

GENERAL STATUTES

OF

MINNESOTA

1913

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or bridges by floods or other casualty, or of unforeseen injuries to machinery in or connected with public buildings, where the public interests would suffer by delay, contracts for repairs may be made without advertising for bids. (618)

1092. **Same—Counties of more than two hundred thousand**—In counties having a population of more than two hundred thousand, no contract for the purchase of goods, materials, or supplies of any kind for the county, the estimated cost of which exceeds one hundred dollars, shall be made by the county board without first giving at least seven days' published notice that bids or proposals will be received therefor, stating the time and place. All such contracts shall be let to the lowest responsible bidder, shall be approved by resolution of the board, and signed by its chairman. In case no satisfactory bid is received, the board may readvertise: Provided, that in case of unforeseen breakages or injuries in or connected with public buildings, where the public interest would suffer by delay, contracts for repairs may be made without advertising for bids, but in such case the action of the board shall be recorded in its official proceedings. (619)

See following section.

1093. **Same—Emergency**—In case of an emergency arising from breakage, damage or decay in any county property of any such county that cannot be allowed to wait for the time required to advertise for bids as herein required then such repairs may be made without advertising for bids, provided, however, such work is authorized by a majority of the board of county commissioners, and such action shall be ratified and recorded in the official proceedings of said board at their next meeting. ('05 c. 189 § 1)

Historical—"An act to amend section 4, chapter 50 of the General Laws of Minnesota for the year 1902, relating to advertising for bids and the letting of contracts in excess of one hundred dollars by county commissioners in all counties having 225,000 inhabitants or over."

1902 c. 50, by its terms applied to counties having 200,000 inhabitants or over. It was repealed by § 9455, but its provisions were embodied in the preceding section. So far as this section differs from that section, it is to be construed, by virtue of § 9398, as amendatory or supplementary.

1094. **Actions against counties**—No action shall be maintained against a county upon any claim except county orders, when the only relief demanded is a judgment for money, until such claim shall have been duly presented to the board, and it shall have failed to act upon the same within the time fixed by law, or unless such board shall consent to the institution of such action. No action shall be brought upon any county order until the expiration of thirty days after a demand for the payment thereof has been made, and any judgment against the county entered in an action brought on any such order without such demand shall be void. (620)

When board has acted, it cannot in absence of fraud or mistake and notice of hearing, set aside its decision and take other action (107-460, 120+896).

Not applicable to final payment due contractor in drainage proceedings (114-448, 131+635). Cited (116-101, 133+469).

1095. **Board of control—Salary of secretary**—The board of control of any county in this state is authorized to fix the salary of the secretary appointed by it at such sum as the board may deem proper, not exceeding three thousand dollars (\$3,000.00) per annum, payable monthly out of the funds appropriated on account of salaries or otherwise for the maintenance of the board. ('07 c. 68 § 1, amended '13 c. 12 § 1)

CHAPTER 8

TOWNS AND TOWN OFFICERS

1096. **Boundaries**—The boundaries of towns shall remain as now established until otherwise provided by the county board pursuant to law. (621)

POWERS—DUTIES—LIABILITIES

1097. **Corporate powers**—Each town is and shall be a body corporate, and empowered:

1. To sue and be sued by its corporate name.

2. To purchase, take, and hold real and personal property for public uses, and convey and dispose of the same.

3. To make all contracts necessary for the exercise of its corporate powers.

4. To make such orders for the disposition, regulation, and use of its corporate property as the inhabitants thereof may deem expedient. (622)

Nature of towns defined. Not liable for negligence (30-186, 14+877, 44 Am. Rep. 191; 65-5, 67+648). Not liable for unauthorized acts of officers (59-3, 60+675).

1098. Limitation of powers—No towns shall possess or exercise any corporate powers except such as are expressly given by law, or are necessary to the exercise of the powers so given. (623)

12-124, 71.

