

THE
STATUTES AT LARGE
OF THE
STATE OF MINNESOTA

COMPRISING
THE GENERAL STATUTES OF 1866
As amended by subsequent Legislation to the close of the Session of 1873
TOGETHER WITH
ALL LAWS OF A GENERAL NATURE IN FORCE, MARCH 7, A.D. 1873

WITH REFERENCES TO
JUDICIAL DECISIONS OF THE STATE OF MINNESOTA, AND OF OTHER
STATES WHOSE STATUTES ARE SIMILAR

TO WHICH ARE PREFIXED
THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT,
THE ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA

VOL. I.

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CHAPTER XII.

OF TOWNSHIP ORGANIZATION AND THE INCORPORATION
OF CITIES AND OF TOWN PLATS.

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TITLE I.

OF TOWNSHIP ORGANIZATION.

(This Title is Chap. X. of the Statutes of 1866.)

SECTION 1. *Town, how organized.*—Whenever a majority of the legal voters of any congressional township in this state, containing twenty-five legal voters, petition the board of county commissioners to be organized as a town under this chapter, said board shall forthwith proceed to fix and determine the boundaries of such new town, and to name the same; and said board shall make a full report of all their proceedings in relation to laying off said town, and file the same with the county auditor.

SEC. 2. *Fraction of township, how organized.*—A fraction of a township may be attached by said commissioners to an adjoining town, or be divided between two or more towns, or organized separately, according to the wishes of a majority of the legal voters to be affected thereby; and when rivers or creeks so divide a township as to make it inconvenient to do town business, the fraction so formed may be disposed of as other fractions; and any township having two or more villages or cities, each containing two hundred or more inhabitants, may petition the county commissioners for a division; and whenever the county commissioners are so petitioned, they may, if they think the interests of such town will be subserved thereby, proceed to divide such township in such manner as will best suit the convenience of the state.

Supervisors of Maple Grove v. Board of Coms. of Wright Co., 12 Minn. 403; State *ex rel* Mantorville v. Mantor, 14 Minn. 437.

SEC. 3. *Towns, how named.*—Towns thus formed shall be named in accordance with the expressed wish of a majority of the legal voters resident therein, but if they fail to so designate the name, the county commissioners may select a name.

SEC. 4. *County commissioners to make and post notices.*—The county commissioners shall thereupon make out notices designating a suitable place for holding the first town meeting in each town, which shall be holden within twenty days after said town is organized; and the auditor shall deliver such notice to the sheriff of the county, who shall cause the same to be posted in each township, not less than ten days before the day set for such town meeting.

SEC. 5. *County auditor to send abstract of report to state auditor.*—Each county auditor shall, within thirty days after such town is organized, transmit by mail to the auditor of state an abstract of such report, giving the bounds of each town and the name designated; and said county auditor shall record, in a book for that purpose, a full description of each town.

SEC. 6. *Proceedings when two towns have same name.*—If the auditor of state on comparing the abstract of the reports from the several counties finds that any two or more townships have the same name, he shall transmit to the auditor of the proper county the name of the town to be altered; and the board of commissioners shall, at their next meeting thereafter, adopt for such town some name different from those heretofore named, so that no two towns organized under this title (chapter)

shall have the same name, and when such name is adopted, the auditor of the county shall inform the state auditor as before directed.

SEC. 7. *Boundaries of towns to remain as now.*—The limits and boundary lines of every organized township shall remain as now established, until otherwise provided by the board of county commissioners under the authority of law.

SEC. 8. *Powers.*—Each town is a body corporate, and has capacity—

First. To sue and be sued.

Second. To purchase and hold lands within its own limits, and for the use of its inhabitants, subject to the powers of the legislature.

Third. To make such contracts, purchase and hold such personal property as may be necessary for the exercise of its corporate or administrative powers.

Fourth. To make such orders for the disposition, regulation, or use of its corporate property as may be deemed conducive to the interests of its own inhabitants.

Cover v. Town of Baytown, 12 Minn. 124; 12 Wis. 93; 17 Wis. 398; 21 Wis. 63.

SEC. 9. *Limitation of powers.*—No town shall possess or exercise any corporate powers except such as are enumerated in this title (chapter), or are especially given by law, or necessary to the exercise of the powers so enumerated or granted.

SEC. 10. *Proceedings to be in name of town.*—All acts or proceedings by or against a town in its corporate capacity, shall be in the name of such town; but every conveyance of land within the limits of such town, made in any manner for the use or benefit of its inhabitants, has the same effect as if, made to the town by name.

SEC. 11. *By-laws, when to take effect.*—No by-law made by any town shall take effect before the same is published by posting up copies thereof in three of the most public places in the town; and such by-laws duly made and so published are binding upon all persons coming within the limits of the town, as well as upon the inhabitants thereof, and shall remain in force until altered or repealed at some subsequent town meeting.

SEC. 12 (AS AMENDED BY THE ACT OF FEBRUARY 24, 1870). *Town meeting, when held, how called.*—The citizens of the several towns of this state qualified to vote at general elections, shall annually assemble, and hold town meetings in their respective towns, on the second Tuesday of March, at such place in each town as the electors thereof at their annual town meetings from time to time appoint; and notice of the time and place of holding such meeting shall be given by the town clerk, by posting up written or printed notices in three of the most public places in said town, at least ten days prior to said meeting.

S. L. 1870, 174.

SEC. 13. *Three supervisors to be elected in each town.*—There shall be elected at the annual town meeting of each town three supervisors—one of whom shall be designated on the ballots as chairman, one town clerk, one treasurer, one assessor, two justices of the peace, two constables, and one overseer of highways, for each road district in said town; but justices of the peace and constables shall be elected only once in two years, except to fill vacancies.

SEC. 14 (ACT OF MARCH 1, 1872). *County auditor to appoint assessors, when.*—When any township assessor is elected, and fails or refuses to qualify to discharge the duties of his office, or if the electors of said township fail, from any

reason whatever, to elect an assessor, and the town board of said township fails or refuses to appoint an assessor for said township on or before the first day of June of that year for which said assessor is to serve, then it shall be the duty of the county auditor to appoint an assessor for said township, who shall be a resident of said county.

S. L. 1872, 92.

SEC. 15 (14). *Supervisors to be fence viewers.*—The supervisors elected in every town are by virtue of their office fence viewers of such town.

SEC. 16 (15, AS AMENDED BY ACT OF MARCH 5, 1869). *Powers of electors at town meetings.*—The electors of each town have power at their annual town meeting—

First. To determine the number of pound masters, and the location of pounds.

Second. To select such town officers as are required to be chosen.

Third. To direct the institution of defence or actions in all controversies where such town is interested.

Fourth. To direct such sums to be raised in such town for prosecuting or defending such actions as they may deem necessary.

Fifth. To make all rules and regulations for ascertaining the sufficiency of fences in such town, and for impounding animals.

Sixth. To determine the time and manner in which cattle, horses, mules, asses, and sheep are permitted to go at large: *provided*, that no cattle, horses, mules, nor asses be allowed to go at large between the fifteenth of October and the first of April.

Locke v. St Paul and Pacific R. R. Co., 15 Minn. 550. *Vide also* 17 Wis. 466.

Seventh. To impose such penalties on persons offending against any rule or regulation established by said town, except such as relate to the keeping and maintaining of fences, as they think proper, not exceeding ten dollars for each offense, unless herein otherwise provided.

Eighth. To apply such penalties, when collected, in such manner as they deem most conducive to the interests of the town.

Ninth. To vote to raise such sums of money for the repair and construction of roads and bridges, for the support of the poor, and for other necessary town charges, as they deem expedient: *provided*, that they may, at their annual town meeting, direct such an amount of the poll and road tax of the town to be expended on the highways in an adjoining township as they deem conducive to the interests of the town; which labor and tax shall be expended under the direction of the supervisors of the town furnishing the same: *provided further*, that where more than one entire congressional township is included within an organized town, the poll and road tax raised within the limits of each of such congressional townships, shall be expended within such congressional township, unless raised to be expended outside of such organized town in an adjoining town.

S. L. 1869, 38.

SEC. 17 (16). *Special town meetings to fill vacancies.*—Special town meetings may be held for the purpose of electing town officers to fill any vacancies that occur, also for the purpose of transacting any other lawful business, whenever the supervisors, town clerk, and justices of the peace, or any two of them, together

with at least twelve other freeholders of the town, file in the office of the town clerk a written statement that a special meeting is necessary to the interests of the town.

SEC. 18 (17). *Town clerk to make record.*—Every town clerk with whom such statement is filed, as required in the preceding section, shall record the same, and immediately cause notice to be posted up in five of the most public places in the town, giving at least ten days' notice of such special meeting; and if there is a newspaper printed in said town, he shall cause a copy of said notice to be published therein at least three days before the time appointed for such meeting.

SEC. 19 (18). *Notice what to specify.*—Every notice given for a special town meeting shall specify the purpose for which it is to be held, and no other business shall be transacted at such meeting than such as is specified in such notice. If vacancies in office are to be filled at such meeting, the notices shall specify in what office vacancies exist, how they occurred, who was the last incumbent, and when the legal term of each office expires.

SEC. 20 (19). *Town meeting, how organized.*—The electors present, at any time, between nine and ten o'clock in the forenoon of the day of the annual town meeting, or special town meeting, shall be called to order by the town clerk, if there is one present; in case there is none present, then the voters may elect, by acclamation, one of their number chairman. They shall then proceed to choose one of their number to preside as moderator of such meeting. The town clerk last before elected shall be clerk of the meeting, and keep full minutes of its proceedings, in which he shall enter at length every order or direction, and all rules and regulations made by the meeting. If the town clerk is absent, then such person as is elected for that purpose shall act as clerk of the meeting.

SEC. 21 (20). *Business, how transacted.*—At the opening of every town meeting the moderator shall state the business to be transacted, and the order in which it shall be entertained, and no proposition to vote a tax shall be acted on out of the order of business as stated by the moderator, and no proposition to reconsider any vote shall be entertained at any town meeting, unless such proposition to reconsider is made within one hour from the time such vote was passed, or the motion for such reconsideration is sustained by a number of voters equal to a majority of all the names entered upon the poll list at such election up to the time such motion is made; and all questions upon motions made at town meetings shall be determined by a majority of the electors voting; and the moderator shall ascertain and declare the result of the votes on each question.

SEC. 22 (21). *Challenges, how regulated.*—If any person offering to vote at any election, or upon any question arising at such town meeting, is challenged as unqualified, the judges of the town meeting shall proceed thereupon in like manner as the judges at the general election are required to proceed, adapting the oath to the circumstances of the town meeting.

SEC. 23 (22). *Qualifications of voters.*—No person is a voter at any town meeting unless he is qualified to vote at general elections, and has been, for the last ten days, an actual resident of the town wherein he offers to vote.

SEC. 24 (23). *Minutes of town meeting to be filed.*—The minutes of the proceedings of every town meeting, subscribed by the clerk of said meeting, and by the judges, shall be filed in the office of the town clerk, within two days after such town meeting.

SEC. 25 (24). *Proclamation of opening of polls, adjournment and closing, to be made.*—Before the electors proceed to elect any town officer, proclamation shall be made of the opening of the polls, by the moderator, and proclamation shall, in like manner, be made of the adjournment, and of the opening and closing of the polls, until the election is ended.

SEC. 26 (25). *Officers, how elected.*—The supervisors, treasurer, town clerk, assessor, justices of the peace, constables, and overseer of the poor, in each township, shall be elected by ballot. All other officers, if not otherwise provided by law, shall be chosen either by yeas and nays, or by a division, as the electors determine.

SEC. 27 (26). *Names voted for to be on one ballot.*—When the electors vote by ballot, all the officers voted for shall be named in one ballot, which shall contain, written or printed or partly written and partly printed, the names of the persons voted for, and the offices to which such persons are intended to be chosen, and shall be delivered to one of the judges so folded as to conceal its contents.

SEC. 28 (27). *Poll list to be kept.*—When the election is by ballot, a poll list shall be kept by the clerk of the meeting, on which shall be entered the name of each person whose vote is received.

SEC. 29 (28). *Judge to deposit ballots in box.*—When the election is by ballot, one of the judges shall deposit the ballots in a box provided for that purpose.

SEC. 30 (29). *Canvass of votes to be public.*—At the close of every election by ballot, the judges shall proceed publicly to canvass the votes, which canvass, when commenced, shall continue without adjournment or interruption until the same is completed.

SEC. 31 (30). *Canvass, how conducted.*—The canvass shall be conducted by taking a ballot at a time from the ballot box, and counting until the number of ballots is equal to the number of names on the poll list, and if there are any left in the box, they shall be immediately destroyed, and the person having the greatest number of votes shall be declared elected. If, on opening the ballots, two or more ballots are found to be so folded that it is apparent that the same person voted them, the board shall destroy such votes immediately.

SEC. 32 (31). *Result of canvass to be read to meeting.*—The canvass being completed, a statement of the result shall be entered at length by the clerk of the meeting in the minutes of its proceedings, to be kept by him as before required, which shall be publicly read by him to the meeting, and such reading shall be deemed notice of the result of the election, to every person whose name is entered on the poll list as a voter.

SEC. 33 (32). *Persons elected to be notified.*—The clerk of every town meeting, within ten days thereafter, shall transmit to each person elected to any town office, whose name is not entered on the poll list as a voter, notice of his election.

SEC. 34 (33). *Who are eligible to town offices.*—Every person qualified to vote at town meetings, is eligible to any town office.

SEC. 35 (34). *Officers to take oath.*—Every person elected or appointed to the office of supervisor, town clerk, assessor, treasurer, or constable, within ten days after he is notified of his election or appointment, shall take and subscribe before the town clerk or justice of the peace, an oath to support the constitution of the United States, and of the state of Minnesota, and faithfully to discharge the duties of his office (naming the same), to the best of his ability. Such oath shall be

administered without fee, and certified by the officer before whom it was taken, with the date of taking the same.

SEC. 36 (35). *Certificate of oath to be filed.*—The person taking such oath, shall immediately, and before entering upon the duties of his office, file the certificate of such oath in the office of the town clerk.

SEC. 37 (36). *Effect of not filing oath or bond.*—If any person elected or appointed to any town office, of whom an oath or bond is required, neglects to file the same within the time prescribed by law, such neglect shall be deemed a refusal to serve in such office.

