

# 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).

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## INCORPORATION, CITIES FOURTH CLASS 411.19

### 411.02 CORPORATE POWERS

HISTORY. 1860 c 31 sc 1 s 2; GS 1878 c 10 s 124; GS 1894 s 1045; 1895 c 8 s 40; 1921 c 462 s 2; MS 1927 s 1828-18; 1931 c 289 s 2.

Where proprietors dedicated a city block to public use, a city of the fourth class cannot convey the land to the state as a site for an armory, except by limiting its use within the terms of the original grant. OAG Jan. 23, 1940 (59-A-40).

A city may sell unimproved land held for recreational facilities if the conditions are such that the land is not and will not be used for the intended purpose. OAG Oct. 31, 1947 (59-B-11).

### 411.05 BIENNIAL ELECTIONS

HISTORY. 1870 c 31 sc 2 s 1; GS 1878 c 10 s 126; GS 1894 s 1047; 1895 c 8 s 42; 1921 c 462 s 5; MS 1927 s 1828-21.

### 411.07 CORPORATE NAME, SERVICE OF PROCESS AND NOTICES

NOTE: Superseded by Rule 4.03(e) to extent inconsistent.

### 411.08 ELECTIVE OFFICERS

Since a village council may be called upon to take action on petitions presented by the school board a member of the village council cannot be a member of the school board. OAG Nov. 24, 1947 (358-F).

Cities of the fourth class may acquire, maintain, and operate housing for veterans without profit. Such property is free from taxation. OAG July 12, 1948 (414-A-11).

### 411.10 VACANCIES

Where one of the seven members of the board of aldermen resigned, a vote of three members will not be effective to fill a vacancy if all six are present, but a vote of three would be effective if only four or five are present. OAG July 12, 1949 (63-A-11).

### 411.13 JUDGES OF ELECTIONS; GENERAL ELECTION LAWS

HISTORY. 1870 c 31 sc 2 s 9; GS 1878 c 10 s 134; GS 1894 s 1055; 1921 c 462 s 13; MS 1927 s 1828-29.

### 411.15 OFFICES, WHEN VACATED

HISTORY. 1870 c 31 sc 2 s 12; GS 1878 c 10 s 137; GS 1894 s 1058; 1895 c 8 s 48; 1921 c 462 s 16; MS 1927 s 1828-32.

### 411.18 OATHS; BONDS

The city attorney is not authorized to appear in defense of city officials against whom a taxpayer's action has been brought charging illegal, unlawful or corrupt disbursement of public funds. OAG Nov. 10, 1947 (59-A-5).

### 411.19 DUTIES OF MAYOR

The office of mayor and instructor in the city school are not incompatible. OAG March 24, 1949 (358-F).

Where the Northern States Power Company supplies electricity to the inhabitants of the village of North St. Paul, the village may not act as a collection agent for the public utility company. OAG Nov. 2, 1953 (470-A).

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## 411.29 CITY ASSESSOR

Where a village becomes a city of the fourth class the village assessor continues in office until a city assessor has been appointed and has qualified. OAG May 5, 1947 (59-A-24).

## 411.36 OFFICERS; OTHER DUTIES; COMPENSATION

HISTORY. 1870 c 31 sc 3 s 20; GS 1878 c 10 s 160; GS 1894 s 1081; 1895 c 8 s 53; 1921 c 462 s 37; MS 1927 s 1828-53.

In a taxpayer's action against certain members of the city council and the surety on their bonds charging corrupt use or disbursement of public funds, a city attorney would not be authorized to appear in defense of the city officials. OAG Nov. 10, 1947 (59-A-5).

The mayor and aldermen of the city of Gaylord organized under the provisions of chapter 411 may not be paid a salary until an election is held pursuant to section 415.05 and then only for services to be rendered in the future. OAG Feb. 14, 1949 (59-A-41).