1099. Conveyances to towns—All real and personal property conveyed to any town, or to the inhabitants thereof, or to any person for the use of the town or its inhabitants, shall be deemed the property of such town, and all such conveyances shall have the same force and effect as if made directly to the town by name. (624)

1100. Powers of town meetings—The electors of each town have power at their annual town meeting:

1. To determine the locations of pounds, and number of poundmasters, and to discontinue any such pound.

2. To select such town officers as are to be chosen.

3. To direct the institution and defence of all actions in which the town is a party or interested, to employ necessary agents and attorneys for the prosecution or defence of the same, and to raise such sums of money for that purpose as they deem necessary.

4. To make such lawful orders and by-laws as they deem proper for restraining horses, cattle, sheep, swine, and other domestic animals from going at large on the highways, and provide for impounding such animals so going at large.

5. To fix penalties for violations of any order or by-law made by such town, except such as relate to the keeping and maintaining of fences.

6. To vote money for the repair and construction of roads and bridges, and determine the amount thereof to be assessed as labor tax, and to vote such sums as they deem expedient for other town expenses, including the construction and maintenance of docks and breakwaters.

7. When they deem it for the interest of the town, to direct that a specified amount of the poll and road tax be expended, under the direction of their town board, on the roads of an adjoining town.

8. To authorize the town board to sell and convey any real or personal property belonging to the town, not conveyed to and required to be held by the town for a special purpose.

9. To authorize the town board to purchase or build a town hall or other building for the use of the town, and to determine by ballot the amount of money to be raised for that purpose.

10. To authorize the town board by vote to purchase grounds for a town cemetery, and limit the price to be paid, and to vote a tax for the payment thereof.

11. To authorize the town, either by itself or in conjunction with one or more other towns, to purchase grounds for a public park and to limit the price to be paid therefor; to authorize the town alone or in conjunction with such other town or towns, to care for, improve and beautify such parks, and to determine by ballot the amount of money to be raised for that purpose, and to vote a tax for the payment thereof. (R. L. § 625, amended '09 c. 350; '13 c. 14. § 1)

Subd. 1 (31-451, 18+315). Subd. 3 (83-219, 86+87; 99-286, 109+248). Subd. 4 (15-350, 283; 43-207, 45+152). Subd. 6 (14-248, 181; 38-186, 190, 36+454). Subd. 7 (24-14).

Electors may ratify action directed by board without authority of law (99-286, 109+248).

Acts of board assuming duties reserved to electors are at least voidable unless ratified by electors (109-28, 122+468).

As to labor tax, see 1913 c. 235 § 40 [2527].

1101. Certain towns to have certain powers of villages—Any township in this state having therein a platted portion on which there resides 1,200 or more people shall have and possess the same power and the same authority now possessed by villages in this state under the laws of this state in so far

as such powers are enumerated in section 727 of the Revised Laws of the State of Minnesota, 1905 [1268], and subdivisions 1, 7, 8, 9, 11, 12, 16, 17, 18, and 22 of said section 727. Also have the powers enumerated in sections 729 and 735, Revised Laws of the State of Minnesota, 1905 [1276, 1284]. ('07 c. 193 § 1)

See following section.

1102. Certain towns to have certain powers of villages of fourth class—Any township in this state having a platted portion on which there resides 1,200 or more people, shall have and possess the same power and the same authority now possessed by the villages of the fourth class under the laws of this state, insofar as such powers are enumerated in sub-division 7, 8, 9, 12 and 17, of section 727, Revised Laws of 1905 [1268]. ('07 c. 397 § 1)

See preceding section.

1103. Certain town orders legalized—That all town orders or warrants heretofore issued by any town for work performed in the repair and construction of roads and bridges in such town are hereby legalized and made valid insofar as such invalidity arises from the fact that such town orders or warrants were issued in excess of the amount voted at the annual meeting for the repair and construction of roads and bridges in such town for the year in which such road or bridge work was performed and for which such orders or warrants were issued. Provided, that this act shall not apply to any suit now pending involving the legality of town orders or warrants issued. ('09 c. 321 § 1)

1104. Taxes in certain towns—Tax of \$250 for township purposes may be voted in certain townships—At any annual town meeting or at any special town meeting properly called for that purpose, in any township in this state now having or which shall hereafter have a taxable valuation of less than one hundred thousand dollars (\$100,000) a sum may be voted as a tax for township purposes of not to exceed two hundred and fifty (\$250) dollars, but the rate of such tax shall not exceed one half of one per cent upon the taxable valuation in any such township. ('13 c. 165 § 1)

