

# 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412.01 - 412.36 Repealed by Laws 1949, Chapter 119, Section 110.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 Following are selected annotations relating to the repealed sections: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-

after, there was no ambiguity and the \$1 charged for the year 1945 is valid; but as to the township for water taken from the master meter, the words "this agreement when adopted shall be in effect" must be construed as though the word "effect" meant "operation" and consequently the water taken from the master meter for the benefit of the town itself must be paid for for the term beginning August 2, 1945. Village of Hibbing v Town of Stuntz, 225 M 31, 29 NW(2d) 808.

Where corporation and village contracted in August, 1940, for construction of electric power plant for village, and addendum to specifications provided that contract would be void if it was determined in village's litigation with public utility that utility's franchise was in effect until September 1944, and in February 1942 the litigation was determined in favor of the village, but in the meantime, because of the war, government restrictions prevented construction of the plant until at least October 1945 when construction costs were much higher, corporation was excused, on ground of temporary impossibility of performance, from performing the contract. Village of Minneota v Fairbanks, Morse & Co., 226 M 1, 31 NW(2d) 920.

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.

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.

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.

## 412.21 CONTRACTS; MEMBERS EXCLUDED; BIDS

Right of taxpayer to enjoin or avoid a contract awarded on competent bidding in a case where an official is financially interested in the contract. 35 MLR 322.

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).

## FORMATION, CHANGE IN TERRITORY, DISSOLUTION

### 412.011 FORMATION OF VILLAGE

HISTORY. 1949 c 119 s 1-4; 1949 c 662 s 1; 1953 c 227 s 1.

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 Rump Co. v Village of Fridley, 233 M 442, 47 NW(2d) 204.

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In a village operating under Optional Plan "B" the assessor is appointed by the village manager and he need not be a resident of the village either at the time of his employment or while filling the office. OAG April 4, 1950 (12-B-4).

A village has only such powers as are by law expressly conferred upon it and may not adopt an ordinance restricting the privilege of fishing within the village to children under 16 years of age. OAG March 27, 1951 (209-G).

A county may not expend funds to investigate or pass upon the validity of the incorporation of a village. OAG April 6, 1951 (484-E-1).

Where a village was incorporated before the taking effect of Laws 1949, Chapter 119, officers elected at the organization meeting held on June 28, 1949, hold office until the first secular day in January, 1950. OAG June 20, 1949 (484-E-4).

After a petition for the incorporation of a village has been voted down it is a question of fact for the county board as to whether or not a new petition covers substantially the same territory. In order to be favorably acted upon the new petition must deal with territorial boundaries substantially different from those in the earlier petition. OAG Aug. 15, 1950 (484-E-4).

In proceeding to incorporate a village electors who have filed a petition may demand of the county board at any time before the board has completed its action on the petition, that their names be withdrawn from the petition. OAG Dec. 22, 1950 (484-E-4).

The statute does not require that the territory to be incorporated must contain a full section of land. In the instant case 110 acres are sufficient. OAG Jan. 4, 1951 (484-E-4).

Whether or not lands are so conditioned as to properly be subjected to a village government is a judicial question and is not to be determined by the county board. OAG April 28, 1952 (484-E-4).

In proceedings to incorporate a village the petition must comply with section 412.011, subdivisions 1, 2, and although the board may, as a matter of policy, desire to incorporate the village, it may proceed only as the law provides. OAG Aug. 18, 1952 (484-E-4).

After a county board has acted on a petition filed under section 412.011, the petitioners cannot withdraw their signatures. OAG Dec. 18, 1952 (484-E-4).

The signers of a petition for the incorporation of a village may withdraw their names from the petition prior to the adoption of the resolution by the county board. If before the hearing a sufficient number of the petitioners withdrew their signatures so that the number of signatures was less than the amount required, the petition would be invalid. It could not be validated by the adding of new additional names. OAG March 11, 1953 (484-E-4).

The council of the village of Hibbing may not voluntarily abandon part of a water and light utility without the concurrence of the commission. If the abandonment is brought about other than by action of the council, such concurrence is not necessary. OAG Sept. 2, 1949 (624-C-10).

A village may not contribute money toward the equipment of a hospital not owned by it or under its control or management. OAG Sept. 8, 1949 (1001-R).

## 412.021 OFFICERS

HISTORY. 1949 c 119 s 5; 1951 c 378 s 1.

Under the standard form of village government, the office of assessor is an elective office whereas under forms of village government provided by Optional Plans A, B, C, the office of assessor is appointive. OAG April 4, 1950 (12-B-1).

When two trustees are to be elected at a village election all candidates run against each other and the voters vote for two. A candidate can place the word "incumbent" after his name only when two candidates with the same surname are

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on the ballot. A candidate for village clerk may withdraw at any time before the filing expires and may withdraw after filing time expires if the withdrawal is made prior to the printing of the ballots. OAG Nov. 24, 1952 (472-C).

## **412.031 REINCORPORATION**

HISTORY. 1949 c 119 s 6.

## **412.041 ANNEXATION OF TERRITORY**

HISTORY. 1949 c 119 s 7; 1951 c 378 s 2.

Are suburbs necessary? 35 MLR 341.

Pursuant to section 412.041, subdivision 1, territory to be added to an existing village by annexation is conditioned as properly to be subjected to village government only if it lies in such close proximity to the village as to both abut thereon and as to be suburban in its character, and to be so limited in area and to have such a natural connection, as well as a unity or community of interests, with the village that the entire area, taken as a whole, will naturally and reasonably be adaptable to the maintenance of village government whereby, in addition to other municipal functions, there may be a common and feasible provision for, and enjoyment of, the benefits of the usual municipal conveniences such as water, sanitation, gas, electricity, police and fire protection and similar services. As long as the legislative function of annexation is exercised by the village within the scope of its delegated powers, and in a reasonable manner as distinguished from one that is arbitrary or unreasonable, this court will not interfere even though the wisdom of the annexation may be subject to question as a matter of policy. In providing by section 412.041, subdivision 1, that territory to be annexed to a village must abut upon the village, the legislature intended that the abutting should not only be to such an extent, but also of such a character, that it will so condition the territory as properly to subject it to the village government. Writ of ouster to issue to village of Mound and to its officers and council members as to territory described in its annexation ordinances of October 1, 1949, and October 6, 1949; writ discharged as to remaining respondents. State v Village of Mound, 234 M 531, 48 NW(2d) 855.

"Majority of owners" means a majority in number of the individual voters and does not mean owners of more than 50 percent of the area. OAG Feb. 6, 1950 (494-E-1).

The validity of the annexation of territory to a village may not be collaterally attacked by a private citizen and may be tested only by quo warranto proceedings. OAG May 15, 1950 (494-E-1).

A petition for the inclusion of territory for a village may include both platted and unplatted land, subject to the acreage limitation of the statute. OAG Feb. 16, 1951 (484-E-1).

## **412.051 DETACHMENT OF TERRITORY**

HISTORY. 1949 c 119 s 8.

In proceedings by a village to detach land, section 412.051 applies only to the detachment of land used solely for agricultural purposes. OAG May 15, 1952 (484-E-2).

## **412.061 ADJUSTMENT OF BOUNDARIES BY VILLAGES**

HISTORY. 1949 c 119 s 9; 1953 c 735 s 1.

Respondent's contention that section 413.14 empowers the city of Columbia Heights to annex several unplatted tracts belonging to different owners within the village of Fridley, only two of which abut upon Columbia Heights, which would leave in the village a number of "islands" separated from each other by portions of Columbia Heights and Minneapolis and disconnected from the public institutions of the village, would require a construction of section 413.14 leading to unjust and un-

reasonable results not intended by the legislature. The instant annexation proceedings are invalid and without force or effect and the city of Columbia Heights and its officials are ousted from exercising jurisdiction over any tracts, pieces, or parcels of land wholly or partly within the corporate limits of the village of Fridley. State v City of Columbia Heights, 237 M 124, 53 NW(2d) 831.

Where the right-of-way line of a railroad company constitutes the east boundary line of the village the land embraced within the railroad right-of-way intervenes between the village and the land on the east side of the right-of-way and such land across the track does not abut upon the village and such land cannot be annexed to the village. OAG July 8, 1949 (484-E-1).

A city or village cannot annex abutting land lying in another city or village except under this section, and the consent of the city or village from which the land is to be taken must be obtained. OAG Nov. 28, 1950 (484-E-1).

Land detached from one village and annexed to another is not subject to taxation for payment of indebtedness of the annexing village as it existed prior to the annexation. OAG April 16, 1952 (494-E-1).

After a petition for the incorporation of a village has been denied it is a question of fact for the county board as to whether or not a new petition covers substantially the same territory. In order to be favorably acted upon the new petition must deal with territorial boundaries substantially different from those set out in the earlier petition. OAG Aug. 15, 1950 (484-E-4).

## **412.071 CONSOLIDATION**

HISTORY. 1949 c 119 s 10; 1953 c 53 s 1.

## **412.081 SEPARATION FROM TOWN**

HISTORY. 1949 c 119 s 11; 1951 c 378 s 3; 1953 c 7 s 1.

The failure of a town to use property as a town hall may result in reversion to the original owners. Permitting a village the partial use of the town hall is not a violation of a condition subsequent. OAG April 4, 1951 (434-C-8).

## **412.091 DISSOLUTION**

HISTORY. 1949 c 119 s 12.

This section provides a method by which a village may be dissolved, but special legislation would be necessary to permit one village to be annexed to a city or to permit a village to again become operative as such. OAG Oct. 11, 1950 (484-E-3).

# **OFFICERS, EMPLOYEES**

## **412.101 PEACE OFFICERS**

HISTORY. 1949 c 199 s 13; 1953 c 715 s 2.

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

The offices of village justice of the peace and village trustee are incompatible. OAG Dec. 13, 1950 (358-D-5).

If the chief of police is operating his own automobile in his private capacity there is no liability in case of accident on the village. If he is operating the vehicle in the performance of his official duties as chief of police and was acting in a governmental capacity there would be no liability, but if in a village proprietary capacity there might be liability. OAG Dec. 14, 1950 (844-B).

## **412.111 DEPARTMENTS, BOARDS**

HISTORY. 1949 c 119 s 14; 1951 c 378 s 4.

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If the village council believes that the work of the village assessor may be expedited and improved by furnishing him clerical assistance during the assessment period, or between assessment periods, or both, the council has authority so to do. OAG March 16, 1950 (12-E).