## 411.37 OFFICERS TO ENFORCE PEACE

HISTORY. 1870 c 31 sc 3 s 21; GS 1878 c 10 s 161; GS 1894 s 1082; 1921 c 462 s 38; MS 1927 s 1828-54.

Use of statement of the accused as information. 37 MLR 392.

## 411.40 POWERS AND DUTIES OF COUNCIL, ENUMERATED

Denial of the right of abutting land owners access to the street; driveway. 31 MLR 292.

The business of selling intoxicating liquor at retail for use as a beverage is peculiarly subject not only to national and state but to local regulation. *Anderson v City of St. Paul*, 226 M 186, 32 NW(2d) 538.

An ordinance regulating the sale of liquor at retail will not be held unreasonable where the classifications therein made rest upon reasonable distinctions; and a provision in an ordinance enacted as a police regulation prohibiting employment of women as bartenders is not unconstitutional as denying women prohibited from being employed as bartenders the equal protection of the laws. *Anderson v City of St. Paul*, 226 M 186, 32 NW(2d) 538.

Where a municipal ordinance is adopted it would be lawful if enacted for one purpose and unlawful if for another purpose. The presumption is that a lawful purpose was enacted unless the contrary clearly appears. *Ramaley v City of St. Paul*, 226 M 406, 33 NW(2d) 19.

Sick leave with pay rights granted by a city to its employees is the grant of a gratuity, not of a vested right, and as such is terminable at the will of the city. While the right to sick leave payments which have become absolutely due is a vested one, the right to payments due in the future is one to a mere expectancy and as such is not a vested one. An amendatory ordinance striking from the amended ordinance provisions therein granting to unskilled laborers sick leave with pay rights and substituting in lieu thereof a provision granting such rights exclusively to a class of employees which does not include unskilled laborers in effect abolishes the sick leave with pay rights of unskilled laborers under the amended ordinance. *Halek v City of St. Paul*, 227 M 477, 35 NW(2d) 705.

City may close drive-ins where not necessary for access to other property. Driveways should not be closed for the sole purpose of establishing revenue producing parking meters. The action of the council must not be arbitrary. OAG Sept. 22, 1947 (59-A-5).

A city organized under Special Laws 1891, Chapter 45, cannot donate realty held by it to a community hospital as distinguished from a municipal hospital. OAG May 24, 1948 (59-A-10).

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INCORPORATION, CITIES FOURTH CLASS 411.40

A taxicab licensee has no vested right in a taxicab space assigned to him by the chief of police or by the city council under an ordinance. OAG April 15, 1948 (59-A-27).

The zoning ordinance of a city of the fourth class providing that in a residential district a multiple dwelling district, if building is designed for housing of one or more families, must provide a lot area of not less than 5,000 square feet, had no retroactive operation as to buildings constructed before the ordinance was adopted. OAG Sept. 6, 1950 (59-A-32).

Where an individual desires to obtain a permit to use an unused city water tower for attachment of radio transmitter facilities, the municipality may license or permit the use of the tower on best terms obtainable but not for a longer term than the city has no use for the property. A 20-year lease might or might not be legal. The city has the right to lease or dispose of unused property, but the question must be kept in mind as to the possibility of future use. OAG April 13, 1948 (59-A-40).

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 municipality may sell its property if it has no further use for it for any authorized public purpose. A city having acquired land for a parking lot by condemnation but which is no longer needed for any public purpose may dispose of such excess property for the best price obtainable. As to whether or not the property may be used for a public purpose is determined by the city. OAG May 6, 1949 (59-A-40).

The privilege of sick leave is a part of the compensation paid to employees, and where the city council has power to prescribe the conditions of employment of employees in the several departments, the council may, by ordinance, provide for sick leave. Such ordinance operates prospectively only. OAG Sept. 11, 1947 (59-A-41).

