax levy and sign bond issues. OAG Oct. 6, 1947 (59-A-29).

Subject to judicial review the charter provisions of the city of Montevideo relating to the power of eminent domain empowers the city to condemn lands de-

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 410.19 CITIES, VILLAGES; CLASSIFICATION, CHARTERS

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voted to a public use when public need and necessity exists therefor. OAG July 25, 1947 (817-F).

### 410.19 POWERS OF MAYOR AND COUNCIL

Where by law an incumbent of one office is ex officio the incumbent of another office, such incumbent occupies two separate and distinct offices. If the duties of the two official capacities are different in their general nature, and are separate and distinct, so that the incumbent while acting in one capacity is governed by one law, and while acting in the other is governed by a different and independent law; and one who the city council of Minneapolis appointed on the death of the city comptroller to the office of "assistant city comptroller," with all powers conferred by the city charter on the city comptroller, and who thereafter discharged duties of the office of city comptroller with public assent, was "de facto" city comptroller and entitled to serve as a member of the board of tax levy of Hennepin county. State ex rel v Brandt, 225 M 345, 31 NW(2d) 5.

Questions involving government must not be determined along technical lines but on the basis that practical and broad considerations should control. Statutes imposing taxes and providing means for collection of the same should be construed strictly insofar as they may operate to deprive the citizen of his property by summary proceedings or to impose penalties or forfeitures upon him; but otherwise tax laws ought to be given a reasonable construction without bias or prejudice against either the taxpayer or the state, in order to carry out the intention of the legislature and further the important public interests which such statutes subserve. State ex rel v Brandt, 225 M 345, 31 NW(2d) 5.

City property may be leased where the space is not presently needed for municipal purposes. The city must receive the most favorable rental obtainable. The question of what is the most favorable rental is one of fact for the determination of the council. OAG Sept. 21, 1951 (59-A-40).

Under a charter provision forbidding an officer of the city from being directly or indirectly interested in a contract with the city, the mayor would be prohibited from continuing to operate as a brewery wholesale dealer selling to a municipal liquor store. OAG April 9, 1951 (90-E-5).

### 410.23 NEW CHARTER AUTHORIZED

MSA, Sections 410.23, 410.24, and 410.25, are unconstitutional insofar as those sections purport to authorize the submission and acceptance of a "new charter" or a "revised" home rule charter in any manner other than as prescribed by Minnesota Constitution, Article IV, Section 36, for amendments to home rule charters. Where the language of the constitution is clear, resort may not be had to a contrary practical construction placed upon it by the legislature or public officials. A charter commission may propose, as an amendment to an existing home rule charter, a complete revision or modification of such charter so long as it respects the limitations contained in section 36 and keeps within the framework prescribed. Leighton v Abell, 225 M 565, 31 NW(2d) 646.

A charter commission may propose, as an amendment to an existing home rule charter, a complete revision or modification of such charter so long as it respects the limitations contained in Article IV, Section 36, and keeps within the framework prescribed. MSA, Sections 410.23, 410.24, 410.25, are unconstitutional insofar as those sections purport to authorize the submission and acceptance of a new charter, or revised home rule charter, in any manner other than prescribed in Minnesota Constitution, Article IV, Section 36. Leighton v Abell, 225 M 565, 31 NW(2d) 646.

A public or municipal corporation de facto exists when there is: (1) some law under which a corporation with powers assumed might lawfully have been created; (2) a colorable and bona fide attempt to perfect an organization under such a law; (3) user of the rights claimed to have been conferred by the law. The principle of de facto power is equally applicable to a city organized under a home rule charter which makes an abortive attempt to adopt amendments to that charter. The city of Moorhead acquired de facto the powers which it attempted to acquire by the adoption of its revised or "new" charter of 1947, although the ad-

# MINNESOTA STATUTES 1953 ANNOTATIONS

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## CITIES, VILLAGES; CLASSIFICATION, CHARTERS 410.24

vertisement of the proposed amendments to its original charter did not comply with the requirements of Minnesota Constitution, Article IV, Section 36. The ordinances here under consideration, properly approved by subsequent elections for the bond issues, are valid. *Bowman v City of Moorhead*, 228 M 35, 36 NW(2d) 7.

The amendment of a city charter must comply with all constitutional requirements. Sections 410.23, 410.24, 410.25 are unconstitutional insofar as they attempt to authorize the submission of a new charter or a revision otherwise than as an amendment in the manner set forth in Article IV, Section 36 of the constitution. OAG Sept. 11, 1952 (58-C).

A city operating under a home rule charter adopted in good faith in accordance with sections 410.23, 410.24, and 410.25, has a de facto existence notwithstanding that above cited sections were declared unconstitutional by the supreme court in an opinion filed on March 15, 1948. The officers of the city are clothed with the same authority as they enjoyed in a de jure existence and will so continue until the state through its attorney general by a direct attack secures a decision of the court to the contrary. OAG April 23, 1948 (58-O).

Where a permit to operate a gravel pit was granted renewable upon application if where the word "shall" as used in the ordinance must be construed as using "may" by virtue of the police power authorizing the council to enact "additional restrictions and limitations" which it may see fit "in order to protect the public health, safety and welfare" if reasonable ground is exercised the permit may be denied. OAG June 16, 1949 (62-B).