Elective officers may not be removed by the village council. OAG Feb. 8, 1952 (12-E).

Residence within the village is not a requisite to eligibility for appointment of an employee in the municipal liquor store or the appointment of a police officer in the village. OAG Dec. 20, 1950 (218-R) (785-S).

A village council may compensate village employees for overtime work. OAG Feb. 17, 1953 (270-G-1).

The offices of the village clerk and relief investigator are incompatible where the council appoints the relief investigator and sets his salary. OAG Jan. 24, 1950 (358-E-7).

The village council fixes the compensation of the village clerk and the deputy village clerk. OAG Feb. 4, 1952 (401-B-22).

There is no statute permitting a blanket bond covering all village officers who are required to furnish a bond. OAG Nov. 16, 1953 (401-B-22).

A village which has not adopted an optional plan for municipal government as provided in section 412.541, may fix and determine the salary of a village treasurer under section 412.111, if the amount of such salary is not fixed by statute and the determination thereof rests in the discretion of the council. OAG Aug. 31, 1950 (456-F).

A village may not adopt a policy governing military leave which is inconsistent with the statutory provisions. OAG May 4, 1951 (469-B).

A village council may hire and discharge village employees and fix their compensation. It may establish a reasonable policy governing employment of village personnel and the conditions of employment and prescribe reasonable rules to carry out its policy. Any ordinance establishing such personnel regulation is controlled by and must be in harmony with the statutes of the state. A village by ordinance may not by-pass a veterans preference law or any like provision of the statutes. OAG May 4, 1951 (469-B).

A village council may not delegate the powers of appointment and tenure of non-elective officers, employees or agents conferred upon it by section 412.111. OAG Nov. 3, 1953 (469-B).

The village council acting as a council may employ attorneys other than the regularly designated village attorney and if the employment was irregular, the village council, by a majority vote, may ratify the act of individual members. OAG April 15, 1950 (469-B-1).

Section 412.111, which provides for the fixing of the compensation of all officers, appointive and elective, when not otherwise prescribed by law, does not authorize the fixing of such compensation retroactively. OAG Nov. 18, 1952 (470-B).

The village council may fix the salary of the village clerk, and when the action was taken on February 9 the provision that the salary should begin as of January 2 is not a retroactive action and is valid. OAG March 4, 1953 (470-B).

A deputy village clerk may be removed by the village clerk but not by the village council. OAG Dec. 21, 1951 (470-C).

The village council may pay the premium on the bond of the village constable from village funds. OAG Jan. 12, 1953 (476-B-4).

A village justice of the peace is not authorized to employ attorneys to defend persons in his court. OAG Dec. 14, 1953 (779-K).

A village council may not provide living quarters for the chief of police and his family in a fire and police station building. OAG Dec. 8, 1952 (785).

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Residence within the village is not a requisite to eligibility for appointment of an employee in a municipal liquor store. OAG Dec. 20, 1950 (785-S).

The village council may appoint policemen, and adopt ordinances prescribing their duties. Their compensation may be fixed by ordinance or resolution. OAG Dec. 23, 1952 (785-S).

### 412.121 ACTING MAYOR

HISTORY. 1949 c 119 s 15.

The village mayor could be employed as a bartender in an on sale liquor establishment owned by his wife, but in such case he would not be permitted to vote upon the granting of the license. OAG Jan. 20, 1950 (90-E-4).

### 412.131 ASSESSORS; DUTIES, COMPENSATION

HISTORY. 1949 c 119 s 16; 1951 c 166 s 1.

The compensation of a village assessor for 1949 is fixed in accordance with law in effect at the time the assessment was made. Compensation of the village assessor in the future is governed by section 412.131. OAG Oct. 26, 1949 (12-B-1).

The compensation of village assessors in Hennepin county is governed by section 412.131. OAG May 16, 1951 (12-B-1).

A village cannot lawfully expend funds to pay a deputy assessor residing in the county but not residing in the village, even though there were no available deputy assessors in the village. OAG March 15, 1950 (12-E).

A deputy village assessor must be a citizen of the village. OAG March 15, 1950 (12-E).

### 412.141 TREASURER'S DUTIES

HISTORY. 1949 c 119 s 17; 1951 c 378 s 3.

Where the law authorizes that another may perform a treasurer's duty, the person or agency so authorized cannot lawfully become a depository of public money except upon qualifying by furnishing the depository bond or security required by law. OAG June 9, 1952 (140-F).

The office of village treasurer and member of the school board in the same village are not incompatible. OAG Jan. 2, 1951 (368-F).

### 412.151 DUTIES OF CLERK

HISTORY. 1949 c 119 s 18; 1951 c 378 s 6; 1953 c 735 s 3.

With the consent of the council the village clerk may appoint a deputy. The deputy may not be a member of the council, but may discharge any other duties of the clerk. There is no statutory prohibition against the appointment of the manager of the municipal liquor store as deputy village clerk. As such, in conjunction with the mayor, he may sign orders on the treasurer for disbursements from the municipal liquor store funds. OAG April 15, 1953 (218-R).

Under the village code the village clerk and not the village is entitled to the fees paid for certified copies of village records. OAG Oct. 1, 1952 (470-B); OAG Feb. 17, 1953 (470-B).

After a village has adopted Optional Plan "B" the holding-over elected clerk may appoint a deputy clerk. OAG Sept. 20, 1951 (470-C).

A deputy village clerk may be removed only by the village clerk. The village council may not remove him. OAG Dec. 21, 1951 (470-C).

The designation of tenure in the appointment of a deputy village clerk does not invalidate the appointment. The tenure of the deputy is at the will of the clerk.

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and limited by the term of the clerk. The deputy is not removable by the council. The deputy village clerk is removable only by his principal, the village clerk. OAG Feb. 18, 1952 (470-C).

## **412.161 CONSTABLES; DUTIES**

HISTORY. 1949 c 119 s 19.

## **412.171 DUTIES OF JUSTICES OF THE PEACE**

HISTORY. 1949 c 119 s 20.

The office of village justice of the peace and village trustee are incompatible. OAG Dec. 13, 1950 (358-D-5).

A village justice of the peace may not employ an attorney to defend any person in his court. OAG Dec. 14, 1953 (779-K).

## **412.181 MAYOR, TRUSTEES; SALARIES**

HISTORY. 1949 c 119 s 21; 1949 c 366 s 1; 1951 c 378 s 7-9; 1953 c 49 s 1.

For services on the board of review council members are not entitled to extra compensation. Their compensation is that prescribed in section 412.181. OAG Dec. 29, 1950 (406-E).

The village mayor and members of the council may be reimbursed for travelling expenses incurred in the performance of their official duties. OAG Dec. 26, 1950 (471-K).

The salaries of mayor and trustees of a village are fixed by section 412.181, subdivision 6. OAG Dec. 29, 1952 (471-K).

The village council by resolution may fix the salaries of the mayor and the trustees on the basis of a fixed sum per regular or special meeting without a maximum yearly limitation. OAG Sept. 11, 1953 (471-K).

## **COUNCIL POWERS**

### **412.191 MEMBERS; POWERS, DUTIES**

HISTORY. 1949 c 119 s 22-26.

Providing the votes of the other trustees were sufficient to constitute a majority, a bond issue authorized by a resolution adopted by a village council is valid even though one of the trustees illegally elected acted as a de facto trustee and voted with the others for the adoption of the resolution. OAG June 2, 1950 (44-A).

Where the district court, in an action contesting an election upon the question of granting licenses for the sale of liquor, orders village to pay the attorney's fees for the contesting parties, the village must either appeal the order or pay the judgment. The money must be paid out of the general revenue fund but the village has authority to transfer a like sum from the liquor store fund to the general fund for the purpose of making the payment. OAG May 31, 1951 (218-C-1).

A village ordinance establishing a municipal liquor store need be published only once in the official newspaper. OAG Nov. 10, 1953 (218-R).

The publication of all village proceedings is not mandatory. Ordinances are required to be published. Section 412.281 does not require the publication of council proceedings either monthly or quarterly. It relates to the form of the clerk's annual financial statement if the proceedings are published. OAG March 27, 1950 (277-B-1).

This section is merely permissive not mandatory. OAG Sept. 11, 1951 (277-B-1).



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Where a village council desires to publish minutes of council proceedings, the publication must be in an official newspaper as designated in sections 412.191 or 412.831. OAG Sept. 11, 1951 (277-B-1).

Village ordinances must be published in a legal newspaper in the county, if there is one. The new village code goes into operation on July 1, 1949, and a village should designate its official newspaper, which must be a legal newspaper, and thereafter all ordinances should be published in the official newspaper. OAG May 18, 1949 (277-B-4).

A village is without power to prohibit horses on paved bituminous streets. The streets belong to the public and not to the village or its council. OAG Oct. 30, 1951 (396-A).

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

A village may not engage in a low-cost housing project until it has met the requirements of Laws 1947, Chapter 487, Article II, Section 4, and Article IV, Section 12. OAG Sept. 9, 1949 (430).

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

A village hall still needed for municipal purposes may not be leased. OAG Sept. 6, 1949 (469-A-9).

The mayor of a village is one of the five members of the village council. The council has authority to appoint committees if it so chooses but cannot delegate to the committee the right to enact ordinances or pass resolutions. The function of the committee is merely to investigate and the business of the village must be conducted by the council. OAG April 9, 1953 (471).

Where a village council appoints a committee to serve at the will of the mayor, he may remove the committee or discharge it but he may not replace it. OAG April 13, 1953 (471).

The village council may regulate its own procedure and prescribe the rules of conduct for its meetings. The reading of the minutes of the preceding meeting may be dispensed with. OAG March 6, 1953 (471-E).

The mayor is entitled to vote and make and second motions at all village council meetings. OAG April 19, 1950 (471-H).

A village may not expend public funds for decorating streets for a harvest festival. OAG Aug. 13, 1949 (476-A-5).

The number of an ordinance is no part thereof. The application of an incorrect number or a number given out of its consecutive order to a particular ordinance does not affect the validity of the ordinance. OAG Nov. 20, 1952 (477-A-1).

To amend a village zoning ordinance enacted under section 412.221, a two-thirds vote is required. OAG Aug. 29, 1951 (477-A-34).

A zoning ordinance does not operate retroactively. A lawful use of the property at the time of the adoption of the ordinance may be continued. OAG Sept. 16, 1949 (477-B-34).