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

The council is without authority to obligate its city beyond the revenues then in possession of such city or embraced in its then current and uncollected tax levy. If the city enters into an agreement in excess of the amount authorized by section 411.40, the officers might incur a personal obligation to perform but the city would be in no way obliged by the agreement. Where warrants are legally issued in anticipation of taxes that are legal obligations of the city, the holder of such warrants may require the officers to perform their duties and pay such warrants when the taxes have been collected and are available for that purpose. OAG July 14, 1948 (519-C) (59-A-49).

The city does not own the fee in the streets. It only has an easement for the use of the property as a street; and has no authority to rent advertising space on city parking meters as a private enterprise for profit. OAG March 2, 1949 (59-A-53).

In fixing parking regulations in streets whether an ordinance setting aside space for a doctor's automobile is a reasonable one is a question of fact. The council has the power to enact reasonable parking ordinances. OAG Dec. 20, 1949 (59-A-53).

A city may not install parking meters upon county property without first obtaining permission. It may acquire an easement by condemnation if the installation of the parking meters will not materially interfere with or is not inconsistent with its prior or present use. OAG July 17, 1951 (59-A-53).

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 411.40 INCORPORATION, CITIES FOURTH CLASS

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In operating a recreational facility a village may install a system of flood lights and pay the cost from the municipal liquor store fund. OAG Oct. 16, 1947 (59-B-11).

A city may lease city property for use by the lessee for recreational purposes only for such time as the council determines the premises are not needed by the city for public purpose. OAG Oct. 31, 1947 (59-B-11).

An ordinance to require a license fee of \$100 per annum and the filing of a bond in the sum of \$2,500 for the protection of the public, to be paid by dealers in second hand motor cars, is not unreasonable. OAG April 23, 1948 (62-C).

The state may appropriate state funds for any public purpose, but a county board may not appropriate money for a purpose not authorized by law. OAG June 29, 1951 (125-B).

A village ordinance or resolution relating to the financing of a municipal liquor store may provide that in case of a discontinuance of the store all merchandise and fixtures owned by the village in connection with the operation of the store shall constitute a fund to be used only for the payment of the obligations of the village in connection with the store. OAG May 24, 1948 (218-R).

The profits from the operation of a municipal liquor store may be transferred to the general revenue fund or used to augment any lawfully designated fund to make up a deficiency there existing. A surplus in the general revenue fund may be transferred to any other fund to make up a deficiency there existing. OAG March 1, 1950 (218-R).

Even though maximum and minimum rentals are provided, the rental of a municipal liquor store cannot be based upon the gross receipts. OAG March 31, 1953 (218-R).

The council has authority to determine hours and conditions of employment; and whether municipal offices may be closed on Saturday is a matter for the council to determine, having in mind its duty to keep offices open at all reasonable times for the discharge of public business. The council may adopt a schedule of employment for the municipal employees staggering the shifts of active duty so that the offices are accessible to the public during reasonable hours on Saturday, or in accord with past custom and precedent, and at the same time providing for a 40-hour week basis of active duty for each employee. OAG July 28, 1948 (270-D).

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).

Where a city conveyed certain property to a private person reserving an easement in, over and through the land and the right to maintain as now laid a sewer, watermain, and manholes and the right to enter the land for the purpose of such maintenance, the word "maintain" means to keep up or preserve something already in existence and does not include an agreement to enter for the purpose of erecting or providing something not already in existence. OAG Nov. 30, 1949 (387-B-6).

More than 15 years ago a village, for a consideration, consented that the owner of an eighty-acre tract of land adjoining the village might connect his drainage system with the village sewer system. No written agreement was made. The law vests in the village council the right to make contracts but the courts may transfer where the action of the council is arbitrary, oppressive or unreasonable. No occupant of ground dedicated or appropriated to public use may acquire by reason of occupancy any title thereto. If the laying of tile on the eighty-acre tract to connect with the village drain simply assisted waters, which in the state of nature drained upon the village, then if the owner of the eighty-acre tract observed the rule laid down in *Sheehan v Flynn*, 59 M 436, 61 NW 462, he was within his rights. OAG Nov. 15, 1948 (387-G).