SEC. 38 (37). *Overseer of highways and pound masters to file notice of acceptance of office.*—Every person elected or appointed to the office of overseer of highways or pound master, before he enters on the duties of his office, and within ten days after he is notified of his election or appointment, shall file in the office of the town clerk, a notice signifying his acceptance of such office. A neglect to file such notice shall be deemed a refusal to serve.

SEC. 39 (38). *Treasurer to give bond.*—Every person elected or appointed to the office of treasurer, before he enters upon the duties of his office, shall execute and deliver to the supervisors of the town and their successors in office, a bond, with one or more sureties to be approved by the chairman of the board, in double the probable amount of money to be received by him, which amount shall be determined by said board, conditioned for the faithful execution of his duties as such treasurer.

SEC. 40 (39). *Bond to be approved and filed.*—The said chairman shall, within six days thereafter, file such bond, with said approval indorsed thereon, in the office of the register of deeds, who shall record the same in a book provided for that purpose.

SEC. 41 (40). *Constables to take oath and give bond.*—Every person chosen to the office of constable, before he enters upon the duties of his office, and within eight days after he is notified of his election or appointment, shall take and subscribe the oath of office prescribed by law, and execute a bond to the board of supervisors in such penal sum as the supervisors direct, with one or more sufficient sureties to be approved by the chairman of said board or the town clerk, conditioned for the faithful discharge of his duties. The chairman of said board or the town clerk shall, if such bond is approved, indorse his approval thereon, and cause such bond to be filed with the town clerk for the benefit of any person aggrieved by acts or omissions of said constable, and any person so aggrieved, or the town, may maintain an action on said bond against said constable and sureties.

SEC. 42 (41). *Justices to take oath and give bond—bond to be approved and filed—who may sue on bond.*—Every person elected or appointed to the office of justice of the peace, shall, within ten days after receiving notice thereof, take and subscribe before any other officer duly authorized to administer oaths, an oath to support the constitution of the United States, and of the state of Minnesota, and faithfully and impartially to discharge the duties of his office, according to the best of his ability. He shall also execute a bond to the board of supervisors, with two or more sufficient sureties, to be approved by the chairman, in the penal sum of not less than five hundred dollars, nor more than one thousand dollars, conditioned for the faithful discharge of his official duties. Said chairman shall indorse thereon his approval of the sureties named in such bond, and such justice shall imme-

diately file the same, together with his oath of office, duly certified, with the clerk of the district court of the proper county, for the benefit of any person aggrieved by the acts of said justice, and any person aggrieved may maintain an action on said bond in his own name against said justice and his sureties.

SEC. 43 (42). *Effect of neglect to give bond.*—If any person elected or appointed to the office of treasurer or constable, does not give such security and take such oath as is required above, within the time limited for that purpose, such neglect shall be deemed a refusal to serve.

SEC. 44 (43). *Penalty for entering on duties before taking oath.*—If any town officer who is required by law to take the oath of office, enters upon the duties of his office before taking such oath, he forfeits to such town the sum of fifty dollars.

SEC. 45 (44). *Term of office.*—Town officers, except justices of the peace and constables, hold their offices for one year, and until others are elected or appointed in their places, and are qualified. The justices of the peace and constables shall hold their offices for two years, and until others are chosen and qualified.

SEC. 46 (45). *Vacancies, how filled.*—Whenever any town fails to elect the proper number of town officers, or when any person elected to a town office has failed to qualify, or whenever any vacancy happens in any town office, from death, resignation, removal from the town, or other cause, the justices of the peace of the town, together with the board of supervisors, or a majority of them, shall fill the vacancy by appointment, by warrant under their hand, and the persons so appointed shall hold their offices until the next annual town meeting, and until others are elected and qualified in their places, and shall have the same powers and be subject to the same duties and penalties as if they had been duly elected.

SEC. 47 (46). *Vacancies in board of appointment, how filled.*—Whenever a vacancy occurs from any cause, in any of the offices enumerated in the foregoing section, composing the board of appointment for the appointment of town officers in case of vacancy, the remaining officers, of such appointing board, shall fill any vacancy thus occurring.

SEC. 48 (47). *Proceedings when town fails to elect officers.*—In case any town refuses or neglects to organize and elect town officers at the time fixed by law for holding annual town meetings, twelve freeholders of the town may call a town meeting for the purpose aforesaid, by posting up notices in three public places in such town, giving at least ten days' notice of such meeting; which notice shall set forth the time and place and object of such meeting; and the electors, when assembled, by virtue of such notice, shall possess all the powers conferred upon them at the annual town meeting. In case no such notice is given, as aforesaid, within thirty days after the time for holding the annual town meeting, the board of county commissioners of the county shall, on the affidavit of any freeholder of said town, filed in the office of the clerk of the board, setting forth the facts, proceed, at any regular or special meeting of the board, and appoint the necessary town officers of such town, and the persons so appointed shall hold their respective offices until others are elected and qualified in their places, and shall have the same powers and be subject to the same duties and penalties as if they had been duly elected.

SEC. 49 (48). *Supervisors may accept resignations.*—The board of supervisors of any town may, for sufficient cause shown to them, accept the resignation of any town officer in their town, and whenever they accept any such resignation, they shall forthwith give notice thereof to the town clerk.

SEC. 50 (49). *Powers and duties of supervisors.*—The supervisors shall have charge of such affairs of the town as are not by law committed to other town officers; and they shall have power to draw orders on the town treasurer for the disbursement of such sums as may be necessary for the purpose of defraying the incidental expenses of the town, and for all moneys raised by the town to be disbursed for any other purpose.

Cover v. Town of Bayton, 12 Minn. 124.

SEC. 51 (50). *Supervisors to improve streets, when.*—Whenever any incorporated village or town which is laid out into streets is included in the limits of an organized township, the town supervisors are authorized to cause improvements to be made in any street that may be needed as a highway, if the corporate authorities of said village or town neglect to make such improvements.

SEC. 52 (51). *To be board of health.*—The town supervisors shall constitute a board of health, and within their respective town shall have and exercise all the powers necessary for the preservation of the public health.

SEC. 53 (52). *Board of health, powers of.*—The board of health may examine into all nuisances, sources of filth, and causes of sickness, and make such regulations respecting the same as they may judge necessary for the public health and safety of the inhabitants; and every person who shall violate any order or regulation made by any board of health, and duly published, shall be deemed guilty of misdemeanor, and punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months.

SEC. 54 (53). *Notice of regulations to be given.*—Notice shall be given by the board of health of all orders, and regulations made by them, by publishing the same in some newspaper, if there is one published in such town; if there is none, then by posting up such notice in five public places therein; and such publication of said orders and regulations, shall be deemed a legal notice to all persons.

SEC. 55 (54). *Nuisances may be ordered to be removed.*—Whenever any nuisance, source of filth, or cause of sickness, is found on private property, the board of health shall order the owner or occupant thereof, at his own expense, to remove the same within twenty-four hours; and if the owner or occupant neglects so to do, he shall forfeit a sum not exceeding fifty dollars, to be recovered in the name of and for the use of the town.

SEC. 56 (55). *Board may remove nuisance, when.*—Whenever such owner or occupant shall not comply with such order of the board of health, said board may cause the said nuisance, source of filth, or cause of sickness to be removed, and all expenses incurred thereby shall be paid by the said owner or occupant, or by such other person as has caused or permitted the same.

SEC. 57 (56). *May examine buildings and vessels.*—Whenever the board of health thinks it necessary, for the preservation of the health of the inhabitants, to enter any building or vessel in their town, for the purpose of examining into and destroying, removing, or preventing any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint under oath to a justice of the peace of his town, stating the facts in the case so far as he has knowledge thereof.

SEC. 58 (57). *Justice shall issue warrant on complaint.*—Such justice shall thereupon issue a warrant, directed to the sheriff or any constable of the county, commanding him to take sufficient aid, and being accompanied by two or more of

the board of health, between the hours of sunrise and sunset, to repair to the place where such nuisance, source of filth, or cause of sickness complained of may be, and the same destroy, remove, or prevent, under the direction of the members of such board of health.

SEC. 59 (58, AS AMENDED BY ACT OF MARCH 1, 1872). *Infected person may be removed.*—When any person coming from abroad, or residing in any town or city within this state, is infected or lately has been infected with the small pox or other contagious disease, dangerous to the public health, the board of health of the town or city where such sick or infected person is, may immediately cause him to be removed to a separate house, if it can be done without danger to his health, and shall provide for such person or persons nurses, medical attendance, and other necessities, which shall be a charge in favor of such town or city upon the person so provided for, his parents, guardian, or master, if able, otherwise, upon the county to which he belongs, or upon the state, if said person be a non-resident of the state.

S. L. 1872, 126.

SEC. 60 (59). *Provision for, in case of danger by removal.*—If such infected person cannot be removed without danger to his health, the board of health shall make provision as directed in the preceding section, for such person in the house where he may be, and in such case, they may cause the persons in the neighborhood to be removed, and may take such other measures as they may deem necessary for the safety of the inhabitants.

SEC. 61 (60). *Board shall provide hospital, when.*—When a disease dangerous to the public health breaks out in any town, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants, which shall be subject to the regulations of the board; and the board may cause any sick and infected person to be removed thereto unless his condition will not admit of such removal without danger to his health, in which case the house or place where he remains shall be considered as an hospital, and, with all its inmates, subject to the regulations of the board.

SEC. 62 (61). *Supervisors shall bring action on official bonds.*—The supervisors shall, by their name of office, prosecute for the benefit of the town, all actions upon bonds given to them, or their predecessors in office; and shall also sue for and collect all penalties and forfeitures, in respect to which no other provision is made, incurred by any officer or inhabitant of the town; and they shall have power, in like manner, to prosecute for any trespass committed on any public inclosure or property belonging to the town, and shall pay all moneys collected under this section to the town treasurer.

SEC. 63 (62). *Two supervisors a quorum.*—Any two of the supervisors constitute a quorum for the performance of any duties required by law, of the town supervisors, except when otherwise provided.

17 Wis. 398.

SEC. 64 (63). *Town clerk to have custody of town records.*—The town clerk shall have the custody of records, books, and papers of the town when no other provision is made by law; and he shall duly file, and safely keep, all certificates of oaths, and other papers required by law to be filed in his office.

SEC. 65 (64). *Proceedings of town meeting shall be recorded.*—He shall record

in the book of records of his town, minutes of the proceedings of every town meeting, and he shall enter therein every order or direction, and all rules and regulations of any such town meeting; and shall also file and preserve all accounts audited by the town board or allowed at a town meeting, and enter a statement thereof in such book of records.

SEC. 66 (65). *Town clerk shall take oath and give bond.*—Every person elected or appointed to the office of town clerk in any of the towns of this state, shall, before he enters upon the duties of his office, and within the time prescribed by law for filing his oath of office, execute a bond with two or more sufficient sureties, to be approved by the town treasurer, in such penal sum as the supervisors direct, conditioned for the faithful discharge of his duties. Said bond so approved shall be filed in the office of the clerk of the district court for the benefit of any person aggrieved by the acts or omissions of said town clerk, and any person so aggrieved, or the town, may maintain an action on said bond against said town clerk and sureties.

SEC. 67 (66). *Name of constable to be sent to clerk of court.*—Every town clerk, immediately after the qualification of any constable, elected or appointed in his town, shall transmit to the clerk of the district court of the county the name of such constable.

SEC. 68 (67). *Name of justice to be sent to clerk of court.*—Each town clerk shall, immediately after the election of any justice of the peace in his town, transmit a written notice thereof to the clerk of the district court of said county, stating therein the name of the person elected, and the term for which he is elected; and if elected to fill a vacancy, he shall state in said notice who was the last incumbent of the office.

SEC. 69 (68). *Neglect to make return, penalty.*—If any town clerk wilfully neglects to make such return, such omission is hereby declared a misdemeanor, and on conviction thereof, the person so offending shall be adjudged to pay a fine not exceeding ten dollars.

SEC. 70 (69). *By-laws to be posted.*—The town clerk shall post in three of the most public places in his town, copies of all by-laws made by such town, and shall make an entry in the town records of the time when, and the place where, such by-laws were posted.

SEC. 71 (70). *Supervisors to audit accounts against town.*—The supervisors constitute a town board for the purpose of auditing all accounts payable by said town; and if from any cause there are not three supervisors present, to constitute said board, the chairman, and in his absence, either of the other supervisors, may notify any one, or so many of the justices of the peace of the town as will, together with the supervisors present, make a board of three; and the board so constituted shall have authority to act as the town board.

SEC. 72 (71). *Shall meet, when.*—The town board shall meet annually on the Tuesday next preceding the annual town meeting to be held in said town, and at such other times as they deem necessary and expedient, for the purpose of auditing and settling all charges against said town; and they shall state on each account the amount allowed by them; but no allowance shall be made for any account which does not specifically state each item of the same, and the nature thereof.

SEC. 73 (72). *Shall audit accounts of town officers.*—The said board shall also, at their annual meeting in each year, examine and audit the accounts of the town

treasurer for all moneys received and disbursed by him as such officer; and they shall audit the accounts of all other town officers who are authorized by law to receive or disburse any money of the town by virtue of their office.

SEC. 74 (73). *Shall draw up report.*—Such board shall draw up a report, stating in detail the items of account audited and allowed, the nature of each account, and the name of the person to whom such account was allowed, including a statement of the fiscal concerns of the town and an estimate of the sum necessary for the current expenses thereof, the support of the poor, and other incidental expenses for the ensuing year.

SEC. 75 (74). *Report shall be read.*—Such report shall be produced and publicly read by the town clerk at the next ensuing town meeting, and the whole or any portion of such report may be referred, by the order of the meeting, to a committee, whose duty it shall be to examine the same and report thereon to such meeting.

SEC. 76 (75). *Treasurer shall pay audited accounts.*—The amount of any account audited and allowed by the town board, and the amount of any account voted to be allowed at any town meeting, shall be paid by the town treasurer on the order of said board, signed by the chairman and countersigned by the clerk; and all orders issued to any person by the town board for any sums due from such town shall be receivable in payment of town taxes of said town.

SEC. 77 (76). *Town clerk to be clerk of town board.*—The town clerk shall be the clerk of the town board, and shall keep a true record of all their proceedings in his office.

SEC. 78 (77). *Duties of treasurer.*—The town treasurer shall receive and take charge of all moneys belonging to the town, or which are by law required to be paid into the town treasury, and shall pay over and account for the same upon the order of such town, or the officers thereof, duly authorized in that behalf, made pursuant to law, and shall perform all such duties as may be required of him by law.