A village in the electric business is subject to the same duties and obligations as persons or corporations doing the same class of business. It cannot lawfully refuse to serve an applicant, require applicant to rebuild a transmission line, or require it to operate on alternate days. It may enter into a contract to the mutual benefit of the village and the applicant. OAG Nov. 9, 1953 (624-C-16).

In the operation of a municipally-owned waterworks utility, a village is acting in its proprietary and not in its governmental capacity and the same rules of negligence apply to that operation as would apply to a private corporation. If the claim be one for wrongful death, the limitation of the wrongful death statute would apply,

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but if the claim is one for personal injury and consequent damages, the ordinary rules of damages apply. OAG Aug. 15, 1949 (844-B-7).

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

The town of Bloomington may regulate the burial of the dead by requiring a license for a public cemetery association. OAG May 11, 1949 (870-I).

The blowing of a fire alarm as a curfew at eight o'clock in the evening is not a private nuisance nor is it a public nuisance. OAG Sept. 26, 1949 (913-F).

## 412.201 EXECUTION OF INSTRUMENTS

HISTORY. 1949 c 119 s 27.

Where a site has been abandoned and a library building is about to be erected thereon, as between the library board and the village, the village council has the duty of disposing of the old buildings on the site. Any instrument transferring title to the buildings now on the site should be executed in the name of the village by its mayor and clerk, with the corporate seal attached, but only pursuant to authority from the council. OAG April 12, 1951 (285-A).

The title to personal property in the old library building is in the village and not in the library board. The village council may dispose of it and determines into what fund the proceeds of the sale should be placed. OAG April 16, 1953 (285-A).

After a village has adopted Option Plan "B" the mayor and the village manager sign all contracts and instruments to which the village is a party. OAG Sept. 20, 1951 (469-A-2); OAG Feb. 17, 1953 (469-A-15).

A contract between a town and a village for fire protection must be in writing. It may be made by a town with any adjacent city or village. A contract may be made by a town for fire protection under sections 365.15 to 365.19 but subject to the limitations prescribed in section 88.04. OAG March 10, 1953 (688-K).

## 412.211 GENERAL VILLAGE POWERS

HISTORY. 1949 c 119 s 28.

A municipality, while not the insurer of a safe condition of its sewers, is liable for failure to exercise ordinary and reasonable care to keep the sewers in repair and free from obstructions. While the municipality has actual or constructive notice of a defect in its sewers over a sufficiently long period to enable it to remedy the condition prior to the act resulting in the damage complained of, that is sufficient notice upon which liability of the municipality may be predicated. *Pettinger v Village of Winnebago*, ..... M ....., 58 NW(2d) 325.

Whether a structure is "needed for village purposes" is a question of fact for determination, in the first instance, by the village council. Where businessmen contributed \$30,000 to build a "community hall" which structure provided space for office rooms to be used for village purposes, it was within the power of the village to determine through the electors upon the issuance of bonds, which together with the moneys contributed would complete the village building. OAG Sept. 22, 1950 (44-B-2).

A village may purchase parking meters on a conditional sales contract, but it must not ignore the provision requiring advertising for bids. OAG March 30, 1951 (59-A-53).

A village may accept and hold stock in a co-operative association issued to it in lieu of patronage dividends. OAG March 8, 1951 (93-A-22).

A village may establish a planning commission under section 471.26 and this commission is independent of and may not be controlled by the county planning commission. OAG May 25, 1951 (110-A).

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When approved by the voters, a village enacting a merit system ordinance may remove certain positions from the classified service by amending the original merit system ordinance. Municipal positions not excluded from the classified service by the original merit system ordinance are within the classified service notwithstanding the incumbents of the position are paid on a fee as distinguished from a salary basis. OAG Feb. 9, 1953 (120).

A village cannot adopt an ordinance restricting the privilege of fishing within the village limits to children under 16 years of age. OAG March 27, 1951 (209-G).

A village has no authority to license the on sale of intoxicating liquors at a place located outside the village limits. Responsibility for enforcing the law with respect to unlicensed sale of intoxicating liquor rests upon the sheriff and county attorney. OAG April 3, 1951 (218-G-15).

A village may acquire property for municipal liquor store by condemnation. It may erect a new municipal store building. OAG March 14, 1950 (218-R).

Section 412.211 authorizes a village to lease buildings for village purposes; this includes use by a municipal liquor store and for a period beyond the term of the council. OAG June 13, 1950 (218-R).

A village council may enter into a 10-year lease of a building for a municipal liquor store and the fact that the lease may rule after a change in the personnel of the council is no objection to the proposed lease. OAG May 11, 1953 (218-R).

A village may purchase such law books for its municipal court as its governing body deems advisable. Such books are the property of the village. OAG Dec. 21, 1951 (306-A).

The village council has general power to acquire, either within or without the corporate limits, such real property as the purposes of the village may require, by purchase, gift, condemnation, or otherwise, under section 412.211, and has specific power to acquire, lay out, widen and repair streets and other public ways as provided in section 412.22, subdivision 6. OAG Nov. 15, 1951 (377-B-1).

The village council has control of the public buildings owned by the village. The council may consent that the deputy village clerk, who is provided by the council with office space in the village hall, may perform the duties of another public office therein. OAG April 15, 1953 (385-B-2) (469-C-6).

Where a village council may establish and improve a street either upon a petition or upon its own initiative the cost thereof may be paid out of general revenue funds, by special assessment, or by issuance of tax-anticipation certificates. OAG Dec. 20, 1951 (396-G).

A municipality may sell or lease real property owned by it if the property is no longer needed for the purposes or use of the municipality. The duration of a lease is a matter for determination of the village council, but the length of the term must be based upon good faith and must not be arbitrary. The municipality has no authority, in conveying property, to prescribe a condition or purpose for which the property may be used. OAG Sept. 13, 1950 (469-A-9) (469-A-15).

For a reasonable consideration a village may lease the village hall to persons desiring to conduct religious services therein on Sunday. OAG June 12, 1953 (469-A-9).

A village may lease unneeded portion of its public building for a roller rink if its leasing will not substantially interfere with the use of the building for public purposes. OAG July 13, 1953 (469-A-9).

A village may acquire real property for such purposes as the village may require, but it may not acquire real estate for the purpose of reconveying it to the county. OAG May 2, 1950 (469-A-12).

A village is without authority to acquire property and lease it back to a private corporation and a village cannot acquire property subject to a covenant to pay off the obligations of the private corporation. OAG Dec. 15, 1950 (469-A-12).

# MINNESOTA STATUTES 1953 ANNOTATIONS

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VILLAGES 412.221

A village may not convey realty to a school district unless it receives the highest obtainable price as a consideration for the transfer. OAG March 1, 1950 (469-A-15).

Section 412.211 gives broader authority than was formerly conferred by section 412.075. The village council by a majority vote may sell real property held by the village in fee simple if the interest of the village requires such sale. OAG Feb. 28, 1952 (469-A-15).

Where electors have rescinded the authority to expend the proceeds of a bond issue for a purpose originally authorized, the proceeds may be invested under the provisions of section 471.56. The proceeds may be used for other public improvements authorized by law if approved by a vote taken in the manner required by law. The right of prepayment of bonds is determinable by the tenor of the bonds. OAG May 9, 1952 (469-A-15).

The village council may sell and dispose of its real estate, including the village hall located thereon, to the county without a vote of the electors, reserving the right to use rooms therein for village purposes. OAG July 21, 1952 (469-A-15).

A village may sell real estate no longer needed for municipal purposes. It need not advertise for bids and a vote of the electorate is not required. A member of the council may not purchase. OAG March 10, 1953 (469-A-15).

A village has no authority to expend village funds for the rental of an office for the use of a soil conservation district. OAG Feb. 23, 1951 (476-B-1).

The village council may spend public money of a village to install brackets on lamp posts to hold flags to be displayed on holidays and may make provision that such flags be placed and removed. OAG Dec. 28, 1951 (476-B-13).

A village council may restrict by ordinance the use of a portion of the village hall grounds for the parking of vehicles of the municipality used in the furtherance of municipal business. OAG May 17, 1951 (477-B-30).

After all the requirements for bidding have been complied with, the award of a contract by the council to the lowest bidder results in a binding contract and it may not, at a later meeting, after a change in its personnel, rescind its prior action. OAG March 6, 1951 (707-A-15).

## 412.221 SPECIFIC POWERS OF THE COUNCIL

HISTORY. 1949 c 119 s 29.

NOTE: Speed restrictions on highways which are not trunk highways are governed by section 169.14, subdivision 5. Load restrictions are governed by section 169.87. If imposed by an ordinance, the ordinance should be published.

Where specifications required that a certified check at five percent of total bid be attached to and submitted with bid, and where total bid equalled the sum of \$69,610, including bid on one unit of selective call equipment for mobile units as specified, certified check in the sum of \$3,500 was sufficient to comply with specifications. *Sutton v City of St. Paul*, 234 M 263, 48 NW(2d) 436.

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

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

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 412.221 VILLAGES

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The council of the village of Richfield may not enter into a contract with public administration service by which the service must evaluate assessment procedures and salaries. OAG Dec. 3, 1953 (12-B).

A village council may not adopt an ordinance requiring the platting of unplatted land within the village as a prerequisite to a sale thereof. OAG Oct. 31, 1952 (18-D).

Whether a structure is "needed for village purposes" is a question of fact for determination, in the first instance, by the village council. Where businessmen contributed \$30,000 to build a "community hall" which structure provided space for office rooms to be used for village purposes, it was within the power of the village to determine through the electors upon the issuance of bonds, which together with the moneys contributed would complete the village building. OAG Sept. 22, 1950 (44-B-2).

The proceeds of a bond issue for the purpose of acquiring a site, erecting and equipping a municipal building to be used as a village hall may not be diverted for use in building a municipal liquor store. OAG Dec. 5, 1952 (44-B-2).

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 may enact reasonable parking ordinances. OAG Dec. 20, 1949 (59-A-53).

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

The village council and not the firemen's civil service commission fixes the hours and time of employment of the fire department personnel and appoints to fill a vacancy from the list of names certified by the commission from the eligible register. OAG Oct. 3, 1951 (120).

A school district may not contribute to a village a portion of the cost of installation of traffic control signals on the public streets of a village. OAG Dec. 14, 1949 (159-B-8).