### 410.24 AMENDMENTS AUTHORIZED

MSA, Sections 410.23, 410.24, and 410.25 are unconstitutional insofar as they purport to authorize a submission and acceptance of a "new charter" or a "revised" home rule charter in any manner other than as prescribed by Minnesota Constitution, Article IV, Section 36, for amendments to home rule charters. *Leighton v Abell*, 225 M 565, 31 NW(2d) 646.

MSA, Sections 410.23, 410.24, and 410.25, are unconstitutional insofar as those sections purport to authorize the submission and acceptance of a "new charter" or a "revised" home rule charter in any manner other than as prescribed by Minnesota Constitution, Article IV, Section 36, for amendments to home rule charters. Where the language of the constitution is clear, resort may not be had to a contrary practical construction placed upon it by the legislature or public officials. A charter commission may propose, as an amendment to an existing home rule charter, a complete revision or modification of such charter so long as it respects the limitations contained in section 36 and keeps within the framework prescribed. *Leighton v Abell*, 225 M 565, 31 NW(2d) 646.

Section 410.12 is not applicable to an amendment of a home rule charter in the nature of a revision submitted under section 410.24. OAG Aug. 4, 1952 (58-C).

A city operating under a home rule charter adopted in good faith in accordance with sections 410.23, 410.24, and 410.25, has a de facto existence notwithstanding that above cited sections were declared unconstitutional by the supreme court in an opinion filed on March 15, 1948. The officers of the city are clothed with the same authority as they enjoyed in a de jure existence and will so continue until the state through its attorney general by a direct attack secures a decision of the court to the contrary. OAG April 23, 1948 (58-O).

In view of the decision in *Leighton v Abell*, declaring certain sections unconstitutional, a city having adopted a new charter thereunder is a de facto municipal corporation, subject only to attack by the attorney general. Officials elected for two year terms under the new charter for offices for which old charter provided one year terms, were entitled to serve out their two year terms. Write-in votes cast at an election held before the expiration of the two year term may be disregarded. OAG April 28, 1948 (58-O).

The legislature by express legislation meeting constitutional requirements may supersede provisions of a home rule charter. OAG Feb. 16, 1951 (59-A-22).

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 410.25 CITIES, VILLAGES; CLASSIFICATION, CHARTERS

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### 410.25 REPORT TO CHIEF MAGISTRATE

MSA, Sections 410.23, 410.24, and 410.25 are unconstitutional insofar as those sections purport to authorize the submission and acceptance of a "new charter" or a "revised" home rule charter in any manner other than as prescribed by Minnesota Constitution, Article IV, Section 36, for amendments to home rule charters. Where the language of the constitution is clear, resort may not be had to a contrary practical construction placed upon it by the legislature or public officials. A charter commission may propose, as an amendment to an existing home rule charter, a complete revision or modification of such charter so long as it respects the limitations contained in Section 36 and keeps within the framework prescribed. *Leighton v Abell*, 225 M 565, 31 NW(2d) 646.

A public or municipal corporation de facto exists when there is: (1) some law under which a corporation with powers assumed might lawfully have been created; (2) a colorable and bona fide attempt to perfect an organization under such a law; (3) user of the rights claimed to have been conferred by the law. The principle of de facto power is equally applicable to a city organized under a home rule charter which makes an abortive attempt to adopt amendments to that charter. The city of Moorhead acquired de facto the powers which it attempted to acquire by the adoption of its revised or "new" charter of 1947, although the advertisement of the proposed amendments to its original charter did not comply with the requirements of Minnesota Constitution, Article IV, Section 36. The ordinances here under consideration properly approved by subsequent elections for the bond issues, are valid. *Bowman v City of Moorhead*, 228 M 35, 36 NW(2d) 7.

A city operating under a home rule charter adopted in good faith in accordance with sections 410.23, 410.24 and 410.25, has a de facto existence notwithstanding that above cited sections were declared unconstitutional by the supreme court in an opinion filed on March 15, 1948. The officers of the city are clothed with the same authority as they enjoyed in a de jure existence and will so continue until the state through its attorney general by a direct attack secures a decision of the court to the contrary. OAG April 23, 1948 (58-0).

## CHAPTER 411

### INCORPORATION, CITIES FOURTH CLASS

#### 411.01 INCORPORATION; PETITION; FIRST ELECTION

NOTE: Laws 1921, Chapter 462, is the only law under which a city of the fourth class may be incorporated. As of October 1, 1953, only two cities, North Mankato and Waconia, are organized under this act. The home rule charter law applies only to a municipal corporation already created. A community must be an incorporated city or village before it may adopt a home rule charter. Consequently, a community desiring to become such under a home rule charter must, preliminary to adopting such a charter, become either a city or a village.

Where a village is incorporated as a city of the fourth class the village officers continue until officers have been elected and have qualified and village ordinances remain in force until new ordinances are adopted by the governing body of the new city. OAG May 5, 1947 (59-A-24).

The city of Canby, incorporated under Laws 1870, Chapter 31, may sell a park acquired by it by a deed with reservation to the school district within the city desirous of purchasing said park property for school purposes. The council should sell the property for the best price obtainable. OAG March 8, 1949 (59-A-40).

Under the provisions of Laws 1949, Chapter 414, a city created under the provisions of Section 411.01 may fix salaries of mayor and councilmen at not over \$100 per year by a two-thirds vote of the council. OAG June 1, 1949 (61-G).