SEC. 79 (78). *Shall keep true account of moneys received and paid out—shall deliver books to successor.*—Every town treasurer shall keep a true account of all moneys by him received by virtue of his office, and the manner in which the same are disbursed, in a book provided at the expense of the town for that purpose, and exhibit such account, together with his vouchers, to the town board at its annual meeting for adjustment; and he shall deliver all books and property belonging to his office, the balance of all moneys in his hands as such treasurer, to his successor in office, on demand, after such successor has qualified according to law.

SEC. 80 (79). *Shall draw money from county treasurer.*—The town treasurer shall from time to time draw from the county treasurer such moneys as have been received by the county treasurer for the use of his town, and on receipt of such moneys shall deliver proper vouchers therefor. Each town treasurer shall be allowed and entitled to retain two per centum of all moneys paid into the town treasury, for receiving, safe keeping, and paying over the same according to law; except such moneys as are appropriated for bounty to soldiers, of which he shall only be allowed to retain one per cent.

SEC. 81 (80). *Shall make annual statement.*—Each town treasurer, within five days preceding the annual town meeting, shall make out a statement in writing of the moneys by him received into the town treasury from the county treasurer, and

from all other officers and persons, and also of all moneys paid out by him as such treasurer, in which statement he shall set forth particularly from whom and on what account such moneys were received by him, with the amount received from each officer or person, and the date of receiving the same, also to whom and for what purpose any moneys have been paid out by him, with the amount and date of each payment. He shall also state therein the amount of moneys remaining in his hands as treasurer. Such statement shall be filed by him in the office of the town clerk, and shall be by such clerk carefully preserved and recorded in the town book of records.

SEC. 82 (81). *Violation of four preceding sections—penalty.*—Every town treasurer who refuses or neglects to comply with the provisions of the four preceding sections shall forfeit not more than two thousand dollars, to be recovered in any court of competent jurisdiction, the amount to be fixed by the jury trying the cause, or by the court if there is no jury impaneled, and may be recovered by a civil action, in the name of any person who prosecutes the same, with costs of suit; one-half shall go to the person so prosecuting, and the remainder to the town of which such delinquent is or has been treasurer.

SEC. 83 (82). *Fees of town officers.*—The following town officers are entitled to compensation at the following rates for each day necessarily devoted by them to the service of the town, in the duties of their respective offices: the town assessors shall receive for their services two dollars per day while engaged in their respective duties as such assessors. The town clerks and supervisors shall receive for their services one dollar per day when attending to business in their town, and one dollar and fifty cents when attending to business out of town; no town supervisor shall receive more than twenty dollars for compensation in any one year: *provided*, that the town clerk shall be paid fees for the following, and not a per diem: For serving notices of election upon town officers, as required by law, twenty-five cents each; for filing any paper required by law to be filed in his office, ten cents each; for posting up notices required by law, twenty-five cents each; for recording any order or any instrument of writing authorized by law, six cents for each one hundred words; for copying any record or instrument on file in his office, and certifying the same, six cents for each one hundred words, to be paid for by the person applying for the same: *provided further*, that at any town meeting, before the electors commence balloting for officers, they may by resolution reduce or increase the compensation of officers, but no such increase shall exceed one hundred per cent.

SEC. 84 (83). *Fees and duties of pound masters.*—The pound master is allowed the following fees, to wit: For taking into pound, and discharging therefrom, any horse, ass, or mule, and all neat cattle, ten cents each. For every sheep or lamb, three cents each; and for every hog, large or small, five cents; and twenty cents for keeping each head twenty-four hours in pound. And the pound master has a lien on all such animals for the full amount of his legal charges and expenses, and shall be entitled to the possession of such animals until the same are paid; and if the same are not paid and said animals removed within four days after they are so impounded, the said pound master shall give notice, by posting the same in three of the most public places in said town, that said animals (describing them) are impounded, and that unless the same are taken away and fees paid, within fifteen days after the date of such notice, he will sell the same at public vendue, at the place where the town meetings of said town are usually held; and on the day desig-

nated in such notice, the said pound master shall expose the said animals for sale, and sell the same to the highest bidder in cash, for which services he shall receive two per cent. of the purchase money for each animal. Out of the moneys realized from said sale the said pound master shall deduct all his legal fees and charges, and pay the balance, if any, to the chairman of the town supervisors, at the same time giving to said supervisors an accurate description of the animal sold, and the amount received by him for each animal, and shall take a receipt and duplicate therefor, and file one of them with the town clerk: *provided*, that the said supervisors shall at any time within six months, upon sufficient proof from the owner of any animal so sold, pay to said owner the balance due as received from the said pound master; but if said money is not claimed within that time, then the sum so received shall be retained for the use of said town.

SEC. 85 (84). *Actions between towns, how regulated.*—Whenever any controversy or cause of action exists between towns, or between a town and an individual or corporation, such proceedings shall be had either at law or equity, for the purpose of trying and settling such controversy, and the same shall be conducted in the same manner, and the judgment or decree therein shall have the like effect, as in other actions or proceedings of a similar kind between individuals and corporations.

SEC. 86 (85). *Actions, in what name brought.*—In all such actions and proceedings the town shall sue and be sued by its name, except where town officers are authorized by law to sue in their name of office for the benefit of the town.

SEC. 87 (86). *Town shall plead, when.*—But no town or town officer shall be required to appear, answer, or plead to any such action at the first term of the court after the commencement thereof, when the same is commenced in the district court, unless the process aforesaid is served as herein directed, at least thirty days before the commencement of the term.

SEC. 88 (87). *Papers in action, how served.*—In legal proceedings against a town by name, all papers shall be served on the chairman of the board of supervisors, and in case of his absence, on the town clerk, and whenever any action or proceeding is commenced, said chairman shall attend to the defense thereof, and lay before the electors of the town at the first town meeting, a full statement of such proceedings, for their direction in regard to the defense thereof.

SEC. 89 (88). *Town not to bring action before justice of peace, when.*—No action in favor of any town shall be brought before any justice of the peace residing in such town.

SEC. 90 (89). *Action to recover penalty, how regulated.*—Whenever any action is brought to recover a penalty imposed for any trespass committed on the lands belonging to the town, if it appears on the trial thereof that the actual amount of injury to such town lands in consequence of such trespass, exceeds the sum of twelve dollars and fifty cents, then the amount of actual damage with cost of suit shall be recovered in said action, instead of any penalty for said trespass imposed by the town meeting, and such recovery shall be used as a bar to every other action for the same trespass.

SEC. 91 (90). *Other actions, how regulated.*—Whenever, by decree, or decision, in any action or proceeding brought to settle any controversy in relation to town commons or other lands, the common property of a town, or for the partition thereof, the rights of any town are settled and confirmed, the court in which such

proceedings are had, may partition such lands according to the right of parties.

SEC. 92 (91). *Judgment against town, how collected.*—When a judgment is recovered against any town or against any town officers in an action prosecuted by or against them in their name of office, no execution shall be awarded or issued upon such judgment, but the same, unless reversed or stayed on appeal, shall be paid by the town treasurer upon demand and the delivery to him of the certified copy of the docket of the judgment, if there is sufficient money of such town in his hands not otherwise appropriated. If he fails to do so, he shall be personally liable for the amount, unless the collection thereof is afterwards stayed upon appeal. If payment is not made within thirty days after the time fixed by law for the county treasurer to pay over to the town treasurer the money in his hands belonging to such town, levied for the purpose of paying such judgment, next after the rendition of such judgment, execution may be issued on such judgment, but only town property shall be liable thereon.

SEC. 93 (92). *Tax to be levied to pay judgment, when.*—If judgment for the recovery of money is rendered against any town, and the judgment is not satisfied or proceedings thereon stayed by appeal or otherwise, before the next annual meeting of said town, a certified copy of the docket of the judgment may be presented to said town at said annual meeting. The supervisors of the town shall thereupon cause the amount due on the judgment with interest from the date of its recovery to be added to the tax of said town, and the same certified to the county auditor and collected as other town taxes are collected.

SEC. 94 (93). *Town to maintain guide posts.*—Every township shall, in the manner provided herein, erect and maintain guide posts on the highways and other ways within the township, at such places as are necessary or convenient for the direction of travellers.

SEC. 95 (94). *Supervisors to make report of places where guide posts are erected or needed—penalty for neglect.*—The supervisors shall submit to the electors, at every annual meeting, a report of all the places at which guide posts are erected and maintained within the town, and of all places at which, in their opinion, they ought to be erected and maintained. For each neglect or refusal to make such report, they shall severally forfeit the sum of ten dollars.

SEC. 96 (95). *Town to determine places where guide posts shall be erected—penalty for neglect.*—Upon the report of the supervisors, the town shall determine the several places at which guide posts shall be erected and maintained, which shall be recorded in the town records. A town which neglects or refuses to determine such places, and to cause a record thereof to be made, shall forfeit the sum of five dollars for every month during which it neglects or refuses so to do; and in such case, upon any trial for not erecting or maintaining guide posts reported to be necessary or convenient, by the supervisors, the town shall be estopped from alleging that such guide posts were not necessary or convenient.

SEC. 97 (96). *Guide posts, how erected and marked.*—At each of the places determined by the town, there shall be erected a substantial post, of not less than eight feet in height, near the upper end of which shall be placed a board, and upon such board shall be plainly and legibly painted, or otherwise marked, the name of the next town or place, and such other town or place of note as the supervisors think proper to which each of such roads lead, together with the distance or

number of miles to the same; and also the figure of a hand, with the forefinger thereof pointed towards the towns or places to which said roads lead: *provided*, that the inhabitants of any town may, at their annual meeting, agree upon some suitable substitute for such guide posts.

SEC. 98 (97). *Neglect to maintain guide posts—penalty for.*—Every town which neglects or refuses to erect and maintain such guide posts, or some suitable substitute therefor, shall forfeit annually the sum of five dollars for every guide post which it so neglects or refuses to maintain, which sum may be sued for and collected by any person, before any justice of the peace of the proper county, and the moneys so collected shall be paid into the town treasury for the benefit of the roads and bridges of the said town.

SEC. 99 (ACT OF MARCH 8, 1873). *Shall designate three public places for posting notices.*—At the annual town meeting in each year, the legal voters present at each meeting shall determine and designate three places in the town as public, or the most public places of a town, and that all legal notices required to be posted in three public, or the most public places of such town, shall be posted up at such places at least, and they shall make provisions for the erection and maintenance of suitable posts on which to post up notices as aforesaid in all places so designated in which there is no sufficient natural convenience for that purpose.

S. L. 1873, 221.

SEC. 100 (98). *Pounds to be under care of pound masters.*—Whenever the electors of any town determine at their annual meeting to erect one or more pounds therein, the same shall be under the care and direction of such pound masters as are chosen or appointed for that purpose.

SEC. 101 (99). *May be discontinued.*—The electors of any town may, at any annual town meeting, discontinue any pounds therein.

SEC. 102 (100). *Town charges, what.*—The following shall be deemed town charges:

First. The compensation of town officers for services rendered their respective towns.

Second. Contingent expenses necessarily incurred for the use and benefit of the town.

Third. The moneys authorized to be raised by the vote of the town meeting for any town purpose.

Fourth. Every sum directed by law to be raised for any town purpose: *provided*, that no tax for town purposes shall exceed the amount voted to be raised at the annual town meeting as provided in subdivision nine, section fifteen aforesaid.

SEC. 103 (101). *How levied.*—The moneys necessary to defray the town charges of each town shall be levied on the taxable property in such town, in the manner prescribed in the title (chapter) for raising revenue and other money for state and county purposes and expenses.

SEC. 104 (102). *Successor to town officer to demand books, etc.*—Whenever the term of any supervisor, town clerk, or assessor expires, and another person is appointed or elected to such office, such successor, immediately after he enters upon the duties of his office, shall demand of his predecessor all books and papers under his control belonging to such office.

SEC. 105 (103). *Vacancies, how filled.*—Whenever either of the officers above

named resigns, or the office becomes vacant in any way, and another person is elected or appointed in his stead, the person so elected shall make such demand of his predecessors or of any person having charge of such books and papers.

SEC. 106 (104). *Records, etc., to be delivered to successor.*—Every person so going out of office, whenever thereto required, pursuant to the foregoing provisions, shall deliver upon oath, all records, books, and papers in his possession, or in his control, belonging to the office held by him, which oath may be administered by the officer to whom such delivery is made.

SEC. 107 (105). *Demand and delivery in certain cases, how made.*—Upon the death of any of the officers enumerated, the successor of such officer shall make such demand, as above provided, of the executors or administrators of such deceased officer, and such executors or administrators shall deliver upon like oath, all records, books, papers, or moneys in their possession or under their control, belonging to the office held by their testator or intestate.

SEC. 108 (106). *Each town an election district.*—Each town organized under this title (chapter), or any law heretofore in force, constitutes an election district.

SEC. 109 (107, AS AMENDED BY ACT OF MARCH 6, 1869). *Power to contract debts limited.*—The town has power to contract debts or make expenditures for any one year in a larger sum than the amount of taxes assessed for such year, without having been authorized by a majority of the voters of such township, and no town shall assess for township purposes more than ten mills on the dollar of taxable property for any one year.

S. L. 1869, 31. *Vide also Act of March 6, 1868 (S. L. 1868, 89).*

SEC. 110 (108). *Chapter not to apply to cities.*—Nothing in this title (chapter) contained shall in any way apply to any portion of the state which is embraced within the limits of any incorporated city; but each incorporated city shall have and exercise within its limits, in addition to its other powers, the same powers conferred by this title (chapter) upon towns, in the manner prescribed by law.

SEC. 111 (ACT OF MARCH 3, 1868). *Supervisors may issue town bonds, etc., for building bridges.*—The board of supervisors of the organized townships of this state, or those that may hereafter be organized, be and the same are hereby authorized and fully empowered to issue the bonds or orders of their respective towns, with coupons attached, in such amounts and at such periods as they may be directed by two-thirds of all the legal voters present and voting at any legally called town meeting held for that purpose; such bonds or orders to be payable in such amounts and at such times, not exceeding six years from date, as two-thirds of the legal voters present and voting at such meeting shall determine, with interest thereon not to exceed twelve per cent. per annum, payable annually; which bonds or orders and coupons shall be signed by the chairman of the board of supervisors, and countersigned by the clerk of said town: *provided*, that nothing herein contained shall be construed to authorize the issuing of such bonds or orders unless the same shall have been first voted for by ballot by two-thirds of the legal voters present and voting at any annual town meeting, or special town meeting called for that purpose, notices of which, particularly specifying the object for which such meeting was called, have been posted in at least three public places in said town for not less than ten days previous to the time of calling the same.