The question of the reasonableness of an ordinance insofar as it might require separate facilities for men and women in 3.2 beer taverns is one that would have to be determined from all the facts relating to the conduct of the business. At any rate, if the present situation is a nuisance, the health officer of any municipality may cause a removal of the nuisance and provide for prevention or abatement of same. OAG July 17, 1951 (217-C).

Brewers and wholesalers of 3.2 beer may be licensed by a village for a fee of \$10 per annum. OAG April 28, 1949 (217-H).

A village may by ordinance regulate but not prohibit the sale of canned heat and similar products. It may not prohibit the sale of canned heat to Indians. OAG Nov. 29, 1951 (218-J-9).

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).

The village council may enter into a ten-year lease of a building for a municipal liquor store and the fact that the lease may run after a change in the personnel of the council is no objection to the proposed lease. OAG May 11, 1953 (218-R).

A village may buy a building which it proposes to use as a municipal liquor store under a contract for deed extending for over 5 years. OAG June 12, 1953 (218-R).

Under certain conditions a village may maintain an ambulance. A town may not contribute to the cost of an ambulance owned by the city. OAG Oct. 17, 1952 (225-A).

No authority exists permitting a village to contribute village funds toward the operating expenses of a privately-owned ambulance. OAG April 27, 1953 (225-A).

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If a nuisance exists by reason of the installation of certain drain tile the village officers may take steps to abandon the nuisance. If the nuisance exists the village officers may use their own discretion as to whether or not notice must be given. The persons who installed the drain tile or are benefitted by the installation have no easement that would serve as a defense against action to abandon a nuisance. OAG Nov. 28, 1949 (273-A-23).

In a county where the county library exists and a village maintains a reading room in connection therewith, the village may employ and pay the librarian. OAG May 1, 1953 (285-C).

County roads may be established under section 162.21 but must not extend into the platted portion of a village. Village streets are controlled by the village officers. OAG Jan. 6, 1950 (377-A-6).

The village council has general power to acquire, either within or without the corporate limits, such real property as the purposes of the village may require, by purchase, gift, condemnation, or otherwise, under section 412.211, and has specific power to acquire, lay out, widen, and repair streets and other public ways as provided in section 412.22, subdivision 6. OAG Nov. 15, 1951 (377-B-1).

A corner lot which has been assessed for sewer on one side may also be assessed later for another sewer on the other side. OAG May 25, 1951 (387-B-1).

By ordinance the village council may require abutting owners to make connection with sewer and water mains. This applies to newly installed toilets and to toilets already existing. OAG April 17, 1952 (387-C-5).

A village is without power to permit a property owner of property fronting on a village street which has no sanitary sewer to construct a septic tank or cesspool in the street. OAG May 14, 1952 (387-C-6).

A school district may not contract with a village to finance the building of a sewer which when built will belong to the village but be paid for by the school district. OAG May 23, 1952 (387-F).

Villages may provide for the inspection of septic tanks. OAG Nov. 5, 1951 (387-G).

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 conveyance 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).

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

A village may close off a street for recreational purposes. OAG Dec. 23, 1952 (396-C-3).

Under its police power a village may close portions of its street temporarily to protect children using an adjacent skating rink. OAG Dec. 17, 1953 (396-C-3).

A village has no authority to purchase on contract a building to be used as a garage for village equipment. OAG Dec. 21, 1953 (469-A-12) (396-G-6).

The village council has general power to pave the streets. The council has its option and may proceed on the assessment plan, under the provisions of section 429.03. Or, the council may pay a part of the cost from the general revenue fund and later make assessment on abutting property owners as to the balance. Or, it may pay the entire cost of the three blocks specified in the instant case out of the general revenue fund. Section 434.14 is also applicable. It is quite general practice in Minnesota for a municipality to use the surplus profits from its municipal liquor store in improving the streets and paying the entire sum out of the general revenue fund. OAG Jan. 25, 1950 (396-G-10).

Villages may provide for street improvements without a petition therefor and issue tax anticipation certificates of indebtedness, but general obligation bonds or cer-

# MINNESOTA STATUTES 1953 ANNOTATIONS

tificates may not be issued without the approval of the voters. OAG June 19, 1951 (396-G-10).

While a village has power to rent its town hall it must obtain the best rent obtainable so as to reduce the burden of taxation and turning the town hall over to the American Legion who propose to expend \$15,000 in repairing it, when in effect, it involves borrowing money from the Legion to make the improvements in the village hall, and this the village has no authority to do. OAG May 26, 1949 (469-A-9).

A village is without authority to acquire property and lease it back to a private corporation and a village cannot acquire property subject to a covenant to pay off the obligations of the private corporation. OAG Dec. 15, 1950 (469-A-12).

There is no general statutory authority authorizing one tax-supported body to make a gift to another tax-supported body. A village cannot convey land to a school district without consideration and a school district must receive full and fair value for any property transferred to a village or county. OAG March 1, 1950 (469-A-15).

The village council acting as a council may employ attorneys other than the regularly designated village attorney and if the employment was irregular, the village council, by a majority vote, may ratify the act of individual members. OAG April 15, 1950 (469-B-1).

Where money is available the village council may remodel the village hall and build a fire hall without an election on the question. OAG July 20, 1949 (469-C-6).

Members of a committee appointed by the council on a motion that the appointees serve at the will of the mayor may be removed by the mayor but cannot be replaced by him. OAG April 13, 1953 (471).

The village mayor and members of the council may be reimbursed for traveling expense incurred in performing the duties of their office. OAG Dec. 26, 1950 (471-K).

Where a village purchased certain property and paid for same out of the general revenue funds, and thereafter dedicated the land to park purposes, and thereafter the state in the exercise of the power of eminent domain took a portion thereof for highway purposes, the proceeds of the sale should go to the general revenue fund and would not in any way be dedicated to park purposes. OAG Feb. 2, 1951 (476-A).

The powers of the village council include authority to settle and compromise pending litigation, acting in good faith. OAG Feb. 2, 1951 (476-A-5).

A village may adopt an ordinance licensing and regulating bowling alleys. The requirement that separate toilet facilities for men and women must be furnished must be determined by the reasonableness of such a provision. OAG May 3, 1951 (477-B-1).

A village may not spend money for training a school safety patrol at camp. OAG Dec. 23, 1953 (476-B-2).

If there is a reasonable basis of classification an ordinance may provide for restriction of garbage disposal service charged to places of business. OAG Feb. 21, 1952 (477-B-14).

Under the provisions of section 412.221, subdivision 32, an ordinance may be enacted establishing the time within which applications for village licenses must be made and fees paid provided that the ordinance is "not inconsistent with the constitution and laws of the United States or of Minnesota." OAG April 3, 1950 (477-B-17).

For the protection of its inhabitants, a village may by ordinance require construction of adequate safeguards around open pits, excavations, and other dangerous conditions existing upon private property, and prescribe penalties for violation thereof. OAG May 22, 1953 (477-B-20).

Villages may enact zoning ordinances and building codes and amend them. OAG April 17, 1951 (477-B-34).

The use of property located in a village and zoned as commercial cannot be used as a cement plant, no authority having been authorized. The fact that the building is

# MINNESOTA STATUTES 1953 ANNOTATIONS

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licensed as a service garage but used for some time as a cement plant is immaterial because the doctrine of estoppel cannot be raised against a municipality. OAG May 17, 1951 (477-B-34).

Village ordinances do not require building permits in residential districts. The village may not question the title to the land upon which it is proposed to build the building. Where a zoning ordinance permits churches in a residential district village authorities may not refuse a building permit. OAG June 29, 1951 (477-B-34).

A village may not amend a zoning ordinance so as to require a platting of unplatted lands within the village as a prerequisite to the sale or lease thereof. OAG March 24, 1952 (477-B-34).

Village sidewalks may be built without an assessment of benefits under the provisions of Laws 1949, Chapter 119, Section 29, Subdivision 6, coded as 412.221. If the plan contemplates the assessment of benefits it may be done in accordance with section 429.21 et seq. OAG Oct. 13, 1949 (480-A).

There is no statutory provision authorizing a village to make an original survey and have the same platted. The statute only authorized the council to renumber the lots and blocks of the village or any part thereof. OAG Nov. 7, 1950 (484-E-6).

A village is without authority to spend money for advertising the village until a tax levy for that purpose has been approved by the electorate. OAG June 1, 1949 (519-Q).

Neither a village nor a village light, power, and building commission may invest funds in certificates issued by a nonprofit corporation organized for the purpose of providing a lighted athletic field. OAG May 9, 1950 (624-A-6).

A village council is not required to exercise the authority conveyed upon it to erect a light plant, the vote being taken under the provisions of section 457.01. Such authority if exercised must be exercised within a reasonable time and what is a reasonable time is a question of fact. Where a utility franchise has expired and the municipality permits service to be continued, the utility may continue without any personal franchise. OAG March 2, 1950 (624-C-6).

Where a franchise is granted to a power corporation for 20 years and the rates to be charged by the corporation are fixed only for a 10-year period and no provision is made for the determination of new rates past that 10-year period, the corporation may fix its own rates subject to the limitation that they must be reasonable. Such a franchise making no provision for fixed rates past the first 10 years is not void as against public policy. OAG Sept. 26, 1951 (624-C-6).

Where a public utilities commission exists in a village and the municipal light plant is engaged not only in distribution but also in the generation of electrical energy, the authority to purchase additional electrical energy from outside sources is vested in the village council and not in the commission. OAG July 10, 1952 (624-C-10).

The power of a village to contract with a public service corporation for furnishing electrical energy to a village and inhabitants does not especially include the power to regulate rates, but regulation of rates may be reserved in the contract. Bids need not be called for by the village before granting a contract involving franchise and rates. OAG April 25, 1950 (624-C-11).

Where no village public utilities commission exists, the village council has power to discontinue water service for nonpayment of an existing account. OAG May 28, 1952 (624-D-5).

A water main may be laid across a railroad crossing with or without the consent of the railroad. If the railroad property is benefited by the improvement it may be assessed therefor the same as other property. OAG June 14, 1950 (624-D-10).

It is not necessary for a village to vote on the question of making repairs to the waterworks system. OAG June 24, 1949 (624-D-17).



# MINNESOTA STATUTES 1953 ANNOTATIONS

## 412.231 VILLAGES

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Bridges are parts of streets and highways and it is the duty of municipalities to use ordinary care in the maintenance of a highway bridge, and if the circumstances are such that a new bridge is required to replace the old one, the village council is authorized to contract with the railroad company for reconstruction after having first obtained permission from the railroad and warehouse commission as provided in section 219.39. OAG May 2, 1951 (642-B-9).