In order to protect school children a village or city council, during certain hours, may close a street bounding a schoolhouse. OAG Nov. 23, 1949 (396-C-3).

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## INCORPORATION, CITIES FOURTH CLASS 411.40

Exercising its legislative power, if public convenience requires that a public street be laid out, it is the duty of a city to do so, but a municipality cannot make a contract to perform a public duty imposed upon it by law. If considerations of public convenience do not require that a public street be laid out, the city is not required to do so nor can it exercise a valid covenant to do it in the future. The free determination of future councils may not be hampered by covenants of earlier administrations. OAG Nov. 23, 1949 (396-C-6).

Vacation of a city street where it crosses and intersects school property is vested under the charter of the city of Columbia Heights in the city council. The school board cannot make a contract to pay damages, if any, occasioned by the vacation of the street. A school board lacks authority to agree to indemnify the city against damage. The school board is a body of limited authority. It has only the powers delegated to it by the legislature. Such authority has not been delegated. The school district and the city are each a separate agency and each an instrumentality of the public and what either of them do will be in the public interest. Neither has the authority to agree to indemnify the other in a matter of this nature. OAG Nov. 1, 1949 (396-C-18).

There is no duty resting upon a municipality to guard or barricade a cesspool or cistern unless it is so close to the traveled portion of the sidewalk as to make the sidewalk dangerous. OAG April 22, 1948 (396-G).

The cost of collecting garbage may be assessed against individuals and, under section 443.015, may be assessed against real estate, including a ten percent penalty. OAG Sept. 22, 1947 (408-C).

The city of Red Wing may accept a gift of housing units from the federal government. OAG Sept. 23, 1949 (430).

A village council cannot arbitrarily prevent removal of a building from a village where the village has no bonded debt and the taxes are paid. OAG Oct. 13, 1947 (469-A).

The village has the right to lease unused village property for such length of time as the property will not be needed by the village and at best prices obtainable. Where citizens lease such land for the purpose of establishing a baseball field the village may grant to such citizens a revocable license permitting the licensees the established lighting facilities for night games. The citizens would have to remove the lighting equipment upon revocation of the license. A village may accept gifts for a recreational program. Any such arrangement would be terminable when and if the village has other public use for the property. OAG Oct. 2, 1947 (469-A-9).

The village has power to sell and dispose of unneeded village property. In disposing of it it is the duty of the council to realize the best price obtainable. Whether the bid of \$10 in the instant case should be accepted rests in the discretion of the council. Unless the facts are such as to constitute the defense of estoppel or laches, there appears to be no limitation upon the time within which a taxpayer may bring an action to annul the sale and cancel the deed. OAG Sept. 30, 1947 (469-A-15).

No authority exists under which the public funds of a village may be invested in a locker plant. OAG Nov. 19, 1948 (476-B-1).

A village or a city of fourth class may make reasonable regulation for the use of garbage removal and dumping grounds, including the regulation of hours. The dumping grounds may be regulated even though a part thereof is outside corporate limits. Penalty provisions may be a part of the garbage ordinance. OAG March 2, 1948 (477-B-14).

A lottery has three elements: (1) prize; (2) chance; and (3) consideration. In the instant case the elements of prize and consideration occur, but as the element of chance is not present, the device is not illegal. OAG Oct. 17, 1947 (510-B).

In purchasing voting machines any city must advertise for bids. OAG Jan. 14, 1949 (518).

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## 411.42 INCORPORATION, CITIES FOURTH CLASS

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If a city enters into an agreement involving an amount in excess of the authorized amount, the city is not obligated by the agreement, but the officials may have incurred a personal obligation to perform. OAG July 14, 1948 (519-C).

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

A 5-mill tax may be levied for library purposes by a city of fourth class. OAG Dec. 1, 1947 (519-Q).

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

Under a franchise ordinance a city may adopt an ordinance regulating the furnishing of facilities of gas by a gas utility system. OAG July 8, 1948 (624-B-3).