S. L. 1868, 87. *Vide also S. L. 1867, 58.*

TITLE II.

OF THE INCORPORATION OF CITIES.

(*This Title is Chapter XXXI. of the Laws of 1870. S. L. 1870, 56.*)

SEC. 112 (AS AMENDED BY ACT OF MARCH 6, 1871). *How cities may be organized.*—Cities may be organized within the limits of this state as herein provided. Whenever two-thirds of the legal voters residing within the limits of a territory comprising not less than two thousand inhabitants, and not more than fifteen thousand, and which territory they desire to have incorporated as a city, shall sign and have presented to the judge of probate of the county in which such territory is situated, a petition setting forth the metes and bounds of said city, and of the several wards thereof, and praying that said city may be incorporated under such name as may therein be designated, the judge of probate shall issue an order declaring such territory duly incorporated as a city, and shall designate therein the metes, bounds, wards, and name thereof, as in said petition described. And the said judge of probate shall in said order designate the time and place of holding the first election of officers for said city, which shall be not less than thirty nor more than sixty days from the presenting of said petition, and shall cause said order to be posted in five of the most public places in said city, at least for thirty days prior to the day of such election, and also cause the same to be published in some newspaper published in said city, at least once in each week for three consecutive weeks prior thereto, and if there be no newspaper published in said city, then in the paper published nearest thereto, and if there be more than one newspaper published in said city, then in one of such papers. Upon presenting the petition aforesaid to the judge of probate as aforesaid, the inhabitants within the metes and bounds therein described shall thenceforth be a body politic and corporate, subject to and with power to act under the authority of all the provisions of this act. They shall have power to sue and be sued; complain and defend in any court; make and use a common seal; and alter it at pleasure; and take, hold, and purchase, lease, and convey such real and personal or mixed estate as the purposes of the corporation may require, within or without the limits aforesaid; shall be capable of contracting and being contracted with; and shall have the general powers possessed by municipal corporations at common law, and in addition thereto, shall possess the powers hereinafter granted; and the authorities thereof shall have perpetual succession. And in case the territory included in any city which shall be hereafter formed and established under the provisions of this act, shall include the territory embraced in any village or borough corporation, such village or borough corporation shall, upon the establishment of such city corporation, cease, and such city corporation shall thereupon succeed to and become vested with and owners of all the property, real, personal, and mixed, which belonged to or was owned by such village or borough corporation at the time when the same ceased to exist, and such city corporation shall also thereupon become and be liable and responsible for all the debts, obligations, and liabilities then existing against such village or borough corporation, for any cause or consideration whatever in the same manner and to the same extent as if such debts,

obligations, or liabilities had been originally contracted or incurred by such city corporation.

S. L. 1871, 91.

SEC. 113 (ACT OF FEB. 24, 1872). *First city elections under general incorporation act.*—The said judge of probate, in his order designating the time and place of holding the first election of officers of any city incorporated under this title (act), shall name three electors of each ward who shall conduct the said first election for their respective wards, and who shall be the inspectors thereof, and shall take the usual oath or affirmation as prescribed by the general laws of the state to be taken by the judges and inspectors of elections, and shall have the power to appoint clerks of such elections, and to administer the necessary oaths, and the persons so named as inspectors of the election shall hold and conduct the same in the manner and under the same penalties as provided by the laws of this state regarding elections, and shall have power to fill vacancies in the board of inspectors as provided by law.

S. L. 1872, 151.

SEC. 114. *Annual elections to be held.*—There shall be an annual election for elective officers hereinafter provided, held on the first Tuesday of April of each and every year, at such place in each ward as the common council shall designate; and the polls shall be kept open from nine o'clock in the forenoon until five in the afternoon; and ten days' previous notice shall be given by the common council, of the time and place of holding such election, and of the officers to be elected, by posting notices thereof in three public places in each ward, and by publishing the same in at least one of the papers published in the city, if one shall be published in said city.

SEC. 115. *City divided into wards.*—Each city governed by this title (act) shall be divided into not less than two nor more than five wards, as may be provided by ordinance of the city council thereof, and each ward shall contain as nearly as practicable an equal number of legal voters, and also an area equal to each other.

SEC. 116. *Corporate name.*—The corporate name of each city governed by this title (act), shall be "The City of _____," and all and every process and notice whatever affecting any such city shall be served upon the mayor, and in his absence, upon the president of the council, and in the absence of both, upon the clerk, and in the absence of these officers from the city, then by leaving a certified copy at the office of said clerk.

SEC. 117. *Officers to be elected.*—The elective officers of each city shall be a mayor, treasurer, recorder, one justice of the peace for each ward, who shall be styled city justice, all of whom shall be qualified voters of the city, and two aldermen in each ward, who shall be qualified voters therein; all other officers for said city shall be appointed by the common council, unless otherwise provided. At the first general election for city officers, there shall be elected in each ward two aldermen, one for one year and one for two years, at every annual election thereafter one alderman shall be elected from each ward, who shall hold his office for two years and until his successor is elected and qualified. The city justices shall hold their offices for two years and until their successors are elected and qualified; all other elective officers shall hold their offices for one year and until their successors are elected and qualified.

SEC. 118. *Officers may be removed, when.*—Every person appointed to any office by the common council, or elected to any office by the people, may be removed from said office by a vote of two-thirds of all the aldermen authorized to be elected. But no officer elected by the people shall be removed except for cause, nor unless furnished with a written statement of the charges against him, nor until he shall have had a reasonable opportunity to be heard in his defence. The common council shall fix a time and place for the trial of such officer, of which not less than ten days' notice shall be given, and have power to compel the attendance of witnesses and the production of books and papers, and to hear and determine the case; and if said officer shall neglect to appear and answer the charges against him, the common council may declare the office vacant.

SEC. 119. *Vacancy, how filled.*—Whenever a vacancy shall occur in the office of mayor or alderman by death, removal, resignation, or otherwise, the common council shall have power, and it shall be their duty to declare the office vacant by resolution entered upon their minutes. Such vacancy shall be filled by a new election, which shall be ordered by the common council within ten days after said vacancy is declared, and held within twenty days after such declaration, and reasonable notice of such election shall be given. Any vacancy happening in any other office shall be filled by the common council, unless otherwise provided for. The person elected or appointed to fill a vacancy shall hold his office and discharge the duties thereof for the unexpired term, and with the same rights and subject to the same liabilities as the person whose office he may be elected or appointed to fill.

SEC. 120. *Elections shall be by ballot.*—All elections by the people shall be by ballot, and each ballot shall contain the names of the persons voted for with a proper designation of the office written or printed thereon, and a plurality of votes shall constitute an election. When two or more candidates for an elective office shall receive an equal number of votes for the same office, the election shall be determined by the casting of lots in the presence of the common council at such time and in such manner as they shall direct.

SEC. 121. *Qualifications of electors.*—All persons entitled to vote for state or county officers, and who shall have resided in the city for four (4) months next preceding the election and ten (10) days in the ward where they offer to vote, shall be entitled to vote for any officer to be elected under this law, and to hold any office hereby created, provided their name shall have been duly inserted in the list of qualified electors of the ward in which they reside, as in the case of the election of state and county officers; and the different wards established by law shall constitute election districts for state and county as well as city elections, and the mode of conducting all state and county elections in said city shall be in the manner herein provided in reference to city elections, except that the returns thereof shall be made by the judges of election to the county auditor of the county within the time and manner prescribed by law.

SEC. 122. *Elections, how conducted.*—The elections in said city shall be held and conducted by the aldermen of each ward, and one (1) other elector of each ward, to be appointed by the common council, who shall be inspectors of election, and shall take the usual oath or affirmation as prescribed by the general laws of the state to be taken by the judges and inspectors of elections, and shall have power to appoint clerks of such elections, and to administer the necessary oaths. Said elec-

tions shall be held and conducted in the same manner and under the same penalties, and vacancies in the board of inspectors thereof filled as required by the laws of this state regarding elections: *provided*, that no candidate for office shall act as inspector or clerk at such election.

SEC. 123. *Judges shall make returns of elections.*—When a city election shall be closed, and the number of votes for each person voted for shall have been counted and ascertained, the judges shall make returns thereof, stating therein the number of votes for each person for each and every office, and shall deliver or cause to be delivered such returns to the clerk of the common council, within three days after any election, and the common council shall meet and canvass said returns and declare the result, as it appears from the same, within three days thereafter. The recorder of the common council shall forthwith notify the officer or officers elected of their election by written notice served upon such officers in person, or left at their usual place of abode, with some person of suitable age and discretion.

SEC. 124. *Special election to be held, when.*—Special elections to fill vacancies, or for any other purpose, shall be held and conducted by the aldermen of each ward, in the same manner, and the returns thereof made in the same form and manner as in general and annual elections, and within such time as may be prescribed by resolution.

SEC. 125. *Officer removing from city, etc.*—Any officer removing from the city or ward for which he is elected, or any officer who shall refuse or neglect, for ten days after notice of his election or appointment, to enter upon the discharge of the duties of his office, shall be deemed to have vacated his office, and the common council shall proceed to fill the vacancy as herein prescribed.

SEC. 126. *Term of office to expire, when.*—The term of every officer elected under this law shall commence on the second Tuesday of April for the year for which he was elected, and shall, unless otherwise provided, continue for one year and until his successor is elected and qualified.

SEC. 127. *Failure by people to elect.*—Should there be a failure by the people to elect any officer herein required to be elected on the day designated, the common council may order a new election to be held, ten days' notice of the time and place being given.

SEC. 128. *Officers to take oath and give bond.*—Every person elected or appointed to any office under this title (act) shall, before he enters upon the duties of his office, take and subscribe an oath of office and file the same, duly certified by the officer taking the same, with the recorder of the city, and the treasurer and marshal, and such other officer as the common council may direct, shall severally, before entering upon the duties of their respective offices, execute to the city a bond, with at least two (2) sureties (to be approved by the common council), who shall make affidavit that they are worth the penalty specified in said bond over and above all debts, exemptions, or liabilities, and said bonds shall contain such penal sums and such conditions as the common council may deem proper, and they may from time to time require new and additional bonds, and may remove from office any officer refusing or neglecting to give the same.

SEC. 129. *Mayor, duties of.*—The mayor shall take care that the laws of the state and the ordinances of the city are duly observed and enforced, and that all other executive officers of the city discharge their respective duties. He shall from time to time give the common council such information and recommend such measures

as he may deem advantageous to the city. The mayor shall be the chief executive officer and head of the police of the city, and shall appoint such police officers and watchmen, except when otherwise provided for; and in case of a riot or other disturbances, he may appoint as many special or temporary constables as he may deem necessary; and any police officer or watchman appointed by the mayor as aforesaid, may be discharged from office by him whenever in his opinion the welfare of the city may demand it, or a reduction of their number renders it necessary.

SEC. 130. *Ordinances shall be presented to mayor.*—All ordinances and resolutions shall, before they take effect, be presented to the mayor, and if he approve thereof, he shall sign the same, and such as he shall not sign he shall return to the common council with his objection thereto, by depositing with the recorder to be presented to the common council at their next meeting thereafter; and upon the return of any resolution or ordinance by the mayor, the same vote by which the same was passed shall be reconsidered, and if after such reconsideration the common council shall pass the same by a vote of two-thirds of the members elected, it shall have the same effect as if approved by the mayor, and in such case the vote shall be by ayes and noes, which shall be entered in the record by the recorder. If an ordinance or resolution shall not be returned by the mayor within five days (Sundays excepted) after it shall have been presented to him, the same shall have the same effect as if approved by him.

SEC. 131. *Officers of the city council.*—At the first meeting of the common council in each year, they shall proceed to elect by ballot from their number a president and vice-president. The president shall preside over the meetings of the common council, and during the absence of the mayor from the city, or his inability from any cause to discharge the duties of his office, the said president shall exercise all the powers and discharge all the duties of the mayor. In case the president shall be absent at any meeting of the common council, the vice-president shall act as presiding officer for the time being, and discharge the duties of said president. The president of the common council, or temporary presiding officer, while performing the duties of mayor, shall be styled the acting mayor, and acts performed by him while acting as mayor as aforesaid, shall have the same force and validity as if performed by the mayor. The mayor and president and vice-president of the common council shall have the right to administer oaths and affirmations.

SEC. 132. *Recorder to be elected.*—There shall be a recorder of said city, styled the city recorder, who shall keep his office at the place of meeting of the common council, or such other place convenient thereto as the council may determine. He shall keep the corporate seal and all the papers and records of the city, and keep a record of the proceedings of the common council, at whose meeting it shall be his duty to attend. Copies of all papers filed in office, and transcripts from all records of the common council, certified by him under the corporate seal, shall be evidence in all courts, as if the original were produced. He shall draw and countersign all orders on the treasurer in pursuance of any order or resolution of the common council, and keep a full and accurate account thereof in books provided for that purpose. The city recorder shall have power to administer oaths and affirmations, and take acknowledgment of deeds and other writings.

SEC. 133. *Duties of recorder.*—It shall be the duty of the recorder to report to the common council the financial condition of the city, whenever the common council shall require. He shall make and keep a list of outstanding city bonds, to

whom issued, for what purposes, when and where payable, and the rate of interest they respectively bear, and recommend such action to the common council as will secure the punctual payment of the principal and interest of such bonds. He shall report annually on or about the first day of April to the common council, an estimate of the expenses of the city, and likewise the revenue necessary to be raised for the current year; and the fiscal year shall commence on the first day of April.