A village may purchase red lights to be used on firemen's cars. OAG June 13, 1949 (688-C-1).

Section 412.221, subdivision 2, authorizes the purchase of fire apparatus by a village on the installment plan. OAG June 13, 1950 (688-C-1).

A village has no authority to issue village warrants and borrow money to purchase a fire truck. It cannot purchase the truck by issuing certificates of indebtedness, or by use of a conditional sales contract. If the village has levied a tax for the purchase of fire fighting equipment and this tax is in process of collection, warrants may be issued in anticipation of the collection of such tax to the limit specified in section 471.69. Section 412.221, subdivision 2, prescribes that purchases be made through a conditional sales contract under which the seller is confined to the remedy of recovery of the property in case of nonpayment of all or part of the purchase price, which shall be payable over a period of not to exceed five years. OAG Sept. 30, 1953 (688-C-1).

A volunteer fireman need not be a resident unless the village ordinance so requires. OAG Feb. 14, 1951 (688-J).

The contract for fire protection between a town and a village may not exceed one year. OAG Nov. 26, 1952 (688-K).

A village may purchase property through a conditional sales contract under which the seller is confined to the remedy of recovery of the property in case of nonpayment of all or part of the purchase price which may be payable over a period of not to exceed five years. Every contract for the purchase of merchandise materials or equipment which requires an expenditure of \$500 or more shall be let to the lowest responsible bidder after ten days public notice. OAG Feb. 21, 1950 (707-A-15).

A village is not authorized to contribute funds for the maintenance of a cemetery owned by a public cemetery association. OAG June 10, 1952 (870-J).

A village has authority to accept by grant a gift of real or personal property for a public cemetery. It may accept a transfer by a public cemetery association of a cemetery under section 306.025, and may own and maintain a municipal cemetery as provided in section 412.221, but is not authorized to accept as a gift a building used exclusively as a burial vault building and to assume an unpaid obligation thereon of \$600. OAG Nov. 13, 1952 (870-J).

Funds derived from the operation of a village hospital may not be disbursed by the hospital board established under section 412.221, subdivision 16. There is no provision with respect to the hospital board as is found in connection with the public utilities commission under section 412.371 nor the park board under section 412.531. As to the village funds received from the conduct of the village hospital, no disbursement may be made except by an order drawn by the mayor and clerk upon the treasurer after proper auditing as provided in section 412.271. OAG Aug. 24, 1949 (1001-H).

A village may not contribute money toward the equipment of a hospital not owned by it or under its control or management. OAG Sept. 8, 1949 (1001-H).

A village cannot erect a hospital and turn uncontrolled management over to a private institution. OAG Nov. 22, 1949 (1001-H).

Only when the property is no longer useful for village purposes may the village hospital and the hospital equipment be sold or leased. OAG July 13, 1950 (1001-H).

## 412.231 PENALTIES

HISTORY. 1949 c 119 s 30.

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The statute relating to punishment for the violation of an ordinance is not changed by the new village code. OAG Nov. 17, 1949 (477-A).

A village council may prescribe a violation which is punishable by a fine or by imprisonment but may not impose a double penalty. OAG Feb. 21, 1952 (477-A).

For the protection of its inhabitants, a village may by ordinance require construction of adequate safeguards around open pits, excavations, and other dangerous conditions existing upon private property, and prescribe penalties for violation thereof. OAG May 22, 1953 (477-B-20).

A village may contract for the purchase of electricity or may purchase electricity from the United States government. OAG Jan. 18, 1950 (624-C-2).

## TAXATION, FINANCE

### 412.241 COUNCIL TO CONTROL FINANCES

HISTORY. 1949 c 119 s 31.

A village clerk may also serve as manager or operator of a village liquor store provided that the village is organized under Optional Plan A. OAG Dec. 19, 1950 (358-E-7).

Title to "personal property in old library building" is in the village and not in the library board and the village council by a majority vote may dispose of the property and determine into what fund the proceeds of the sale shall be paid. OAG April 16, 1953 (285-A).

### 412.251 ANNUAL TAX LEVY

HISTORY. 1949 c 119 s 32; 1951 c 104 s 1.

A re-enactment of Minnesota Statutes 1941, Section 459.06, by Laws 1945, Chapter 347, did not authorize the village of Buhl to levy a tax for a municipal forest in excess of the per capita tax limitation, section 275.11 et seq, but the per capita tax limitation controls the same as it did prior to the re-enactment of section 459.06. State ex rel v Borgen, 231 M 317, 43 NW(2d) 95.

In a county where the county library exists and a village maintains a reading room in connection therewith, the village may employ and pay the librarian. OAG May 1, 1953 (285-C).

Where a village is incorporated after a levy of town taxes is made by the electors at a town meeting, the town levies remain and are unaffected by the village incorporation. OAG July 23, 1952 (440-B).

A village may levy a tax for the support of a village band and by agreement may exercise that power jointly with another municipality, each paying the agreed amount. OAG April 21, 1950 (519-H).

The laws governing the taxes which a village may levy, the maximum levy permitted by law, and the purposes for which taxes may be levied, is stated in section 412.251. No exception is made for emergencies. No municipal corporations can become indebted, in any manner, or for any purpose beyond the limit specified. The purpose of the indebtedness in excess of the constitutional limit is wholly immaterial. OAG June 18, 1952 (519-Q).

General store maintenance purposes must be considered as "general village purposes" in computing the total tax subject to a 35-mill limitation. OAG Dec. 26, 1952 (519-Q).

A village may not levy a separate tax for the upkeep of a cemetery but may use money in the general fund for that purpose. OAG Aug. 24, 1949 (870-J).

**412.261 TAX ANTICIPATION CERTIFICATES**

**HISTORY.** 1949 c 119 s 33; 1953 c 735 s 4.

Where a village council is empowered to establish and improve a street either upon a petition therefor, or upon its own initiative, the cost thereof may be paid out of general revenue funds, by special assessment, or by issuance of tax anticipation certificates. OAG Dec. 20, 1951 (396-G).

Villages may provide for street improvements without a petition therefor and issue tax anticipation certificates of indebtedness, but general obligation bonds or certificates may not be issued without the approval of the voters. OAG June 19, 1951 (396-G-10).

Where a village, before issuance of bonds or obligations to defray cost of improvement project, levies a tax over term of obligations issued, council may issue tax anticipation certificates against the particular fund for a particular year even though the county auditor as a result of error or inadvertence fails to spread or extend the tax for the particular year involved. Tax anticipation certificates must be sold at public sale in accordance with the requirements of section 475.60. OAG Feb. 21, 1951 (476-C-1).

**412.271 DISBURSEMENTS**

**HISTORY.** 1949 c 119 s 34; 1951 c 378 s 10; 1953 c 319 s 5.

Payment of wages to municipal liquor store employees and the payment of bills incurred by the store is governed by the provisions of section 412.271. OAG Jan. 17, 1951 (218-R).

There is no statutory provision for a special auditing committee of a municipal liquor store. OAG June 10, 1952 (218-R).

The village clerk with the consent of the council may appoint a deputy. The deputy may discharge any other duties of the clerk, except that he shall not be a member of the council. There is no statutory prohibition against the appointment of the manager of the municipal liquor store as deputy village clerk and as such in conjunction with the mayor he may sign orders on the treasurer from disbursements from the municipal liquor store funds. OAG April 15, 1953 (218-R).

Village warrants need not be signed by the village treasurer. A system may be adopted of having the village warrants countersigned by the treasurer whereby the warrant becomes a check. OAG June 23, 1949 (456-B).

Section 471.38 amends the law relating to verified claims against towns and counties but does not amend the law relating to verified claims against villages and school districts. OAG May 25, 1949 (476-A-5).

Claims against a village, except for wages paid on an hourly or daily basis, shall be itemized and verified by an attached affidavit stating that the claim is just and correct and that no part thereof has been paid. OAG Sept. 18, 1950 (476-A-5).

A facsimile signature of village officers applied by a mechanical device on village orders is valid when authorized and directed. OAG March 2, 1953 (476-A-11).

Funds derived from the operation of a village hospital may not be discharged by the hospital board established under section 412.221, subdivision 16. There is no provision with respect to the hospital board as is found in connection with the public utilities commission under section 412.371 nor the park board under section 412.531. As to the village funds received from the conduct of the village hospital, no disbursement may be made except by an order drawn by the mayor and clerk upon the treasurer after proper auditing as provided in section 412.271. OAG Aug. 24, 1949 (1001-H).

**412.281 ANNUAL FINANCIAL STATEMENT**

**HISTORY.** 1949 c 119 s 35.

The publication of all village proceedings is not mandatory. Ordinances are required to be published. Section 412.281 does not require the publication of council proceedings either monthly or quarterly. It relates to the form of the clerk's annual financial statement in the event the proceedings are published. OAG March 27, 1950 (277-B-1).

The publication of the annual financial statement of a village is controlled by Laws 1949, Chapter 119. It is to be noted that the annual financial statement may be summarized in such form as the public examiner may prescribe. OAG Jan. 11, 1950 (277-B-2).

## **412.291 FISCAL YEAR**

HISTORY. 1949 c 119 s 36.

## **412.301 FINANCING STREET AND FIRE EQUIPMENT**

HISTORY. 1949 c 119 s 37.

The village of Hibbing may purchase street construction or maintenance equipment and use it for garbage removal. Certificates of indebtedness issued for the above purpose may be made callable before maturity date. They must be sold at public sale. OAG Feb. 10, 1950 (469-A-11) (476-A-4).

The issuance of certificates of indebtedness and a tax levy, as authorized by section 412.301, for the purchase of fire equipment or street construction or maintenance equipment must be within the existing debt limitation, as stated in section 475.53, and also within the provisions of section 275.12. OAG May 10, 1950 (476-A-4).

A village has no authority to issue village warrants and borrow money to purchase a fire truck. It cannot purchase the truck by issuing certificates of indebtedness, or by use of a conditional sales contract. If the village has levied a tax for the purchase of fire fighting equipment and this tax is in process of collection, warrants may be issued in anticipation of the collection of such tax to the limit specified in section 471.69. Section 412.221, subdivision 2, prescribes that purchases be made through a conditional sales contract under which the seller is confined to the remedy of recovery of the property in case of nonpayment of all or part of the purchase price, which shall be payable over a period of not to exceed five years. OAG Sept. 30, 1953 (688-C-1).