A municipality is not liable for damages for loss by fire through the negligence or inefficiency of its fire department or its employees; and there being no liability on the part of the village, the council may not use public funds to pay a claim for which no liability exists. OAG July 29, 1948 (688-H).

When a bid contemplates the delivery of machinery at the village making the purchase an increase in freight rates after the bid and before delivery is not the concern of the village unless so specified in the bid. OAG Sept. 23, 1947 (707-B-7).

If pinball machines are games of skill a municipality may not pass an ordinance prohibiting minors from playing the same. OAG Feb. 24, 1949 (733-D).

A city of the first class may acquire lands through eminent domain proceedings both within and without the city limits for corporate purposes. If the rights acquired include a lake or lake bed the rights of the riparian owner may be acquired, but if the body of water is navigable, under the federal rule the state is the owner of the lake bed below the low water mark. The city has power, however, to regulate the use and maintain general supervision and control of navigable water within, upon, and adjacent to the city limits. OAG July 30, 1948 (817-F).

The city of Wabasha having been authorized by the Congress to construct a harbor for small boats at the mouth of the Zumbro river may, by resolution, authorize condemnation of property for the purpose of establishing the harbor, this being a public purpose. OAG Sept. 9, 1947 (817-M).

The city of Sauk Centre may under its charter as amended lawfully use public funds for the establishment of a public hospital. Such purpose is a public purpose. A donation may be made of public funds and unneeded city real estate to a charitable institution for the purpose of operating a public hospital where the city acquires the right to have its inhabitants treated and cared for in the hospital on the same basis as other persons, and to have its indigent poor so cared for without discrimination. The contract is valid though the hospital is to be conducted by the Franciscan sisters. OAG May 5, 1945 (1001-A).

An agreement between a city and certain doctors whereby the doctors took over the management of the city hospital and guaranteed the city against deficits was illegal because it permitted city funds to remain in the custody of private persons and the conditions of the contract and its terms were too indefinite to be enforceable. OAG Aug. 7, 1947 (1001-A).

A contract between a city organized under Laws 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).

## 411.42 EXCLUSIVE OR PERPETUAL FRANCHISES NOT GRANTED

A city under a franchise ordinance has power to adopt an ordinance regulating the furnishing of facilities of gas by a gas utility system. OAG July 8, 1948 (624-B-3).

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INCORPORATION, CITIES FOURTH CLASS 411.79

## **411.47 BORROWING MONEY AND ISSUING BONDS; TAX LEVIES; PASSAGE OF ORDINANCES**

A village may not pay a premium on bonds redeemed before majority. OAG Oct. 30, 1953 (44-A-6).

A city of fourth class may not issue full faith and credit bonds to pay the cost of improvement of a water utility, except as authorized by vote; but certificates payable only from the receipts of the utility may be issued without a vote. OAG Oct. 1, 1947 (59-A-51).

## **411.48 TAX LEVY FOR GENERAL PURPOSES**

Where the state is paving a trunk highway which passes through a city, the state will pave eleven feet on either side of the center line. The city may, under its common law powers, pave the space between the pavement laid out by the state and the curb, a width of fourteen feet on each side. OAG Dec. 30, 1947 (396-C-10).

## **411.49 SPECIAL TAXES**

A city of fourth class may levy a tax of one-tenth of a mill for fire department purposes. OAG Dec. 1, 1947 (519-Q).

## **411.56 OPENING AND VACATING STREETS AND ALLEYS**

Where an alley is obstructed by articles placed therein by individuals, such alley may be cleared by appropriate legal action. A municipality need not open a dedicated street until the public coveyance requires it and whether or not an alley should be improved rests in the discretion of the city council. OAG Aug. 22, 1949 (396-C-1).