SEC. 134. *Contracts, bonds, and evidences of indebtedness must be signed by recorder.*—He shall make or cause to be made estimates of the expenses of any work to be done by the city, and countersign all contracts made in behalf of the city, and certificates of work authorized by any committee of the common council, or by any city officer. And every contract made in behalf of the city, or to which (the city) is a party, shall be void unless signed by the recorder. The city recorder shall keep regular books of account, in which he shall enter all indebtedness of the city, and which shall at all times show the precise financial condition of the city; the amount of bonds, orders, certificates, or other evidences of indebtedness issued by the common council, the amount of all bonds, orders, certificates, or other evidences of indebtedness which have been redeemed, and the amount of each outstanding, to countersign all bonds, orders, or other evidences of indebtedness of the city, and to keep accurate accounts thereof, stating to whom and for what purpose issued, and the amount thereof; to keep accounts with all receiving and disbursing officers of the city, showing the amount they have received from the different sources of revenue, and the amount which they have disbursed under the direction of the common council. He shall keep a list of all certificates issued for work or any other purpose, and before the levy by the common council of any special tax upon the property in the city, or any part thereof, shall report to the common council a schedule of all lots or parcels of land which may be subject to the proposed special tax or assessment, and also the amount of such special tax or assessment which it may be necessary to levy on such lots or parcels of land, which said schedule shall be certified by the affidavit of the recorder, and shall be the *prima facie* evidence of the facts therein stated in all cases wherein the validity of such special tax or assessment shall come in question. The common council shall, if from such report they deem such special tax legal and just, cause the same to be levied in pursuance of the provisions of this act. If before the first day of January of any year, the amount expended, or to be expended chargeable to any city fund (adding thereto the current expenses estimated for the remainder of the fiscal year and chargeable to such fund) shall be equal to three-fourths of the tax authorized to be raised or revenue estimated for such fund; he shall report at once the same to the common council, and he shall not countersign any contract chargeable to such fund until the amount of taxes actually collected be ascertained; and during the remainder of the fiscal year he shall not sign any contract, the expenses of which shall exceed the revenue actually collected for the fund to which such expenses are properly chargeable. The recorder shall examine all reports, books, papers, vouchers and accounts of the city treasurer, and from time to time shall perform such other duties as the common council may direct. All claims and demands against the city, before they are allowed by the common council, shall be audited and adjusted by the recorder. And he shall keep a record of all his acts and doings, and keep a book in which he shall enter all contracts, with the index thereto; such record shall be open to the inspection of all parties interested. He shall not be interested

directly or indirectly in any contract or job to which the city is a party, in which the city is interested; and any contract in which he may be interested shall be null and void.

SEC. 135. *City attorney may be elected.*—The common council shall have power to elect an attorney for the city who shall perform all professional services incident to his office, and when required shall furnish opinions upon any subject submitted to him by the common council or its committees.

SEC. 136. *Duties of city treasurer.*—The treasurer shall receive all moneys belonging to the city, including all taxes, license money and fines, and keep accurate and detailed account thereof, in such a manner as the common council shall from time to time direct. The treasurer shall exhibit to the common council, at least fifteen days before the annual election, or sooner if required by them, a full and detailed account of the receipts and expenditures after the date of the last annual report, and also of the state of the treasury, which account shall be filed with the clerk, and a copy of the same published in one or more of the city newspapers, or in the paper published nearest to said city. He shall also report to the common council at such times and in such manner as they may require.

SEC. 137. *Chief of police to be appointed—his duties.*—There shall be a chief of police of said city, who shall be appointed by the mayor, by and with the consent of the common council, and who shall perform such duties as shall be prescribed by the common council for the preservation of the public peace. All police officers and watchmen of said city shall possess the powers of constables at law, or by the laws of this state: and it shall be their duty to execute and serve all warrants, process, commitments, and all writs whatsoever, issued by the city justice, for any violation of the laws of the state of Minnesota, or of the ordinances or by-laws of said city; and also all writs and process whatever, issued by the city justice in civil actions; and they shall have authority to pursue and arrest any person fleeing from justice, in any part of the state, and when performing the duties of constables aforesaid, shall be entitled to like fees. Watchmen shall have authority to arrest and detain any person guilty of any breach of the peace, or any violations of the laws of this state, or of the ordinances or by-laws of the city; and for these purposes shall possess the powers of constables at common law, while on duty.

SEC. 138. *Street commissioner to be elected—his duties.*—The common council shall, at their first meeting after the annual election, or an adjournment thereof, elect by ballot a street commissioner, who shall hold his office for one year and until his successor is elected and qualified. It shall be the duty of the street commissioner to superintend all work and improvements on the streets, bridges, and public grounds of the city, and carry into effect all orders and ordinances of the common council in relation to work or improvements upon the streets, roads, bridges, and public grounds of the city; and he shall be required to execute a bond, with sureties satisfactory to the common council, conditioned for the faithful performance of his duties, and that he will account for all moneys collected or received by him in his official capacity, or belonging to the city.

SEC. 139. *Council to elect assessor—duties of.*—The common council shall, in the month of April in each year, elect an assessor, who shall be styled the city assessor, who shall perform all the duties in relation to the assessing of property for the purpose of levying of all city, county, and state taxes. And upon the completion of the assessment roll, he shall return the same to the common council,

who may alter, revise, and equalize the same, as they may deem it just and proper. Said city assessor shall hold his office for one year, and until his successor is elected and qualified.

SEC. 140. *City justices—their powers and jurisdiction.*—The justices of the peace of the city, styled city justices, shall possess all the authority, power, and rights of a justice of the peace of the county under the laws of this state, and shall have, in addition thereto, exclusive jurisdiction to hear and try all complaints for violation of any provision or provisions of the city charter, or any ordinance, by-law, rule, or regulation made or adopted under or by virtue thereof, and of all cases cognizable before a justice of the peace in which the city is a party, and of all writs, prosecutions, and proceedings in the recovery of any fine, forfeiture, or penalty under any by-law, ordinance, or regulation of the said city or its charter, and in all cases of offenses committed against the same. And the said city justices shall have jurisdiction in cases of larceny, and may hear and try the same where the amount claimed to have been stolen does not exceed the sum of twenty-five dollars. In all prosecutions for assaults, batteries, and affrays, and for all other offenses not indictable, and in all civil suits or proceedings before said city justices the same forms and proceedings shall be had and used, where not otherwise directed, as are established and required to be had in civil and criminal actions by the laws of this state before a justice of the peace; and appeals from the judgment and decisions of said city justices shall be allowed as now provided by law for appeals from judgments rendered by justices of the peace. In all cases of convictions for assaults, batteries, and affrays within said city, and in all cases of convictions under any ordinances of the city for breach of the peace, disorderly conduct, keeping houses of ill-fame, or frequenting the same, and of keeping or maintaining disorderly or ill-governed houses, the said justices shall have power, in addition to the fines or penalty imposed, to compel said offenders to give security for their good behavior, and to keep the peace for a period not exceeding six months; and in a sum not exceeding five hundred dollars. The said justices shall have the same power and authority in cases of contempt, as a justice of the peace under laws now in force. All fines and penalties imposed by the city justices for offenses committed within the city limits, for the violation of any ordinance, by-law, or regulation of said city, shall belong to and be a part of the finances of said city; for offenses against the laws of the state, of the county treasury.

SEC. 141. *Shall report to council.*—The city justices shall, as often as the common council may require, report to the common council all the proceedings instituted before them in which the city is interested, and shall at the same time account for and pay over to the city treasurer, all fines and penalties collected or received by them belonging to said city; and such justices shall be entitled to receive from the county such fees in criminal cases as are allowed by statute to justices of the peace for similar services.

SEC. 142. *Shall attend at their offices.*—Said justices shall be in attendance at their offices for the transaction of business at such reasonable hours as the common council may prescribe, and complaints may be made to, and writs and process issued by them at all times, in court or otherwise.

SEC. 143. *Justices may tax costs in certain cases.*—In all suits brought on behalf of said city for the recovery of any forfeiture, fine, or penalty, in cases arising on complaints for the violation of any ordinance, by-law, or regulation of

said city, and on complaints for assault, battery, or affray, or other misdemeanor, or criminal offense, not indictable, committed within said city, the said justices shall be authorized to tax, with the other legal costs, one dollar for each trial, for the benefit of said city, and their residence in said city shall not deprive them of jurisdiction of actions brought in favor of or against said city, when said actions are otherwise within the jurisdiction of a justice of the peace.

SEC. 144. *Council shall elect a surveyor—his duties.*—The common council, at their first meeting in each year, or as soon thereafter as may be, shall elect a city surveyor, who shall be a practical surveyor and engineer. He shall keep his office in some convenient place in said city, and the common council shall prescribe his duties, and fix the fees and compensation for any services performed by him. All surveys, profiles, plans, or estimates made by him for the city shall be the property of the said city, and shall be carefully preserved in the office of the surveyor, open to the inspection of persons interested; and the same, together with all the books and papers appertaining to said office, shall be delivered over by the surveyor, at the expiration of his term of office, to his successor, or the common council.

SEC. 145. *City printer to be elected.*—The common council, at their first meeting after each annual election, or as soon thereafter as may be, shall advertise for proposals to do the city printing, giving public notice of not less than one week, in such manner as the council may direct, that sealed bids shall be received by the recorder of the common council for doing said printing. The bid or bids received by the clerk to do said printing shall be publicly opened and read by the recorder, at such time and place as the common council shall appoint, and the person or persons offering to do said printing for the lowest sum or price in any newspaper published in said city, and shall give satisfactory security for the performance of the work, shall be declared city printer for the ensuing year, and in the newspaper designated in said accepted bid or proposal, shall be published all ordinances, by-laws, and other proceedings and matters required by this act or by the by-laws or ordinances of the common council to be published in a public newspaper. The city printer or printers, immediately after the publication of any notice, ordinance, or resolution which is required to be published, shall file with the city recorder a copy of such publication, with his affidavit, or the affidavit of his or their foreman, of the length of time the same has been published; and such affidavit shall be *prima facie* evidence of the publication of such notice, ordinance, or resolution: *provided*, that if no person will publish, or offer to publish in any newspaper published in said city, such ordinances or other matters as the common council may require to be published, at a rate not exceeding that now prescribed by statute for legal advertisements or notices, the common council may make such other provision for publishing its ordinances, by-laws, and matters requiring publication as it may think fit, anything herein contained to the contrary notwithstanding.

SEC. 146. *Officers refusing to deliver book, etc., to successor—penalty.*—If any person, having been an officer of said city, shall not, within ten days after notification and request, deliver to his successor in office all property, books, papers, and effects of every description in his possession belonging to said city, or pertaining to the office he may have held, he shall forfeit and pay to the use of the city one thousand dollars besides all damages caused by his neglect or refusal so to deliver, and said successor may receive possession of such books, papers, and effects, in the manner prescribed by the laws of this state.

SEC. 147. *Further powers of council.*—The common council shall have power at any time to require other and further duties to be performed by any officer whose duties are herein prescribed, not inconsistent with this act, and to appoint such other officers as may be necessary to carry into effect the provisions of this act, and to prescribe their duties, unless otherwise provided for, but no officer elected or appointed by the common council, or appointed by the mayor, as hereinbefore provided, shall be appointed for a longer term than one year, and until his successor is elected or appointed and duly qualified. The common council shall have the power, unless herein otherwise provided, to fix the compensation of all officers elected or appointed under this act, and such compensation shall be fixed by resolution; and in regard to all offices created by this charter, the compensation shall be fixed within three months from the first organization and meeting of the common council after the first year, the compensation of officers shall be fixed for the fiscal year in the month of April of each year, except for such offices as may hereafter be created, in regard to which the compensation shall be fixed at the time of the creation of such office, nor shall the compensation of any office, after having been fixed, be increased or diminished during the term for which such officer was elected or appointed. No officer elected or appointed to office under the provisions of this charter shall be a party to or interested in any contract in which the city is interested, made while such officer is holding office: *provided*, that the mayor and aldermen shall receive no compensation for their services as such officers.

SEC. 148. *What officers are conservators of the peace.*—The mayor or acting mayor, recorder and each alderman, the city justices, police officers and watchmen, shall be officers of the peace, with powers of constables at common law, and may command the peace, suppress in a summary manner all rioting and disorderly behavior within the limits of the city, and for such purposes may command the assistance of the bystanders, and, if need be, of all the citizens and military companies; and if any person, bystander, military officer or private shall refuse to aid in maintaining the peace when so required, each person shall forfeit and pay a fine of fifty dollars; and in cases where the civil power may be required to suppress riots or disorderly behavior, the superior or senior officer present, in the order mentioned in this section, shall direct the proceedings.

SEC. 149. *Common council, meetings of.*—The aldermen shall constitute the common council, and the style of all ordinances shall be, "The common council of the city of do ordain," etc. The common council shall meet at such time and place as they by resolution may direct. A majority of the aldermen shall constitute a quorum.

SEC. 150. *Council judges of election and of qualification of its members.*—The common council shall hold stated meetings, and the mayor may call special meetings, by notice to each of the members, to be delivered personally or left at their usual place of abode. The common council shall be the judges of election and qualification of its own members, and in such cases shall have power to send for persons and papers, and shall also determine the rules of its own proceedings, and have power to compel the attendance of members.

SEC. 151. *Powers of the council in the passage of ordinances.*—The common council shall have the management and control of the finances and all the property of the city, and shall likewise, in addition to the power herein vested in them, have full power and authority to make, enact, ordain, establish, publish, enforce, alter,

modify, amend, and repeal all such ordinances, by-laws, rules, and regulations for the government and good order of the city, for the suppression of vice and intemperance, and for the prevention of crime, as they shall deem expedient; they shall have power to establish and maintain a city prison: *provided*, that until otherwise ordered by the common council, the county jail of the county shall be used as a city prison, and it shall be the duty of the sheriff or jailor of the county to take into custody and safe keeping in said jail all persons committed thereto until discharged according to law. The common council shall have full power and authority to declare and impose penalties and punishments, and to enforce the same against any person or persons who may violate any provisions of any ordinance or by-law passed or ordained by them, and all such ordinances, rules, and by-laws are hereby declared to have all force of law: *provided*, that they be not repugnant to the constitution and laws of the United States, or of this state, and for these purposes shall have authority by ordinance, resolution, or by-laws—

City of St Paul *v.* Laidler, 2 Minn. 209; Same *v.* Troyer, 3 Minn. 293.

First. To license and regulate the exhibitions of common showmen, and shows of all kinds, or the exhibition of caravans, circuses, concerts, or theatrical performances, billiard-tables, nine or ten-pin alleys, bowling-saloons; to grant licenses to and regulate auctions and auctioneers, tavern-keepers, and victualing-house keepers, and all persons dealing in spirituous, vinous, or fermented liquors: *provided*, that all licenses for so dealing in spirituous, vinous, or fermented liquors shall not be less than fifty dollars a year, and no license shall be granted for a less term than one year, and all licenses shall commence and terminate on the first day of May of each year.

City of St Paul *v.* Troyer, 3 Minn. 293; Same *v.* Colter, 12 Minn. 41.