1105. Sale of realty—Whenever any real estate belonging to the town is sold, the conveyance thereof shall be executed by the chairman of the town board in his official capacity, and attested by the clerk; and such conveyance, duly witnessed and acknowledged, shall convey to the grantee therein named all of the right, title, and estate which the town then has in the real estate conveyed. (626)

1106. By-laws to be posted—No by-laws shall take effect until posted notice thereof has been given. Thereafter it shall be binding upon all the inhabitants of the town, and upon all persons coming within its limits. (627)

1107. Town buildings—Tax—Whenever any town shall have authorized the purchase or building of a town hall or other building for its use, and determined the amount of money to be raised for that purpose, the town board may levy a tax for the amount so authorized, and make all necessary contracts for purchasing or building the same, and shall have the control and management thereof. (628)

1108. Procuring town hall—Indebtedness—Curative—That whenever and in all cases between the 1st day of July, A. D. 1908, and the 16th day of March, A. D. 1909, a petition or request signed by legal voters of any organized town in this state has been made and filed with the town clerk and township board of such town, asking that such township and the board of supervisors thereof, proceed to procure a site and construct and complete thereon, a town hall for such town, pursuant to the provisions of chapter 8 of the Revised Laws, 1905, or any other law or laws of this state, then in force, and also asking that the town clerk of said town and said board of supervisors proceed to call and cause to be held, a town meeting and election for the legal voters and electors of such town, to vote upon said proposition including the amount of money to be raised and expended therefor, and thereafter such proceedings were had that a town meeting and election was held in such town for the electors and legal voters thereof to vote upon said proposition, and at which town meeting

and election the electors and legal voters of such town, did vote upon said proposition, including the procuring of a site, the construction and completion of a town hall thereon, and the raising of money and the amount to be raised therefor, and a majority of all the ballots and votes cast at such town meeting and election, as counted and canvassed, were in favor of said town and its said town board procuring such site and building, constructing and completing thereon a town hall, as described in said petition and notice of said election, and the amount of money to be raised and expended by said town and its said town board for said purpose was voted upon and authorized by said electors and legal voters at such town meeting, the full amount of the cost of the same, together with all other outstanding indebtedness of said town, not exceeding ten per cent of the assessed valuation thereof, and thereafter the board of supervisors of said town, in pursuance of said town meeting, and as authorized by the vote of the electors cast thereat, have proceeded to procure a site and to build and construct thereon a town hall for said town, and have expended money therefor, and have issued the township orders and other evidences of indebtedness therefor, the full amount of money so expended, the orders, warrants and other evidences of indebtedness issued, not exceeding the amount so voted by said electors at said town meeting, all steps taken, acts and proceedings done and performed, orders, town orders, warrants and other evidences of indebtedness issued for the procuring of such site and the building, constructing and completing thereon, such town hall, are hereby legalized, validated, ratified and confirmed, and all such orders, township orders, warrants and other evidences of indebtedness so issued by said town board for said purpose, are hereby legalized, ratified, validated and confirmed and made the legal, valid and binding obligations of said town. In all such cases, the act or acts of said electors in voting said amount of money for said purpose, and in authorizing said town board of said town to expend the same for said purpose, is hereby legalized, validated, ratified and confirmed. ('09 c. 279 § 1)

The provisions of R. L. 1905 c. 8, are included in chapter 8 hereof.