Where a contract for labor and parts for repairing a tractor used for street maintenance requires an expenditure of \$500 or more, the contract therefor must be awarded to the lowest responsible bidder. The cost thereof, including labor and parts, may be financed by the issuance of certificate of indebtedness. OAG Sept. 12, 1950 (707-A-15).

## **412.311 CONTRACTS**

HISTORY. 1949 c 119 s 38; 1951 c 378 s 11; 1951 c 379 s 5; 1953 c 735 s 5.

Right of taxpayer to enjoin or void a contract awarded on competitive bidding, an officer being interested in the transaction. 35 MLR 322.

Where a village, in proceedings for the construction of a power plant, asks for base bids on a particular type of generating equipment and alternate bids on another type, the village council, in its discretion, may disregard the alternate bid in accepting the bid of the lowest responsible bidder. The council's acceptance of such bid will not be set aside if there is a reasonable basis for such exercise of discretion. *Ottertail Power Co. v Village of Wheaton*, 234 M 419, 49 NW(2d) 804.

Where plans and specifications for the construction of a power plant reasonably and necessarily demand the consideration of several factors and no single bid is lowest in all the factors for consideration, the village council may, in the reasonable exercise of its discretion, decide what weight is to be given the various factors and accept what it deems to be the lowest bid, considering all the factors. Such acceptance will not be set aside by the court where there is no showing of an abuse of discretion. *Ottertail Power Co. v Village of Wheaton*, 235 M 123, 49 NW(2d) 804.

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 412.311 VILLAGES

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Where bids are received on items of equipment which are not capable of precise or exact specifications, a municipality may exercise a reasonable discretion in determining who is the lowest responsible bidder and, in so doing, may consider, in addition to the bid price, the quality, suitability, and adaptability of the article to be purchased for the use for which it is intended. The court's finding that the plans and specifications here involved were not so vague and indefinite as to stifle competition or so restrictive as to preclude competitive bidding is sustained by the evidence. Sections 471.34 to 471.37 do not apply to contracts for work or services or to contracts for the purchase of supplies and equipment which include also the furnishing of work and labor in connection with the installation thereof. *Otter Tail Power Co. v Village of Elbow Lake*, 234 M 419, 49 NW(2d) 197.

A village has authority to purchase parking meters on a conditional sales contract but it must not ignore the provision requiring advertising for bids. OAG March 30, 1951 (59-A-53).

The village treasurer may not furnish his own official bond written by an insurance agency in which he has an interest, but the council may, by a four-fifths vote, purchase merchandise or materials in which a member of the council is interested in an amount not exceeding \$50 in any year. OAG Aug. 23, 1949 (90-A).

The village council must not enter into a contract with an electrical shop when one of the councilmen is financially interested therein. OAG June 10, 1949 (90-A-1).

A private citizen owning property leased said property to a village to be used as a municipal liquor store. His subsequent election as mayor of the village did not affect the validity of the lease nor was he disqualified from holding public office. OAG Dec. 1, 1949 (90-A-1).

A vending machine kept in a municipal liquor store by the owner, a councilman-elect, under an oral arrangement with the village whereby a percentage of the gross receipts from the machine is payable to the village, is prohibited. OAG Dec. 26, 1951 (90-A-1).

Generally no member of a village or city council may be directly or indirectly interested in any contract made by the council. Section 471.88 authorizes a village council, by unanimous vote, to contract for the services of a member under certain circumstances. Whether there is any authority for the village council to pay a member for services in pumping out private basements as the result of rainstorms and floods is a fact question. OAG Sept. 9, 1953 (90-A-1).

A contract between a village and a member of the council may be entered into when the facts are within the provisions of section 471.88 (4). OAG Nov. 6, 1953 (90-A-1).

A village councilman may have a village license unless the ordinance requires the giving of a bond, which would constitute a contract. OAG Aug. 15, 1949 (90-E-4).

A member of the village council may not sell property to the village wherein he is an officer. OAG Aug. 23, 1949 (90-E-6).

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

A council trustee may not serve as a part-time village policeman for compensation. OAG April 29, 1952 (358-E-9).

Where the village council employed a contractor to build certain new streets at an agreed price, said contract was valid except for the fact that the village failed to advertise for bids. If the village accepted the improvement and benefited thereby, the village is liable and must pay a reasonable value of the contractor's labor and materials, and such value is a question of fact. OAG Sept. 18, 1950 (707-B-5) (476-A-5).

The water, power, and light commission of the village of Proctor must advertise for bids on any purchases of materials and equipment requiring the expenditure of \$500 or more. OAG April 24, 1953 (624-A-6).

# MINNESOTA STATUTES 1953 ANNOTATIONS

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VILLAGES 412.321

In determining who is "lowest responsible bidder" the council is not limited to the financial responsibility of the bidder. Other essential and favorable factors in the interest of the city may be taken into consideration. OAG Dec. 1, 1952 (707-A-4).

A village may not award a contract for construction of a fire hall on a cost plus basis. All contracts for any kind of construction requiring an expenditure of \$500 or more, must be let to the lowest responsible bidder. OAG Aug. 21, 1950 (707-A-6).

Under the law requiring published notices for bids the council should give such notice as will attract the most bidders. OAG July 21, 1949 (707-A-9).

If a village contract involves the expenditure of \$500 or more of village money, it is necessary to advertise for bids. OAG Sept. 21, 1949 (707-A-15).

Contracts for improvement of a library building costing \$1,000 or more should be let by the library board after calling for bids. OAG Sept. 26, 1949 (707-A-15).

No emergency being involved a village is without power to make a contract for construction involving more than \$500 without advertising for bids. OAG Oct. 17, 1949 (707-A-15).

Where the amount involved is \$500 or more a village is required to let the contract to the lowest responsible bidder and section 412.421 being in pari materia with section 412.311 requires that any village contract for a local improvement in excess of \$1,000 be awarded to the lowest responsible bidder. OAG May 29, 1950 (707-A-15).

Where a contract for labor and parts for repairing a tractor, used for street maintenance, requires an expenditure of \$500 or more, the contract therefor must be awarded to the lowest responsible bidder. The cost thereof, including labor and parts, may be financed by the issuance of certificates of indebtedness. OAG Sept. 12, 1950 (707-A-15).

The village water and light commission is required to advertise for bids before entering into a contract for the purchase of equipment involving an expenditure of \$500 or more. OAG Jan. 24, 1951 (707-A-15).

A village may purchase public liability insurance and need not advertise for bids even though the premiums will exceed \$500 per year. OAG Jan. 29, 1952 (707-A-15).

Certain contracts requiring an expenditure of \$500 or more must be let after advertising for bids to the lowest responsible bidder. An addition to a village hall may not be done by day labor. The provisions of Laws 1953, Chapter 735, Section 5, must be adhered to. OAG June 11, 1953 (707-A-15).

The contract of a village for the purchase of material, merchandise, or equipment in excess of \$500 must be awarded to the lowest responsible bidder. The village council may purchase parts of a fire truck when such parts are separable and each costs less than \$500 without first advertising for bids for such purchase where it is made in good faith and not to evade the provisions of the statute. As to whether the purchase of a fire truck or any other commodity constitutes an emergency, is a question of fact. OAG Oct. 15, 1953 (707-A-15).

Where a village plans to purchase or lease a chlorinator or other water treating equipment, the procedure is subject to the terms of the competitive bidding statute, section 412.311, as amended by Laws 1953, Chapter 735, Section 5. OAG Nov. 7, 1953 (707-A-15).

## UTILITIES

### 412.321 MUNICIPAL UTILITIES

HISTORY. 1949 c 119 s 39-42.

A municipality, while not the insurer of the safe condition of its sewers, is liable for failure to exercise ordinary or reasonable care to keep the sewers in repair and free from obstructions. Where the municipality has actual or constructive notice of

a defect in its sewers over a sufficiently long period to enable it to remedy the condition prior to the act resulting in the damage complained of, that is sufficient notice upon which liability of the municipality may be predicated. *Pettinger v Village of Winnebago*, ..... M ....., 58 NW(2d) 325.

Where the question of construction of an electric power plant was submitted to the electors of the village, only the estimated cost or maximum amount to be expended, was required to be stated on the ballot. *Otter Tail Power Co. v Village of Wheaton*, 235 M 123, 49 NW(2d) 804.

A vote of the electorate of the village is required for the construction of the water works for the village, and approval requires a five-eighths of those voting vote in the affirmative. Should the construction of water works be approved, bonds to finance such construction would not be included in the net debt of the village for the purpose of determining limitations on the net debt. The question of issuing general obligation bonds for construction of the water works must be submitted to the electors for their approval. OAG Nov. 18, 1949 (624-D-7) (44-B-17).

No public utility shall be constructed, purchased, or leased until the proposal to do so has been submitted to the electors and approved by five-eighths of those voting on the proposition. OAG Feb. 3, 1953 (44-B-17).

The people having voted not to establish water works and sewer system, the council is not justified in the purchase of land which the council expects at some uncertain future time to use in conjunction with the planned sewer and water system. OAG June 12, 1952 (469-A-12).

A village employee, entitled to a vacation with pay, who does not take the vacation, cannot be paid for the vacation period as the payment would constitute double pay for the same period of time. OAG Nov. 6, 1950 (469-D-13).

A village through its council may purchase electricity at wholesale and resell it to local consumers. Under these circumstances section 412.311 is not applicable. OAG Sept. 24, 1952 (624-C-2).

A village desiring to take over a municipal light and gas plant from a company owning a franchise must do so under the provisions of section 117.20, the act being entitled, "In the matter of condemnation of, etc." The petition for condemnation should not be filed until the village council has been empowered to initiate such proceedings. The village through condemnation proceedings would not acquire any rights the existing company has under contract with the natural gas distributor but the village must make its own contract with the distributor. Under the provisions of section 300.05 the vote to acquire such property "shall be taken at a special election called for that purpose." OAG March 31, 1950 (624-C-6).

Where on August 7, 1945, the village passed an ordinance granting to a gas company a non-exclusive franchise for 25 years to maintain and operate a gas distribution system for the sale of gas within the village, and reserved the right to acquire the property at any 5-year period from the effective date of the franchise when authorized to do so by a two-thirds majority of the votes cast upon the question of acquisition, the granting of the franchise was a contract and the village is bound by the provisions of section 300.05 and may not proceed to acquire the property under the provisions of section 412.321 which requires approval of only five-eighths of those voting. OAG May 22, 1950 (624-C-6).