Second. To restrain and prohibit all descriptions of gambling and fraudulent devices and practices, and all playing of cards, dice, or other games of chance, for the purpose of gambling in said city, and to restrain any person from selling, giving, or dealing in spirituous, vinous, or fermented liquors, unless duly licensed by the common council.

Third. To prevent any riots, disorderly assemblages in said city, and provide for the arrest of and punishment of any person or persons who shall be guilty of the same, to suppress disorderly houses and houses of ill fame, and to provide for the arrest and punishment of the keepers thereof, and to authorize the seizure and destruction of all instruments used for the purpose of gambling.

Fourth. To compel the owner or owners of any cellar, tallow-chandler shop, soap factory, tannery, stable, barn, privy, sewer, or other unwholesome structure or place, to cleanse, remove, or abate the same from time to time, as often as may be deemed necessary for the health, comfort, and convenience of the inhabitants of said city.

Fifth. To direct the location and management of slaughter-houses and markets, breweries, and distilleries, and to establish rates for and license venders of gunpowder, and regulate the storage, keeping, and conveying of gunpowder, or other combustible materials.

Sixth. To prevent the encumbering of streets, alleys, lanes, and public grounds with carriages, carts, wagons, sleighs, or other vehicles, or with boxes, lumber, firewood, posts, awnings, or any other material or substance whatever.

Seventh. To prevent and punish immoderate driving or riding in the streets, to regulate (the speed of) cars and locomotives in said city, and to prevent their obstructing the streets of said city, to compel persons to fasten their horses or other animals attached to vehicles or otherwise while standing in the streets, and to regulate places of bathing and swimming in the waters within the limits of the city.

Eighth. To restrain the running at large of cattle, swine, sheep, poultry, and geese, and to authorize the distraining and sale of the same, and to impose penalties on the owners of such animals for violation of the ordinances: *provided*, that when a sale of such animals shall be made, the proceeds thereof, after deducting the expenses of distraining, keeping, advertising, and selling such animals, shall be deposited in the office of the treasurer of said city, for the use and benefit of the owners thereof, if called for by such owner within one year from the day of such sale.

Ninth. To prevent the running at large of dogs, and may impose a tax on the same, in a summary manner, when at large contrary to the ordinance.

Tenth. To prevent any person from bringing, depositing, or having within said city any putrid carcass or unwholesome substance, and to require the removal of the same by any person who shall have upon his premises any such substances, or any putrid or unsound meat, flesh, or fish, or hides, or skins of any kind, and to authorize the removal of the same at the expense of the owners.

Eleventh. To establish and construct public pounds, pumps, wells, cisterns, reservoirs, and hydrants: to erect lamp-posts and provide for the lighting of the city, and to control the erection of gas works or other works for lighting the streets, public grounds, and public buildings, and to create, alter, and extend lamp districts; to regulate and license hacks, carts, omnibuses, and the charges of hackmen, draymen, cabmen, and omnibuses in the city.

Twelfth. To establish and regulate boards of health, provide hospitals and hospital grounds, and the registration of births and deaths, and the returns of bills of mortality, and to regulate or prevent, if deemed expedient, the burial of the dead within the city limits.

Thirteenth. To regulate the size and weight of bread, and to provide for the seizure and forfeiture of bread baked contrary thereto.

Fourteenth. To prevent all persons riding or driving any horse, mule, or ox or other animal on the side walks in said city, or in any way doing any damage to said sidewalks.

Fifteenth. To prevent the discharging of fire-arms or crackers, and to prevent the exhibition of any fireworks in any situation which may be considered by the common council dangerous to the city, or any property therein, or annoying to any of the citizens thereof.

Sixteenth. To prevent open and notorious drunkenness, brawling, and obscenity in the streets or public places of the city, and to provide for the arrest and punishment of all persons who shall be guilty of the same.

Seventeenth. To restrain and regulate parties, runners, agents, and solicitors for boats, vessels, stages, cars, and public-houses, or other establishments.

Eighteenth. To establish public markets and other public buildings, and make rules and regulations for the government of the same; to appoint suitable officers for overseeing and regulating such markets, and to restrain all persons from interrupting or interfering with the due observance of such rules and regulations.

Nineteenth. To license and regulate butcher shops and stands for the sale of game, poultry, butchers' meats, butter, fish, and other provisions.

City of St Paul v. Laidler, 2 Minn. 209.

Twentieth. To regulate the place and manner of weighing and selling hay, and measuring and selling of fire-wood, coal, peat, and lime, and to appoint suitable persons to superintend and conduct the same.

Twenty-first. To compel the owner or occupant of buildings or grounds to remove snow, dirt, or rubbish from the sidewalk, street, or alley opposite thereto, and to compel such owner or occupant to remove from the lot owned or occupied by him, all such substance as the board of health shall direct, and in his default to authorize the removal or destruction thereof by some officer, at the expense of such owner or occupant.

Twenty-second. To regulate, control, and prevent the landing of persons from boats, vessels, or other conveyances whereon are contagious or infectious diseases or disorders, and to make such disposition of such persons as to preserve the health of the city.

Twenty-third. To regulate the time, manner, and place of holding public auctions, and vendues, and sales at public outcry.

Twenty-fourth. To provide for watchmen, and to prescribe their number and duties and regulate the same, and to create and establish the police of said city, and to prescribe the number of police officers and their duties, and to regulate the same.

Twenty-fifth. To provide by ordinance for a standard of weights and measures; for the appointment of a city sealer, and require all weights and measures to be sealed by the city sealer; and to provide for the punishment of the use of false weights and measures.

Twenty-sixth. To regulate the inspection of flour, pork, beef, fish, salt, whisky, and other liquors and provisions; and to appoint inspectors, measurers, weighers, and gaugers; to regulate their duties and prescribe their compensation.

Twenty-seventh. To direct and regulate the planting and preservation of ornamental trees in the streets, alleys, highways, and public grounds of the city.

Twenty-eighth. To remove and abate any nuisance injurious to the public health or safety, and to remove or require to be removed any building, which, by reason of dilapidation, defects in structure, or other causes, may have or shall become imminently dangerous to life and property; and to provide for the punishment of all persons who shall cause or maintain such nuisances, and to charge and assess the expense of removing or abating the same upon the lot or lots upon which such nuisance or dangerous building may be maintained.

Twenty-ninth. To remove and abate any nuisance, obstruction, or encroachment upon the streets, alleys, public grounds, and highways of the city.

Thornton v. Smith et al, 11 Minn. 15; *Cleveland v. City of St Paul*, 18 Minn. 279.

Thirtieth. To do all acts and make all regulations which may be necessary and expedient for the preservation of health, or the suppression of disease, and to make regulations to prevent the introduction of contagious diseases into the city, and to make quarantine laws and enforce the same within the city.

Thirty-first. To restrain and punish vagrants, mendicants, street beggars, and provide for the punishment of the same.

Thirty-second. Fines, penalties, and punishments, imposed by the common

council for the breach of any ordinance, by-law, or regulation of said city, may extend to a fine not exceeding one hundred dollars, and imprisonment in the city prison or county jail not exceeding thirty days, or both, and to be fed on bread and water at the discretion of the city justice; and offenders against the same may be required to give security for their good behavior, and to keep the peace for a period not exceeding six months, and in a sum not exceeding five hundred dollars.

SEC. 152. *Ordinances and by-laws, how passed and published.*—All ordinances, regulations, resolutions, and by-laws shall be passed by an affirmative vote of a majority of the members of the common council present, by ayes and noes, and published in the official paper, and posted in three conspicuous places in each ward for two weeks before the same shall be in force, and shall be admitted as evidence in any court in the state, without further proof; they shall be recorded by the city recorder in books provided for that purpose. No appropriation shall be made without a vote of a majority of the members of the council present in its favor, which vote shall be taken by ayes and noes, and entered among the proceedings of the council.

SEC. 153 (ACT OF MARCH 6, 1873). *Ordinances printed in book form received as evidence.*—Whenever the by-laws, ordinances, rules, and regulations of any city of this state, incorporated under the provision of chapter thirty-one of the laws of 1870, entitled "an act to authorize the incorporation of cities," or by any special act prior to or subsequent to that date, have been or shall hereafter be printed and published by authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

S. L. 1873, 189.

SEC. 154. *Nuisances defined.*—The power conferred upon the common council to provide for the abatement or removal of nuisances shall not bar or hinder suits, prosecutions, or proceedings in the courts according to law. Depots, houses, or buildings of any kind within the limits of said city, wherein more than twenty-five pounds of gunpowder, or more than five barrels of thirty-six gallons each (or such greater or less quantity as said common council may direct by ordinance) of petroleum, kerosene, naphtha, or other inflammable or explosive oils or substances, are deposited, stored, or kept at any one time; gambling houses, houses of ill-fame, disorderly taverns, and houses or places where spirituous, vinous, or fermented liquors are sold without license required therefor, within the limits of said city, are hereby declared and shall be deemed public or common nuisances.

SEC. 155. *Council to examine and audit accounts of city officers.*—The common council shall examine, audit, and adjust the accounts of the recorder, treasurer, street commissioners, city justice, and all other officers and agents of the city, at such times as they may deem proper, and also at the end of each year, and before the terms for which the officers of said city were elected or appointed shall have expired. And the common council shall require each and every such officer and agent to exhibit his books, accounts, and vouchers for such examination and settlement; and if any such officer or agent shall refuse to comply with the orders of said council, in the discharge of their said duties, in pursuance of this section, or shall neglect or refuse to render his accounts, or present his books and vouchers to the council, or a committee thereof, it shall be the duty of the common council to declare the office of such person vacant. And the common council shall institute suits and proceedings at law against any officer and agent of said city who may be

found delinquent or defaulting in his accounts, or in the discharge of his official duties, and shall make a full record of all such settlement and adjustment.

SEC. 156. *Power of council to borrow money—limitation of said power.*—That the common council of the city shall have full power from time to time to borrow money to pay the indebtedness of the city, and in order to pay such indebtedness the city may issue city bonds therefor, bearing interest not to exceed ten (10) per cent. per annum, redeemable at any time within ten (10) years, at the discretion of the common council: *provided*, that at no time shall it be lawful for said indebtedness, bonded or otherwise, to exceed the sum of fifteen thousand (\$15,000) dollars, unless the same be authorized by two-thirds votes of the legal votes cast at the election held for such purposes; *and provided further*, that the city council shall each and every year levy a tax of one (1) mill on the dollar of the taxable property of the city for each thousand (1000) dollars that may be funded by the said city into bonds to pay the interest on said bonds and create a sinking fund to pay the same when due. All laws, ordinances, regulations, and by-laws, shall be passed by an affirmative vote of the majority of the common council, and be signed by the mayor, and shall be published in the official paper of the city, before the same shall be in force, and within twenty (20) days thereafter they shall be recorded by the recorder in books provided for that purpose, but before any of the said laws, ordinances, regulations, or by-laws shall be recorded, the publication thereof, as aforesaid, shall be proved by the affidavit of the foreman or publisher of such newspaper, and the said affidavit shall be recorded therewith, and at all times shall be deemed and taken as sufficient evidence of such publication.

SEC. 157. *Power to levy taxes.*—The common council shall have power to levy upon all the taxable property of said city taxes to provide for the current expenses of the city government and police, for the opening, maintaining, and improvement of public grounds, and the construction of buildings and improvements of a general character: *provided*, that such taxes shall in no year exceed one per cent. of the assessed valuation.

SEC. 158. *Special tax shall be levied, for what.*—The common council shall have power to levy a special tax upon all the taxable property in the city, or of the different wards of the same, for the purpose of constructing, maintaining bridges and culverts, and opening, constructing, maintaining, and repairing roads, highways, streets, and alleys; for the construction of reservoirs, cisterns, sewers, drains, and street gutters and grading of streets, and for other purposes conducive to good order and cleanliness, and to protection against crime, disease, and fire: *provided*, that such taxes shall in no year exceed one per cent. of the assessed valuation; *and provided further*, that for the improvements in this section mentioned, the common council shall have power to assess the tax to pay the same upon the ward or wards benefited by such improvements, in such manner and to such extent as the common council may think just and equitable. The tax shall be apportioned upon a cash valuation of the property, which it shall be determined is liable to assessment for such improvements. No debt shall be incurred or created by the city, the common council, or any officer of the city, except pursuant to the authority herein expressly given for that purpose; and no order or orders shall be issued upon the city treasury exceeding the amount of tax collected or assessed and in process of collection.

SEC. 159. *Annual taxes to be levied to pay bonds and other indebtedness.*—

The common council shall have power, and it shall be the duty of the common council to levy annually upon the taxable property of said city, taxes sufficient to pay all bonds or other indebtedness due and payable in any year, and the interest on bonds or other indebtedness due or payable in any year, unless that previously to the first day of September in each year some other adequate provision has been made for the payment of the same. The common council shall have the power to issue bonds and levy taxes exceeding the amount authorized by other sections of this act: *provided*, the same be authorized by a majority of the voters present and voting at an election to be held for that purpose. The time, place, and manner of holding such election to be prescribed by the common council, the same notice to be given as at other elections. And no bonds for any purpose shall be issued by the common council unless so authorized.

SEC. 160. *How taxes to be levied.*—Taxes may be levied by resolution of the common council, and no tax shall be invalid by reason of any informality in the manner of levying the same, nor because the amount levied shall exceed the amount required to be raised for the special purpose for which the same is levied; but in such case the surplus shall, if the tax be a general tax, go into the general fund of the city; if it be a bond or interest tax, it shall be kept and used for the future payment of principal or interest of the same class of bonds, or the purchase thereof before due; if it be for improvements, it shall be kept and used for future improvements of the same character.

SEC. 161. *When to transmit statement of taxes—how collected.*—The common council shall cause to be transmitted to the county auditor of the county, on or before the first day of September of each year, a statement of all taxes by them levied, and such taxes shall be collected, and the payment thereof enforced, with and in like manner as state and county taxes are paid and the payment thereof enforced, and the county treasurer of said county shall pay such taxes over as fast as collected to the treasurer of said city.

SEC. 162. *How orders may be drawn on treasury.*—No moneys shall be paid out of the city treasury unless such payment be authorized by a vote of the common council, and these shall be drawn out only upon orders by the mayor and countersigned by the recorder, which orders shall specify the purpose for which they were drawn, and the fund out of which they are payable, and the name of the person in whose favor the same are drawn, and may be made payable to the order of such person or to the bearer, as the common council may determine.