1109. Cemeteries—When authorized by a vote of its electors, any town may acquire, by purchase or gift, land within its limits, to be used as a cemetery for the burial of its dead. The town board shall have control and management of every such cemetery, and may lay the same out into lots, streets, and walks, and cause plats and maps thereof to be made and filed in the office of the town clerk. If any such cemetery becomes separated from the town by being included in a village thereafter organized from its territory, it may be sold and conveyed by the town board to such village. (629)

1110. Sale of lots—Proceeds—Lots in such cemetery may be sold by the board only for the burial of the dead of such town, and upon sale shall be conveyed in like manner as its other real estate. Proceeds of all sales shall be paid into the town treasury, and shall constitute a fund to be used only in maintaining, improving, and ornamenting such cemetery. (630)

1111. Public burial grounds—Whenever any tract of land in a town, title to which is not vested in some cemetery association, has been used as a public burial ground for ten years, the title thereto shall be deemed vested in such town, and the same shall be subject to the control and management of its town board in like manner as other town cemeteries. (631)

1112. Permanent fund for cemetery purposes—That the board of supervisors of any township in the state which has heretofore purchased land for, and which is now used or may be hereafter purchased and used as, a cemetery therein may require and provide that any part or portion of the price paid for lots therein shall constitute a permanent fund which shall be deposited as hereinafter provided and that the interest accruing thereon shall be paid annually to the trustees of said cemetery to be by them expended in caring for and beautifying such lot and cemetery. ('11 c. 224 § 1)

1113. Same—Supervisors to fix price—That said board of supervisors are hereby given power and authority to fix and determine the amount of such price of each such lot sold that shall be taken, held and deposited for the purpose of caring for and beautifying said lot and cemetery and to direct and re-

quire the said trustees of said cemetery to so expend the same. ('11 c. 224 § 2)

1114. **Same—May accept gifts—**That said board of supervisors are hereby authorized and empowered to receive, accept and deposit as hereinafter provided any donation or gift of money made to such fund so created and to provide and require that the interest therefrom shall be used by the trustees in the care and beautifying of such lot or lots in such cemetery, or in the care and beautifying of such cemetery, and may receive and accept gifts and donations for the care and beautifying of any particular lot or lots in such cemetery, and shall use the same and the interest thereon for the purpose specified by the donor. ('11 c. 224 § 3)

1115. **Same—Deposit with county treasurer—**The said board of supervisors are hereby authorized and empowered to require the trustees of any such cemetery to deposit all such money in the county treasury of the county in which such township is located immediately after the sale and receipt by them of payment for any lot sold in such cemetery, or the receipt of any such gift or donation, and the county treasurer of any such county is hereby authorized, empowered and directed to receive the same and all such and deposit it as hereinafter provided. ('11 c. 224 § 4)

1116. **Same—Deposit in bank—**That said funds, and all thereof, as soon as received by such county treasurer shall be deposited in a bank designated as a depository of county funds by the board of auditors of such county. ('11 c. 224 § 5)

1117. **Same—Interest—**That for the purpose of such deposit said fund so created shall be treated as other funds in the county treasury and shall draw the same rate of interest as the funds of said county deposited in said depository. ('11 c. 224 § 6)

1118. **Same—Interest, how used—**That said fund shall be deposited in such depository in the name of such county and the bond or security given to said county by such depository shall be taken and held to be as security for such fund but the treasurer of such county shall keep an accurate and separate account thereof and shall draw from such depository annually the interest accruing on such fund and pay the same to the board of trustees of said cemetery and said board of trustees shall use said interest for the purposes aforesaid and none other. ('11 c. 224 § 7)

1119. **Same—Transfer of fund—**That it is hereby made the duty of the county treasurer of any such county whenever any change is made in the depository of the county funds of any such county to change and transfer to such new depository the fund herein provided for and deposit such fund in such new depository. ('11 c. 224 § 8)

1120. **Same—Disposition of excess—**That any excess of interest over the sum necessary for the care and beautifying of said lots or cemetery in any one year shall be by said trustees deposited in such treasury to be added to and become a part of the principal sum, and no part of the principal sum shall ever be used. ('11 c. 224 § 9)

1121. **Same—Investment of fund—**The board of supervisors shall, when possible, invest the said fund so created in the same kind of bonds and securities that the permanent school fund of the state of Minnesota may be invested in and for such purposes and none other. The said board of supervisors may require the county treasurer of any such county to withdraw all, or any part, of such fund from such depository and if said fund, or any part thereof, be so invested, the said bonds, or other securities shall be and remain with the county treasurer and that the bond of the county treasurer shall at all times be security for the proper care thereof and the payment of interest received by him thereon to the trustees of said cemetery and upon the payment of any such bonds or other securities, the treasurer of such county upon such payment shall deposit the same in the depository in which county funds are deposited, the treasurer of such county shall collect the interest upon the funds so loaned and pay the same to the trustees of said cemetery and shall annually pay over to the trustees of said cemetery all interest, money collected or received by him on fund so deposited or invested as herein provided. ('11 c. 224 § 10)