A village may purchase electric power for distribution or may erect its own plant. OAG Feb. 11, 1953 (624-C-16).

Where no village public utilities commission exists the village council may discontinue water service for nonpayment of an existing account. OAG May 28, 1952 (624-D-5).

In villages the jurisdiction to entertain petitions for water main extensions, to levy special assessments therefor, and to issue improvement bonds or warrants necessary to defray the expense in making local improvements is vested in the village council and not in the village public utilities commission. OAG May 12, 1953 (624-D-11).

# MINNESOTA STATUTES 1953 ANNOTATIONS

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VILLAGES 412.351

It is not necessary for a village to vote on the question of making repairs to the water works system. OAG June 24, 1949 (624-D-17).

Under the provisions of Laws 1949, Chapter 119, Section 39, coded as section 412.321, a village may contract for repairs and replacements of its electrical distribution system without a vote of the people. OAG July 15, 1949 (707-A-15).

A village may contract to pay for the drilling of a well upon the gallonage basis as the water from the well is used. OAG Jan. 7, 1953 (707-A-15).

## **412.331 ESTABLISHMENT OF COMMISSION**

**HISTORY.** 1949 c 119 s 43.

The water, light, and power building commission of a village may transfer moneys from the sinking fund to be used for other public needs. The public utilities commission may order the disbursement of funds in the so-called sinking fund. OAG Jan. 9, 1950 (624-A-6).

A village may make an extension of its water mains as follows:

1. The public utilities commission may extend the mains using funds accumulated in the water utility.
2. The village council may do the work and pay the same from general taxation.
3. The village council may proceed by the assessment method if the proper procedure is followed. OAG June 6, 1949 (624-D-10).

An employee in the state classified service must resign if he occupies an appointive village office for which a salary is provided. OAG March 27, 1952 (644-E.)

A village may purchase property through a conditional sales contract under which the seller is confined to the remedy of recovery of the property in case of non-payment of all or part of the purchase price which may be payable over a period of not to exceed five years. Every contract for the purchase of merchandise materials or equipment which requires an expenditure of \$500 or more shall be let to the lowest responsible bidder after ten days public notice. OAG Feb. 21, 1950 (707-A-15).

The village water and light commission is required to advertise for bids before entering into a contract for the purchase of equipment involving an expenditure of \$500 or more. OAG Jan. 24, 1951 (707-A-15).

The public utilities commission in a village is an instrumentality of the village government but it is not a corporation. It is a part of the government. The power to sue or defend a suit is not enumerated among its powers. In case of suit it is the village that must defend. The commission cannot retain counsel or pay for his services from the funds under its control. OAG April 22, 1952 (779-A-5).

## **412.341 COMMISSION; MEMBERSHIP, ORGANIZATION**

**HISTORY.** 1949 c 119 s 44; 1951 c 378 s 12.

Under the Village Code members of the water and light commission may be paid a salary when authorized and fixed by the village council. OAG Nov. 21, 1949 (624-E-3).

The village water and light commission has no authority to adopt a rule making water and light bills a lien against real property. Further legislative authority is necessary before a municipal utility can make its charges a lien against property. OAG June 28, 1949 (624-G-5).

An employee in the state classified service must retire if he occupies an appointive village office for which a salary is provided. OAG March 27, 1952 (644-E).

## **412.351 COMMISSION, JURISDICTION**

**HISTORY.** 1949 c 119 s 45; 1951 c 378 s 13.



The council of the village of Hibbing may not voluntarily abandon a part of a water and light utility without the concurrence of the commission. If the abandonment is brought about by means other than by the action of the council, such concurrence is not necessary. OAG Sept. 2, 1949 (624-C-10).

A village water and light commission must advertise for bids before entering into a contract for the purchase of equipment involving an expenditure of \$500 or more. OAG Jan. 24, 1951 (707-A-15).

## **412.361 SPECIFIC POWERS**

**HISTORY.** 1949 c 119 s 46; 1953 c 735 s 6.

In selecting lowest responsible bidder a municipality may exercise a reasonable discretion. Consideration other than price may be utilized, such as quality, suitability, and adaptability of the article to be purchased for the use for which it was intended. Where it appears that the commission's choice is based upon a substantial difference in quality, suitability, and adaptability, its action will not be interfered with. *Duffy v Village of Princeton*, ..... M ....., 60 NW(2d) 27.

The office of member of a village utility commission and the office of a director of the school board are not incompatible. OAG April 30, 1952 (358-F).

Under the provisions of Laws 1949, Chapter 119, the water fund and the electrical fund must be kept separately; and there is apparently no authority permitting one fund to borrow from the other; but the commission and the village council may enter into an agreement for the transfer of a certain amount of money from the water works fund to the general revenue fund of the village, and by further agreement between the commission and the village council, the village might transfer certain money from the general revenue fund into the electrical fund. OAG June 27, 1949 (624-A-6).

A village may pay for utility service to the public utilities commission and thereupon the commission may transfer the same amount back to the village general fund if the surplus is sufficient. OAG April 4, 1951 (624-A-6).

A village public utilities commission may contract to furnish electrical service to the village for village purposes without making a charge therefor. OAG June 12, 1951 (624-A-6).

The question whether the village or its public utilities commission should maintain street lights and fire hydrants may be settled by an agreement between the council and the commission under section 412.361, subdivision 5. OAG Nov. 6, 1951 (624-C-3).

There is no statute prohibiting discrimination in utility rates. The rate charged to a school district for light or heat need not be identical with the rate charged to other consumers. OAG Jan. 25, 1952 (624-C-11).

A village does not need to vote on the question of making repairs to the water works system. OAG June 24, 1949 (624-D-17).

Where a public utilities commission exists in a village and a municipal light plant is engaged not only in the distribution but also in the generation of electrical energy, the authority to purchase additional electrical energy from outside sources is vested in the village council and not in the commission. OAG July 10, 1952 (624-C-10).

The village water and light commission has no authority to adopt a rule making water and light bills a lien against real property. Further legislative authority is necessary before a municipal utility can make its charges a lien against property. OAG June 28, 1949 (624-G-5).

The public utilities commission in a village is an instrumentality of the village government but it is not a corporation. It is a part of the government. The power to sue or defend a suit is not enumerated among its powers. In case of suit it is the village that must defend. The commission cannot retain counsel or pay for his services from the funds under its control. OAG April 22, 1952 (779-A-5).

## **412.371 PUBLIC UTILITY FUND AND DISBURSEMENTS**

**HISTORY.** 1949 c 119 s 47.

Under the provisions of Laws 1949, Chapter 119, the water fund and the electrical fund must be kept separately; and there is apparently no authority permitting one fund to borrow from the other; but the commission and the village council may enter into an agreement for the transfer of a certain amount of money from the water works fund to the general revenue fund of the village, and by further agreement between the commission and the village council, the village might transfer certain money from the general revenue fund into the electrical fund. OAG June 27, 1949 (624-A-6).

The water, light, and power building commission of a village may transfer moneys from the sinking fund to be used for other public needs. The commission may order the disbursement of funds in the so-called sinking fund. OAG Jan. 9, 1950 (624-A-6).

## **412.381 REPORTS**

**HISTORY.** 1949 c 119 s 48.

The minutes of the proceedings of the village council should be published in the official newspaper, designated as such under the provisions of section 412.191. OAG Sept. 11, 1951 (277-B-1).

## **412.391 ABOLITION OF COMMISSION**

**HISTORY.** 1949 c 119 s 49.

**412.401-412.481** Repealed, 1953 c 398 s 13.

## **PARKS, PARK BOARDS**

### **412.491 PARKS; PARKWAYS; RECREATIONAL FACILITIES**

**HISTORY.** 1949 c 119 s 61.

The surplus revenue from the operation of a municipal liquor store becomes a part of the general fund of the village and may be expended by the village for any lawful purpose; and under the provisions of section 412.491 et seq, the village may acquire land for a village park using general revenue funds derived from the municipal liquor store in making the acquisition. OAG April 12, 1950 (218-R).

A village may close off a street for recreational purposes. OAG Dec. 23, 1952 (396-C-3).

Under its police powers a village may temporarily close portions of its streets to protect children using an adjacent skating rink. OAG Dec. 17, 1953 (396-C-3).

A village may not maintain a state roadside area outside its limits over which it has no right of supervision or control. OAG Aug. 28, 1950 (476-B-10).

### **412.501 PARK BOARD IN CERTAIN VILLAGES; CONTINUANCE OF EXISTING BOARD; OFFICERS; COMPENSATION**

**HISTORY.** 1949 c 119 s 62.

### **412.511 ACQUISITION AND CONTROL OF PARK PROPERTY**

**HISTORY.** 1949 c 119 s 63.

### **412.521 POWERS OF BOARD**

**HISTORY.** 1949 c 119 s 64.

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 412.531 VILLAGES

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A baseball field in a public park may not be leased to one baseball club for its exclusive use. OAG Sept. 12, 1949 (59-B-11).

In establishing a policy governing the employment of its personnel and the conditions of employment the village council must take into consideration and act in a manner consistent with the powers of public utilities commission and the park board. OAG May 4, 1951 (469-B).

### 412.531 PARK FUNDS

HISTORY. 1949 c 119 s 65; 1951 c 378 s 14.

## OPTIONAL PLANS, VILLAGE GOVERNMENT

### 412.541 OPTIONAL PLANS

HISTORY. 1949 c 119 s 66.

A village which has not adopted an Optional Plan for its government, as provided in section 412.541, may fix and determine the salary of its treasurer under section 412.111, if the amount of salary is not fixed by statute and the determination thereof rests in the discretion of the council. OAG Aug. 31, 1950 (456-F).

### 412.551 ADOPTION OF SPECIFIC PLAN

HISTORY. 1949 c 119 s 67-71.

Where, under the new village code, Laws 1949, Chapter 119, a village desires to adopt special plan A, the recommended procedure is to call a special election and the form of question to be stated on the ballot at the special election is as follows: "Shall Optional Plan A, modifying the standard plan of village government by providing for the appointment by the council of the clerk, treasurer and assessor, be adopted for the government of the village?" Should the plan be adopted, the village may then at the December election elect only such officers as may be required under the plan. OAG May 31, 1949 (484-E).

Optional plan "A" may be submitted to the voters at a village election at the December, 1950, general election; and the plan should be placed in operation before the term of the incumbent expires, that is before December 31, 1950. Any vacancy in the office of the fourth trustee may be filled by the council by appointment. OAG Nov. 8, 1950 (484-E-4).