## **411.59 VACATION OF STREETS; PROCEDURE**

In contemplation of vacation of streets pursuant to section 411.59, a petition must be signed by a majority of the owners of property on the line of such streets and a city owning land in fee abutting upon the streets sought to be vacated may join in such petition. OAG Aug. 5, 1948 (396-C-18).

## **411.67 STREET GRADES**

A city is liable for damages resulting from change of grade of a street. The city cannot compel the abutting owner to pay the cost of relaying sidewalks made necessary by change of grade. OAG Sept. 27, 1948 (59-A-53).

## **411.75 ACTION OF COUNCIL, RESCINDED; HOW**

HISTORY. 1870 c 31 sc 10 s 1; GS 1878 c 10 s 196; GS 1894 s 1187; 1921 c 462 s 76; MS 1927 s 1828-92.

## **411.76 REMISSION OF JUDGMENTS OR PENALTIES IN FAVOR OF CITY**

HISTORY. 1870 c 31 sc 10 s 2; GS 1878 c 10 s 197; GS 1894 s 1188; 1921 c 462 s 77; MS 1927 s 1828-93.

## **411.78 FINES AND IMPRISONMENTS**

HISTORY. 1870 c 31 sc 10 s 4; GS 1878 c 10 s 199; GS 1894 s 1190; 1921 c 462 s 79; MS 1927 s 1828-95.

## **411.79 RESIDENTS NOT DISQUALIFIED AS JUDGE, JUSTICE, WITNESS OR JUROR**

HISTORY. 1870 c 31 sc 10 s 5; GS 1878 c 10 s 200; 1891 c 146 sc 12 s 9; GS 1894 s 1191; 1921 c 462 s 80; MS 1927 s 1828-96.



# MINNESOTA STATUTES 1953 ANNOTATIONS

## 411.80 INCORPORATION, CITIES FOURTH CLASS

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### 411.80 OWNERSHIP OF REAL AND PERSONAL ESTATE

HISTORY. 1870 c 31 sc 10 s 6; GS 1878 c 10 s 201; GS 1894 s 1192; 1921 c 462 s 91; MS 1927 s 1828-97.

Funds being available therefor, a city of fourth class may acquire lands within or without the city for park purposes. OAG May 18, 1950 (59-B-11).

Property acquired and used by a city of fourth class without profit as housing for veterans is exempt from taxation. OAG July 12, 1948 (411-A-11).

411.82 Renumbered, 415.031.

411.83 Renumbered, 415.032.

## CHAPTER 412

### VILLAGES

412.01 - 412.36 Repealed by Laws 1949, Chapter 119, Section 110.

NOTE: Prior to July 1, 1949, the effective date of Laws 1949, Chapter 119, all villages were controlled by R. L. 1905, Chapter 9, coded in the 1945 revision as sections 412.01 to 412.36. Following are selected annotations relating to the repealed sections:

### 412.02 WHAT TERRITORY MAY BE INCORPORATED

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.

### 412.06 INCORPORATION, WHEN EFFECTED

The judgment of the incorporators in determining that the village area is suitable for incorporation was properly exercised and the incorporation is sustained. The findings of the referee have the effect of a special verdict which is entitled to the same weight as a general verdict and thus final upon appeal where the evidence is conflicting. State ex rel Northern Pump Co. v Village of Fridley, 233 M 442, 47 NW(2d) 204.

### 412.075 GENERAL POWERS AND DUTIES

A finding that a village council in good faith abolished a position should be sustained where the evidence showed that the council abolished the position and let a contract under which the contractor agreed to perform all the work incident thereto, and other work in addition, the council returning no voice in the selection of the contractor's employee. The veterans preference law does not prevent a village council in good faith abolishing an office or position it has the power to create. State ex rel v Thomas, 223 M 435, 27 NW(2d) 155.

### 412.19 COUNCIL

Where the village of Hibbing entered into a contract on August 2, 1945, with the town of Stuntz whereby individual users of water were to pay \$1 per month for the term beginning January 1, 1945, to August 1, 1945, and \$1.50 a year there-