SEC. 163. *When orders may be canceled.*—When any such order shall have been paid or received by the treasurer, it shall not again be issued, but he shall immediately cancel the same, and file the same away in his office, keeping the orders drawn upon each fund separate.

SEC. 164. *To levy poll tax.*—It shall be lawful for the common council of said city, at any time, to levy a corporation poll tax upon every qualified voter in said city: *provided*, that said tax shall not in any one year exceed the sum of two dollars on each person.

For decisions upon assessments for city purposes *vide* McComb v. Bell, 2 Minn. 295; Weller v. St Paul, 5 Minn. 95; Morrison v. Same, *ib.* 108; Griggs v. Same, 11 Minn. 308; De Roch-brune v. Same, *ib.* 313.

SEC. 165. *Council to control highways.*—The common council shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public

squares, and grounds within the limits of said city, and shall cause all streets which may have been opened and graded to be kept open and in repair and free from nuisances.

SEC. 166. *May open, vacate, and lay out streets, etc.—when necessary to take private property, how to proceed.*—The common council of said city, by a vote of not less than two-thirds of the members present, and constituting a quorum of any stated or special meeting, such vote to embrace a majority of all the members elect, shall have power to lay out, open, alter, and vacate public squares, streets, grounds, highways, and alleys, and to widen and straighten the same: *provided*, that whenever it shall be required to take private property for the purposes above stated, they shall proceed in the manner hereinafter provided—

First. The common council, upon ordering an improvement above-mentioned to be made, shall appoint as many commissioners as there may be wards of said city, selecting one from each ward, who shall be a disinterested freeholder and qualified voter of said city, to view the premises, and assess the damages which may be occasioned by the taking of private property or otherwise in making said improvement. Said commissioners shall be notified as soon as practicable by the city clerk of said city, to attend at his office, at a time to be fixed by him, for the purpose of qualifying and entering upon their duties; and in case any such commissioner, upon being so notified, shall neglect or refuse to attend as aforesaid, he shall forfeit and pay a fine to said city, not exceeding fifty dollars, and shall be liable to be prosecuted therefor before the city justice of said city, as in the case of fines imposed for a violation of an ordinance of said city; and the commissioners in attendance shall be authorized to appoint another commissioner or commissioners in place of any absentee or absentees aforesaid, selected from the ward in each case not represented, and possessing the qualifications aforesaid. In all other cases of vacancy the common council shall fill such vacancy.

Second. The commissioners shall be sworn by the city clerk to discharge their duties as commissioners in the matter with impartiality and fidelity, and to make due return of their actions and doings to the common council.

Third. The said commissioners shall, with all reasonable speed, with the assistance of the city surveyor of said city, cause a survey and plat of the proposed improvement to be made and filed with the city clerk, exhibiting, as far as practicable, the land or parcels of property required to be taken, or which may be damaged thereby, and shall thereupon give notice by publication in the official newspaper in said city, for at least ten days, to the effect that such plat has been filed, and that the said commissioners will meet at a place and time designated by them, and thence proceed to view the premises, and assess the damages for property to be taken, or which may be damaged by such improvement.

Fourth. At the time and place appointed according to said notice, the commissioners shall view the premises, and may hear any evidence or proof offered by the parties interested, and adjourn from day to day, if necessary, for the purpose aforesaid. When their view and hearing aforesaid shall be concluded, they shall determine and assess the amount of damages to be paid to the owner or owners of each parcel of property proposed to be taken, or which may be damaged by said improvement, and in so doing shall take into consideration the value of the property proposed to be taken, with such other damage as may be incident thereto, and also the advantages which will accrue to such owner or owners in making such improvement.

Fifth. If there should be any building standing in whole or in part upon the land to be taken, the said commissioners shall in each case determine and assess the amount of damages which should be paid to the owner or owners thereof, in case such building, or so much thereof as might be necessary, should be taken, and shall also determine and assess the amount of damages to be paid to such owner or owners in case he or they should elect to remove such building, and the damages in relation to buildings aforesaid, shall be assessed separately from the damages in relation to the land upon which they are erected.

Sixth. If the lands and buildings belong to different persons, or if the land be subject to lease, mortgage, or judgment, or if there be any estate in it less than an estate in fee, the injury or damage done to such persons or interests respectively, may be awarded to them by the commissioners, less the benefit resulting to them from the improvement.

Seventh. The said commissioners having ascertained and assessed the damage aforesaid, shall make and file with the city clerk a written report to the common council, of their action in the premises, embracing a schedule or assessment of the damages in each case, with a description of the land and the name of the owners, if known to them, and also a statement of the costs of the proceeding.

Eighth. Upon such report being filed in the office of the city clerk, said city clerk shall give at least ten days' notice by publication in the official newspaper of said city, to the effect that such assessment has been returned, and that the same will be confirmed by the common council, at a meeting thereof, to be named in said notice, unless objections are made in writing by persons interested in any land required to be taken. Any persons interested in buildings standing in whole or in part upon any land required to be taken by such improvement, shall, on or before the time specified in said notice, notify the common council in writing of their election to remove such buildings, according to the award of the commissioners. The common council, upon the day fixed for the consideration of such report, or at such subsequent meeting to which the same may stand over or be referred, shall have power, in their discretion, to confirm, revise, or annul the assessment, giving due consideration to any objections interposed by parties interested.

Ninth. The damages assessed shall be paid out of the general funds of said city, and shall be paid or tendered, or deposited and set apart in the treasury of said city, to and for the use of the parties entitled thereto, within six months from the confirmation of such assessment and report, and the land or property required to be taken for the purposes aforesaid, shall not be appropriated until the damages awarded therefor to the owner thereof, shall be paid or tendered to the owner or his agent, or deposited and set apart for his use as aforesaid; and in case the said city should be unable to determine to whom the damages in any particular case so awarded should be paid, or in case of disputed claims in relation thereto, the damages in such case may be deposited, by order of the common council, in the district court of the county, in the same manner as moneys are paid into court, until the parties entitled thereto shall substantiate their claim to the same.

Tenth. In case any owner or owners of buildings as aforesaid shall have elected in manner aforesaid to remove his or their buildings, he or they shall so remove them within thirty days from the confirmation of said report, or within such further time as the common council may allow for the purpose, and shall thereupon be entitled to payment from said city of the amount of damages awarded in such case, in case

of removal. When such person or persons shall not have elected to remove such buildings, or shall have neglected (after having elected to remove) to remove the same within the time prescribed, such buildings, or so much thereof as may be necessary, upon payment or depositing the damages awarded for such taking, in manner aforesaid, may be then taken and appropriated, sold or disposed of, as the common council shall direct, and the same, or the proceeds thereof, shall belong to said city.

Eleventh. When any known owner of lands or tenements, affected by any proceeding under this act, shall be an infant, or labor under legal disability, the judge of the district court, or, in his absence, the judge of any court of record, may, upon application of said commissioners, or of said city, or such party, or his next friend, appoint a suitable guardian for such party, and all notices required by this act shall be served upon such guardian.

Twelfth. Any person feeling himself aggrieved by such assessment, may, by notice in writing served on the mayor of said city, a copy whereof, with proof of service, shall be filed in the office of the clerk of the district court of the county, within twenty days from the time of the confirmation of said report or assessment, appeal from such assessment to the district court aforesaid. When such appeal shall be tried by the court and jury, as in ordinary cases; but no pleadings shall be required, and the party appealing shall specify, in the notice of appeal, the grounds of objection to such assessment, and shall not be entitled to have any other objections than those specified considered, and a transcript of such report, certified by the city clerk, or the original thereof, shall be *prima facie* evidence of the facts therein stated, and that such assessment was regular and just, and made in conformity to law. The judgment of such court therein shall be final. Such appeal shall be entered and brought on for trial, and be governed by the same rules in all other respects as appeals from justices of the peace in civil suits.

SEC. 167. *Council to cause survey and profile to be filed.*—Whenever any public ground, street, or alley, shall be laid out, widened, or enlarged, under the provisions of this chapter, the common council shall cause an accurate survey and profile thereof to be made and filed in the office of the city surveyor, and also filed in the office of the register of deeds of the county.

SEC. 168. *When public streets may be vacated.*—No public grounds, streets, alleys, or highways within said city shall be vacated or discontinued by the common council, except upon the petition of a majority of the owners of property on the line of such public grounds, streets, alleys, or highways, resident within the said city; such petition shall set forth the facts and reasons for such vacation, accompanied by a plat of such public grounds, streets, alleys, or highways, proposed to be vacated, and shall be verified by the oath of at least two of the petitioners. The common council shall thereupon, if they deem it expedient that the matter should be proceeded with, order the petition to be filed of record with the city clerk, who shall give notice by publication in the official paper of said city, for four weeks, at least once a week, to the effect that such petition has been filed as aforesaid, and stating in it, its object, and that said petition will be heard and considered by the common council, or a committee appointed by them, on a certain day and place therein specified, not less than ten days from the expiration of such publication. The common council, or such committee as may be appointed by them for the purpose at the time and place appointed, shall investigate and consider the said matter,

and shall hear the testimony and evidence on the part of parties interested. The common council thereupon, after hearing the same, or upon the report of such committee, in favor of granting such petition, may, by resolution passed by a two-thirds vote of all the members elect, declare such public grounds, streets, alleys, or highways, vacated, which said resolution, after the same shall go into effect, shall be published as in the case of ordinances, and thereupon a transcript of such resolution, duly certified by the city clerk, shall be filed for record and duly recorded in the office of the register of deeds of the county.

Interest of city in public square, *Huff v. City of Winona*, 11 Minn. 119.

SEC. 169. *Person aggrieved may appeal.*—Any person aggrieved thereby may, within twenty days after the publication thereof, appeal to the district court of the county, under the same regulations as in the case of opening streets and alleys, and the judgment of the court thereon shall be final.

SEC. 170. *Duties of city clerk.*—It shall be the duty of the city clerk to keep in his office a record of all proceedings taken under this subject (chapter), and after the confirmation of any report mentioned in sections one hundred and sixty-six (two) and one hundred and sixty-eight (four) of this chapter, said clerk shall carefully record and transcribe in such record all the proceedings taken in relation to the matter in said report, including all petitions, orders, and appointments of commissioners, returns and reports of commissioners, notices and proofs of publication thereof, and orders or resolutions of the council, and the said record, or a certified transcript thereof, or the original papers, petitions, proofs of publication, orders or resolutions, on file in his office shall be *prima facie* evidence of the facts therein contained, in any court in this state.

SEC. 171. *Council to prescribe fire limits.*—The common council, for the purpose of guarding against the calamities of fire, shall have power to prescribe the limits within which wooden buildings, or other buildings the material or construction of which shall be regarded as dangerous to surrounding property, shall not hereafter be created, placed, or repaired, and to direct that all and any buildings within the limits prescribed, shall hereafter be built and constructed in such manner and of such materials, as in the judgment of the common council, shall (not) be dangerous to surrounding property, and to prohibit the repairing or rebuilding of wooden buildings within the fire limits, when the same shall have been damaged by fire or otherwise, to the extent of fifty per cent. of the value thereof, and to prescribe the manner of ascertaining such damages. The common council shall have power, by resolution, to order any building, structure, or materials thereof, hereafter erected, or in process of erection, of which the construction or materials may be dangerous to surrounding property, to be taken down or removed beyond the fire limits of the city, and shall have power to prescribe the notice to be given to the owner or agent to remove such building, and in case the same is not removed in pursuance of the notice given, to order the same taken down, removed by the police, or in such manner as the common council may see fit. And the common council may prescribe penalties for the violation of any of the provisions of this section, or of any ordinance made or enacted to carry out the provisions thereof, not exceeding one hundred dollars, which may be imposed by a city justice, upon the complaint of any citizen.

SEC. 172. *To prevent dangerous construction of chimneys, etc.*—The common council shall have power to prevent the dangerous construction and condition of

chimneys, fire-places, hearths, stoves, stove-pipes, ovens, boilers, and apparatus used in and about any building, and to cause the same to be removed, or placed in a safe or secure condition when considered dangerous. To prevent the deposit of ashes in unsafe places, and the throwing of ashes in the streets and alleys. To require the inhabitants to provide as many fire buckets, and in such manner and time as they shall prescribe, and to regulate the use of them in time of fire. To regulate and prevent the carrying on of manufactures dangerous in causing or promoting fires. To regulate and prevent the use of fire-arms and fireworks. To compel owners or occupants of buildings to have scuttles in the roofs, and stairs or ladders to the same. To authorize the mayor, aldermen, fire wardens, and other officers of the city to keep away from the vicinity of any fire all idle and suspected persons, and to compel bystanders to aid in the extinguishment of fires and the preservation of property exposed to danger thereat, and generally to establish such regulations for the prevention and extinguishment of fires as the common council may deem expedient.

Power of private citizen to make arrest at fire, *vide* Judson v. Reardon, 16 Minn. 431.

SEC. 173. *To purchase fire apparatus—exemptions.*—The common council shall have power to purchase fire engines and all other apparatus which may be required for the extinguishment of fires, and to authorize the formation of fire engine, hook and ladder and hose companies, and to provide for the proper support and regulation of the same, and to order such companies to be disbanded, their public meetings prohibited, and their apparatus to be given up. Every member of each company which may be authorized to be formed, shall be exempt from highway work and poll tax, from serving on juries, and from military duty during the continuance of such membership.

SEC. 174. *Council to appoint engineers.*—The common council shall have power to appoint the chief engineer and two assistant engineers of the fire department, and also one fire warden in each ward, and to prescribe the duties of such officers.

SEC. 175. *Penalty for refusing to obey orders at fires.*—Whenever any person shall refuse to obey any lawful order of any engineer, fire warden, mayor, or alderman, at any fire, it shall be lawful for the officer giving such order to direct orally any constable, police officer, watchman, or any citizen to arrest such person, and confine him temporarily in any safe place, until such fire shall be extinguished; and in the same manner such officers, or any of them, may arrest, or direct the arrest and confinement of any person at such fire who shall be intoxicated or disorderly; and any person who shall refuse to obey any such lawful order, or who shall refuse to arrest or aid in arresting any person so refusing to obey, shall be liable to such penalty as the common council may prescribe, not exceeding a fine of fifty dollars.

Vide Sec. 173, *supra*. Judson v. Reardon, 16 Minn. 431.

SEC. 176. *Council to establish grade of streets.*—The common council may cause to be established from time to time, and as rapidly as the convenience of the inhabitants may require, under the direction of their city surveyor, the grade of all streets, sidewalks, and alleys in said city, and it shall cause accurate profiles thereof to be made and kept in the office of the city surveyor.