Where a village, operating under the Standard Plan of government, submitted a proposal to adopt an Optional Plan A, two slates of candidates should not be submitted, but only one and under the Standard Plan. OAG Nov. 17, 1950 (484-E-4).

When in a village election the question was on the adoption of Optional Plan A, 522 votes were cast at the election, 247 of which voted "Yes" and 193 voted "No", the 82 blank ballots of those who did not vote must be excluded when determining whether the plan was adopted. OAG Dec. 30, 1953 (484-E-4).

### 412.561 APPLICABLE LAWS AND ORDINANCES; RIGHTS RESERVED

HISTORY. 1949 c 119 s 72.

After a village has adopted Optional Plan "B" the mayor and the village manager sign all contracts and other instruments to which the village is a party. OAG Sept. 20, 1951 (469-A-2).

### 412.571 CONTINUANCE IN OFFICE; ELECTIONS

HISTORY. 1949 c 119 s 73; 1951 c 378 s 15-17.

Where a village clerk resigns prior to the expiration of his term, the council should appoint a new clerk even though an Optional Plan has been adopted since the commencement of the term of the resigning clerk. OAG Oct. 8, 1951 (470-L).

# MINNESOTA STATUTES 1953 ANNOTATIONS

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VILLAGES 412.681

Where an Optional Plan under the village code is adopted prior to the holding of the regular election the term of the village clerk is not extended under Laws 1949, Chapter 621. OAG Nov. 16, 1949 (484-E-4).

## OPTIONAL PLAN A

### 412.581 OPTIONAL PLAN "A"; OFFICERS

HISTORY. 1949 c 119 s 74.

A village clerk may serve as manager or operator of a village liquor store provided that the village is organized under Optional Plan "A". OAG Dec. 19, 1950 (358-E-7).

### 412.591 OPTIONAL PLAN "A"; DUTIES OF CLERK

HISTORY. 1949 c 119 s 75.

## OPTIONAL PLAN B

### 412.601 APPLICATIONS OF SECTIONS 412.601 TO 412.751

HISTORY. 1949 c 119 s 76.

### 412.611 COUNCIL-MANAGER PLAN

HISTORY. 1949 c 119 s 77.

In a village operating under Optional Plan "B" the assessor becomes an appointive officer and should be appointed by the manager. OAG April 4, 1950 (12-B-4).

### 412.621 BOARDS AND COMMISSIONS

HISTORY. 1949 c 119 s 78.

### 412.631 COMPOSITION OF COUNCIL

HISTORY. 1949 c 119 s 79.

### 412.641 MANAGER

HISTORY. 1949 c 119 s 80.

### 412.651 VILLAGE MANAGER; POWERS AND DUTIES

HISTORY. 1949 c 119 s 81.

### 412.661 LIMITATION OF POWERS OF MEMBERS OF COUNCIL

HISTORY. 1949 c 119 s 82.

### 412.671 CREATION OF DEPARTMENTS; DIVISIONS AND BUREAUS

HISTORY. 1949 c 119 s 83.

### 412.681 CLERK AND TREASURER; SUBORDINATE TO MANAGER; ABOLISHMENT OF OFFICE

HISTORY. 1949 c 119 s 84.

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 412.691 VILLAGES

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### **412.691 MANAGER THE CHIEF PURCHASING AGENT; LIMITATION; AUDIT AND APPROVAL**

HISTORY. 1949 c 119 s 85.

After a village has adopted Optional Plan "B" the mayor and the manager sign all contracts and other instruments to which the village is a party. OAG Sept. 20, 1951 (469-A-2).

In executing a deed of conveyance by a village which has adopted Optional Plan "B" the deed should be signed by the mayor and the clerk. OAG Feb. 17, 1953 (469-A-15).

### **412.701 BUDGETING**

HISTORY. 1949 c 119 s 86.

Expenses for a trip, investigation, and other duties incurred prior to the issuance of bonds authorized for improving, enlarging, and repairing the water, light, and steam heating plant of the village were not payable from the proceeds of the bond issue. OAG April 26, 1950 (44-B-8).

### **412.711 CONSIDERATION OF BUDGET; TAX LEVY**

HISTORY. 1949 c 119 s 87; 1953 c 735 s 8.

Prior to the passage of the 1953 amendment it was necessary for the village council to enact an appropriation ordinance. Since the enactment of Laws 1953, Chapter 735, Section 8, the necessity for an ordinance was eliminated and the statute as it now reads is self executing. OAG Aug. 19, 1953 (476-A).

### **412.721 BUDGET PROVISIONS, ENFORCEMENT; BUDGET ALLOWANCES, PENALTY FOR EXCEEDING**

HISTORY. 1949 c 119 s 88; 1953 c 735 s 9.

### **412.731 MODIFICATION OF BUDGET**

HISTORY. 1949 c 119 s 89; 1953 c 735 s 10.

A village operating under Optional Plan "B" may transfer surplus in the utility fund into the general fund so as to permit an increase in budget expenditures. OAG Feb. 19, 1952 (476-A-15).

### **412.741 REGULATIONS RELATING TO DISBURSEMENT OF FUNDS**

HISTORY. 1949 c 110 s 90.

A village which operates under Optional Plan "B" and which purchases electricity from an electric power company and does its own distributing to customers may transfer its surplus in the utility fund into the general fund and thus permit an increase in budget expenditures. OAG Feb. 19, 1952 (476-A-15).

### **412.751 EMERGENCY DEBT CERTIFICATES**

HISTORY. 1949 c 119 s 91.

## **OPTIONAL PLAN C**

### **412.761 APPLICATION OF SECTIONS 412.761 TO 412.821**

HISTORY. 1949 c 119 s 92.

### **412.771 COMMISSION FORM OF GOVERNMENT**

HISTORY. 1949 c 119 s 93.

# MINNESOTA STATUTES 1953 ANNOTATIONS

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VILLAGES 412.861

The offices of village treasurer and member of the school board in the same village are not incompatible. OAG Jan. 2, 1951 (358-F).

## **412.781 ADMINISTRATIVE DEPARTMENTS; POWERS**

HISTORY. 1949 c 119 s 94.

## **412.791 BOARDS**

HISTORY. 1949 c 119 s 95.

## **412.801 ASSIGNMENT OF MEMBERS OF THE COUNCIL AS DEPARTMENT HEADS**

HISTORY. 1949 c 119 s 96.

## **412.811 OFFICIALS**

HISTORY. 1949 c 119 s 97, 98.

## **412.821 ESTIMATES OF FINANCIAL REQUIREMENTS**

HISTORY. 1949 c 119 s 99.

## **GENERAL AND MISCELLANEOUS**

### **412.831 OFFICIAL NEWSPAPER**

HISTORY. 1949 c 119 s 100.

The designation by a village of an official newspaper is governed by section 412.831. OAG April 27, 1949 (277-B-4).

### **412.841 DESTRUCTION OF VILLAGE RECORDS**

HISTORY. 1949 c 119 s 101; 1953 c 735 s 11.

### **412.851 VACATION OF STREETS**

HISTORY. 1949 c 119 s 102; 1953 c 735 s 12.

Where the village of Minneota, in 1907, purchased a strip of land 33 feet wide and 1500 feet long, running along its border, which was never dedicated for street purposes but which has been called Market Street and used as a roadway without repair, and on which the village now desires to build an open ditch so as to eliminate a natural water-course now doing damage, the so-called Market Street having been dedicated by common law to street purposes, may be vacated only by statutory procedure for vacancy and the proceedings must be instituted by a majority of owners abutting on the alleged street. The building of a ditch thereon would be regulated by the provisions of section 429.011 et seq. The abutting owners being a farmer who owns the country side of the street and the eight owners of property on the village side of the alleged street must be compensated according to the provisions of section 117.19. OAG Sept. 28, 1953 (396-C-18).

Subject to section 368.01, a person owning the fee to all abutting lands affected may petition for the vacation of a highway. OAG Dec. 1, 1952 (396-F-3).

A petition for the vacation of an alley must be signed by a majority of the lands abutting thereon. The owner of land which abuts the end of the alley sought to be vacated is an abutting owner. OAG April 23, 1952 (396-G-1).

## **412.861 ORDINANCE PROSECUTIONS**

HISTORY. 1949 c 119 s 103; 1953 c 735 s 13.

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 412.871 VILLAGES

1108

A statute relating to punishment for a violation of an ordinance is not changed by the new village code. OAG Nov. 17, 1949 (477-A).

### 412.871 FINES AND PENALTIES

HISTORY. 1949 c 119 s 104.

### 412.881 PRESIDENT AND RECORDER DEFINED

HISTORY. 1949 c 119 s 105.

### 412.891 INCONSISTENCY WITH CASH BASIS LAW

HISTORY. 1949 c 119 s 106.

### 412.901 APPLICATION

HISTORY. 1949 c 119 s 109.

A re-enactment of Minnesota Statutes 1941, Section 459.06 by Laws 1945, Chapter 347, did not authorize the village of Buhl to levy a tax for a municipal forest in excess of the per capita tax limitation, 275.11 et seq, but the per capita tax limitation controls the same as it did prior to the re-enactment of section 459.06. State ex rel v Borgen, 231 M 317, 43 NW(2d) 95.

A village may continue its present form of government subject to the provisions of section 412.901. OAG Aug. 15, 1949 (688-M).

### 412.911 REPEALS

HISTORY. 1949 c 119 s 110.

### 412.921 CERTAIN STATUTES NOT TO APPLY TO VILLAGES

HISTORY. 1949 c 119 s 111.

A village council may not levy special assessments against abutting property owners to meet payments under a rental contract with a public utility corporation for furnishing street lighting. OAG March 1, 1951 (624-C-3).

## CHAPTER 413

### CHANGE IN LIMITS OR NAME

413.01 Repealed, 1949 c 119 s 110.

### NAMES

#### 413.02 CHANGE OF NAME

HISTORY. 1913 c 431 s 1, 2; 1913 c 493 s 1, 2; MS 1927 s 1193, 1194, 1850, 1851; 1949 c 119 s 111.

#### 413.03 VILLAGES WITHIN VILLAGES

HISTORY. 1858 c 10 s 3, 4; PS 1858 c 57 s 36, 37; 1929 c 184 s 1-5.

Where a village is incorporated within a town of which it formerly was a part and there was no separation for assessment and election purposes no division of