To bind property for grading expenses every step required by charter must be taken, McComb v. Bell, 2 Minn. 307.

SEC. 177. *Duty of street commissioner.*—Whenever the common council shall deem it necessary to construct or repair any sidewalk in said city, they shall

require the street commissioner to notify all owners and occupants of any lot or lots, or any parcels of land adjoining such sidewalk, to construct or repair the same at his or their own proper expense and charge, within a time designated by the publication in the official paper of said city, for not less than two weeks, of a notice to said owners or occupants, setting forth what work is to be done, and the character of the same, by such owners or occupants, and the time within which they are required to do the same.

SEC. 178. *Expense of constructing sidewalk, how paid.*—If such work is not done, and the said sidewalks are not built or repaired in the manner, and within the time prescribed, the common council may order the same to be done by the street commissioner, at the expense of the lots and parcels of land adjoining said sidewalks, and said expenses shall be assessed upon such lots and parcels of land so chargeable, by the street commissioner, and returned by him to the common council. And said assessment so made and returned, if approved by the common council, shall become a lien upon said lots and parcels of land, as in case of city, county, and state taxes.

SEC. 179. *Assessment not paid, how collected.*—If said assessment be not paid to the street commissioner or the city treasurer, on or before the twentieth day of August, in any year, the common council shall cause a statement of the same to be transmitted, with the city taxes levied for that year, to the auditor of the county, on or before the first day of September in each year, and the said auditor shall insert the same with the other taxes in the duplicate statement of taxes annually transmitted by him to the county treasurer for collection, and payment thereof enforced, with and in like manner as city, county, and state taxes are collected and payment thereof enforced.

Vide Griggs v. City of St Paul, 11 Minn. 308; and De Rochbrune v. Same, *ib.* 313; also Nash v. City of St Paul, 8 Minn. 174 (authority to contract must be strictly followed).

SEC. 180. *To prescribe width of sidewalk and material used.*—The common council shall prescribe the width of sidewalks, and may establish different widths in different localities, and determine the kind of material of which they shall be constructed, having regard to the business and the amount of travel in the vicinity of each.

SEC. 181. *Contract for lighting streets.*—The common council shall have authority to contract with any person, persons, or corporation for the lighting of such streets or parts of streets and public places as they shall deem proper for the convenience and safety of the inhabitants.

SEC. 182. *Permit, laying of gas pipes, etc.*—The common council may permit the laying of gas pipes in any and all the streets, alleys, and highways and public grounds of the city; but in all cases the common council shall regulate the laying of the same, so that said gas pipe may not at any time interfere with the construction of common sewers or the lateral branches thereof, or with the proper and convenient location of water mains and pipes, and may at any time require the location of any gas pipe to be changed, if the same shall be found to interfere with the proper and convenient location of common sewers or water mains and pipes.

SEC. 183. *Permit any party to lay water pipes.*—The common council may permit any party or corporation to lay water mains and pipes in any and all streets, alleys, highways, and public grounds of the city, and shall regulate the position of

the same, so that they shall not obstruct or interfere with common sewers or with the proper drainage of the city.

SEC. 184. *Vote of council to be rescinded, when.*—No vote of the common council shall be re-considered or rescinded at a subsequent meeting, unless at such subsequent meeting there be present as large a number of aldermen as were present when the vote was taken.

SEC. 185. *When penalty may be remitted.*—No penalty or judgment recovered in favor of the city shall be remitted or discharged, except by the vote of two-thirds of the aldermen elect.

SEC. 186. *When warrant may be issued, etc.*—In all prosecutions for any violation of this title (act), the first process shall be by warrant on complaint being made: *provided*, that no warrant shall be necessary in any case of the arrest of any person or persons while in the act of violating any law of the state of Minnesota, or ordinance or by-law of the city, but the person or persons so arrested may be proceeded against, tried, convicted, and punished or discharged in the same manner as if the arrest had been made by warrant. All warrants, process, or writs by a city justice for the violation of an ordinance and by-laws of said city, shall be directed to the chief of police or any police officer of said city.

SEC. 187. *Non-payment of fines, how punished.*—In all cases of the imposition of any fine or penalty, or of the rendering of any judgment by a city justice of said city, pursuant to any statute of the state of Minnesota, or pursuant to any ordinance or by-law of the said city, as punishment for any offense, or for the violation of any ordinance or by-law as aforesaid, the offender shall be forthwith committed to the city prison of said city, or if there be no city prison, to the common jail of the county, and be there imprisoned for a term not exceeding three months, in the discretion of the city justice, unless the said fine or penalty be sooner paid or satisfied; and from the time of the arrest of any person or persons for any offense whatever, until the time of trial, the person or persons so arrested may be imprisoned in the city prison, or in case that there be no city prison, in the common jail of the county.

SEC. 188. *Qualifications of judge, justices, etc.*—No person shall be an incompetent judge, justice, witness, or juror, by reason of his being an inhabitant of said city, in any proceeding or action in which the city shall be a party in interest.

SEC. 189. *May purchase and hold real estate.*—Each city may purchase and hold real and personal estate for public purposes, sufficient for the convenience of the inhabitants thereof, and may sell and convey the same, and the same shall be free from taxation.

SEC. 190. *No law considered as repealing this act unless expressly stated.*—No law of the state concerning the provisions of this title (act) shall be considered as repealing, amending, or modifying the same, unless said purpose be expressly set forth in such law.

SEC. 191. *Who and when to collect poll tax.*—The street commissioner shall collect the corporation or poll tax, which may be levied by the common council, and said street commissioner shall have all the power as possessed by road supervisors as provided by the laws of the state, and shall report to the common council when required.

For decisions as to liability of city *vide* St Paul v. Seitz, 3 Minn. 297; McDonald v. City of Red Wing, 13 Minn. 38; Daly v. City of St Paul, 7 Minn. 390; Nash v. Same, 8 Minn. 174; and Lovell v. Same, 10 Minn. 291.

TITLE III.

TOWN PLATS.

(This Title is Chapter XXIX. of the Statutes of 1866.)

SEC. 192 (1). *Town or addition to be platted.*—When any person wishes to lay out a town or an addition or subdivision of out lots, he shall cause the same to be surveyed, and a plat thereof made, which shall particularly describe and set forth all the streets, alleys, commons or public grounds, and all in and out lots or fractional lots within, adjoining, or adjacent to said town, giving the names, width, courses, boundaries, and extent of all such streets and alleys.

SEC. 193 (2). *Plat, what to show.*—All the in lots shall be numbered in progressive numbers, or by the squares in which they are situated, and their precise length and width stated on said plat; and out lots shall not exceed ten acres in size, and shall in like manner be surveyed and numbered, and their precise length and width stated on the plat, together with any streets, alleys, or roads which divide or border the same.

SEC. 194 (3). *Monuments to be fixed at corners of public grounds.*—The proprietor of the town, addition, or subdivision of out lots, shall at the time of surveying and laying [out] the same, plant and fix at a corner of the ground, or at the corner of a public lot, if there is any, and if none, then at the corner of some one of the in lots in the town, and at the corner of each out lot, a good and sufficient stone of such size and dimensions, and in such manner as the surveyor directs, for a corner, from which to make further surveys; and the point where the same may be found shall be designated on the plat.

SEC. 195 (4, AS AMENDED BY ACT OF MARCH 4, 1871). *Plat to be certified.*—The plat after being completed shall be certified by the surveyor, and the officers and every person whose duty it is to comply with the foregoing requisitions, shall, at or before the time of offering such plat for record, acknowledge the same before some person authorized to take acknowledgment of deeds. A certificate of such acknowledgment, shall, by the officer taking the same, be indorsed on the plat, which certificate of the survey and acknowledgment shall also be recorded and form a part of the record: *provided*, that whenever any part of the lands embraced in such plat are within the limits of any incorporated city, the plat shall not be so recorded until it [the plat] shall have been approved by the common council of such city, and a certificate of such approval put thereon by the clerk of such common council, which certificate shall also be recorded and form part of the record of such plat.

S. L. 1871, 92.

SEC. 196 (5). *Effect of execution and record of plat.*—When the plat is made out, certified, acknowledged, and recorded as required by this title (chapter), every donation or grant to the public or any individual, religious society, or to any corporation or body politic, marked or noted as such on said plat, shall be deemed in law and equity a sufficient conveyance to vest the fee simple of all such parcels of land as are therein expressed, and shall be considered, to all intents and purposes, a general warranty against such donors, their heirs or representatives, to said donees, or

grantees, for their use, for the uses and purposes therein named, expressed, and intended, and no other use or purpose whatever; and the land intended to be for the streets, alleys, ways, commons, or other public uses in any town or city, or addition thereto, shall be held in the corporate name thereof, in trust for the uses and purposes set forth and expressed or intended.

Baker v. City of St Paul, 8 Minn. 491; *Schurmeier v. St Paul and P. R. R. Co.*, 10 Minn. 82; *City of Winona v. Huff*, 11 Minn. 119.

SEC. 197 (6). *Where recorded.*—If the county in which said town or addition is situated is not organized, the plat shall be recorded in the register's office of that county to which the county in which said town is situated, is attached for judicial purposes.

SEC. 198 (7). *Powers of county commissioners in certain cases.*—When any town, addition, or subdivision of out lots has been heretofore laid out, and lots sold either by county agents, commissioners, or other persons, and a plat of the same has not been acknowledged and recorded in conformity to the acts heretofore in force, the present county commissioners or a majority of them in such county, or other persons, or proprietors who have laid out the same, or their legal representatives, shall have the same fairly, fully, and clearly made out, certified and acknowledged and recorded in the proper county, in the form and manner required by this chapter; noticing and particularly describing the donation of lands, or otherwise to individual societies, bodies politic, or for common or public purposes; *provided*, that if the lots have been differently numbered and sales made, and they cannot well be changed, they shall be returned as originally stated, but in all other respects the plat shall conform to the requisitions of this chapter.

SEC. 199 (8). *Fees of surveyors and registers.*—The surveyors who lay out, survey and plat any town, or addition thereto, shall receive twenty-five cents for each and every in and out lot the same may contain, unless otherwise agreed, and every register of deeds recording the same, shall receive the sum of five cents for each and every lot as aforesaid; the plat and survey to be by him transcribed or copied into a book, or upon suitable paper, to be formed into an unbound volume, with covers for careful preservation, to be provided by the county commissioners for that purpose: *provided*, that the original of said plat and survey may be incorporated in said volume, and shall in all respects form the true record of the same, in which case the register shall receive the sum of two cents for each and every lot as aforesaid.

SEC. 200 (9). *Penalty for selling lots without complying with this title (chapter).*—If any person disposes of, offers for sale, or leases for any time, any out or in lot, in any town or addition to any town or city, or any part thereof, before all the foregoing requisitions of this title (chapter) are complied with; every person so offending, shall forfeit and pay the sum of twenty-five dollars for each and every lot or part of a lot sold or disposed of, leased or offered for sale.

SEC. 201 (10). *County officers violating provisions of title (chapter)—penalty.*—If any county officer, or other person whose duty it is to comply with any of the requisitions of this title (chapter), neglect or refuse so to do, they shall each forfeit and pay a sum of not less than ten, nor more than one hundred dollars, for each and every month they delay a compliance.

SEC. 202 (11). *Forfeitures, how collected.*—All forfeitures and liabilities which are incurred or arise under this title (chapter), shall be prosecuted, and recovered

MINNESOTA STATUTES 1873 SUPPLEMENT

AN ACT

TO AUTHORIZE MUNICIPAL CORPORATIONS TO SELL OR LEASE PUBLIC GROUNDS TO
RAILROAD CORPORATIONS.

Be it enacted by the Legislature of the State of Minnesota :

SECTION 1. The city common council, board of aldermen, trustees, commissioners, or other corporate authorities of any city, town, village, or other municipal corporation, are hereby authorized and empowered to grant, sell, convey, or lease any public grounds or place within their respective corporate limits, to any railroad corporation: subject, nevertheless, to all the rights of the original proprietors of such public grounds.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 28, 1866.

in the name of the county treasurer ; and any officer paying over any money to the said treasurer, received under any of the provisions of this title (chapter), shall take his receipt therefor, and forthwith file the said receipt with the clerk of the board of county commissioners, and the said clerk shall charge the amount of said receipt in account against said treasurer, on the books of the county commissioners.

SEC. 203 (12, AS AMENDED BY ACT OF MARCH 5, 1869). *District court may alter or vacate plat, when.*—The district courts are authorized and empowered, upon application made by one or more of the proprietors of any city or town, or of any addition to any city or town, or of any part of any city or town or addition thereto, within their district, to alter or vacate the same, or any part thereof, including streets and public squares, and to adjudge and declare the title to such streets, alleys, and public squares such persons as are entitled to the same.

S. L. 1869, 42. Weisberger v. Tenny, 8 Minn. 456.

SEC. 204 (13). *Notice of application to be posted.*—If such proprietor is desirous of obtaining such vacation, he shall post notices in writing of such intended application, in at least two of the most public places in the county in which such city, or town, or addition is situated, and insert a copy thereof in a newspaper printed or in circulation in said county, at least thirty days prior to the sitting of the court to which he intends to make such application.

SEC. 205 (14). *Proceeding on hearing.*—If such proprietor produces to said court satisfactory evidence that the notice required by the preceding section has been given, the court shall proceed to hear and determine said petition, and may alter and vacate said city or town or additions, or any part thereof, and order its proceedings to be recorded by the clerk in the records of said court and in the office of the register of deeds of the county in which said city, town, or addition is situated. But no street or alley, or any part thereof, shall be vacated between blocks or lots, or which connect two parts of the city, town, or addition, except such blocks or lots or one part of the city, town, or addition so connected is also vacated, unless, however, it appears to the satisfaction of the court that such street or alley, or part thereof, sought to be vacated is useless for the purpose for which the same was laid out or dedicated : *provided*, that if upon the hearing of said application, any objection is made by any person owning or occupying contiguous land, and whose interest will be injuriously affected by such proposed vacation, the court shall hear him and give judgment as seems right and proper : *provided further*, that whenever, in the judgment of the court, the parties resisting such vacation or alteration will sustain by the same damages greater than the benefits resulting therefrom, the court is empowered to assess the said damages, or cause the same to be assessed, and require the payment of the same by the parties making such application, before the said vacation or alteration shall take effect.