TOWN MEETINGS

1122. **First meeting—Proceedings**—The first town meeting in each new town shall be held within twenty days after it is organized, at a time and place to be designated by the county board, and the county auditor shall cause ten days' posted notice thereof to be given in each such town. The voters present at such meeting, between 9 and 10 o'clock a. m., shall choose one of their number as moderator, two others as judges of election, and one as clerk, who shall severally take and subscribe the oath required of judges and clerks of a general election, which may be administered to the judges and clerk by the moderator, and to the moderator by either of the judges. They shall thereupon conduct the proceedings of such meeting, and the voters shall possess the same powers as at other town meetings. (632)

1123. **Annual meeting—Business**—There shall be an annual town meeting held in each town on the second Tuesday of March at the place of holding the last town meeting, or at such other place in the town, or in a city or village within or adjoining the same, designated by the annual town meeting. The clerk shall give ten days' posted notice of such meeting, specifying the time and place, and all town officers required by law to be elected shall be chosen thereat, and such other business done as is by law required or permitted. (633)

1124. **Special meetings**—Special town meetings may be held for the purpose of electing officers to fill vacancies or 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 the interests of the town require that such meeting be held. (634)

23-521, 524.

1125. **Notice**—Whenever such statement is so filed, the clerk shall record the same, and cause ten days' posted notice thereof to be given, specifying the purpose for which it is to be held, and, if a newspaper is published in the town, shall cause one week's published notice of such meeting to be given. If vacancies in office are to be filled, the notice shall specify in what offices they exist, how they occurred, who was the last incumbent, and when the legal term of such office expires. (635)

23-521.

1126. **Town meetings—How organized**—The voters present at any time between 9 and 10 o'clock a. m. on the day of the annual or any special town meeting shall be called to order by the town clerk, if present; if not, the voters present may elect a chairman by acclamation. They shall then in the same manner choose a moderator of such town meeting. (636)

1127. **Clerk of meeting**—The town clerk shall be clerk of the town 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, the voters present shall elect a clerk of the meeting. The minutes of such meeting shall be subscribed by the clerk of the meeting and judges, and filed in the office of the town clerk within two days after the meeting. (637)

G. S. 1894, §§ 934, 938, cited (98-480, 108+3).

1128. **Order of business**—At the opening of every town meeting the moderator shall state the business to be transacted, and the order in which it will be entertained, and no proposition to vote a tax shall be acted on out of the order of business stated by the moderator; and no proposition to reconsider any vote shall be entertained at any town meeting unless 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 on each question. (638)

G. S. 1894, § 935, cited (98-480, 108+3).

1129. Qualification of voters—Every person qualified to vote at a general election may vote at any town meeting in the town where he resides. If a voter is challenged, the judges shall proceed thereupon as in the case of challenges at a general election, adapting the oath to the circumstances of the case. (639)

1130. Judges of election—The supervisors of each town shall be the judges of election at the town meetings, but, if there be a vacancy in said board, or any supervisor is absent, the electors may choose judges to fill their places from the qualified voters of the town. (640)

1131. Polls opened and closed—The polls shall be opened between 9 and 10 o'clock a. m., proclamation of which shall be previously made by the moderator. Proclamation shall in like manner be made of the adjournment and of the opening and closing of the polls thereafter. (641)

1132. Officers, how elected—The supervisors, treasurer, town clerk, assessor, justices of the peace, and constables in each town shall be elected by ballot. All other officers, if not otherwise provided by law, shall be chosen by yeas and nays, or by division, as the electors determine. (642)

G. S. 1894, § 940, cited (97-221, 106+904).

1133. Ballots—In an election of town officers to be chosen by ballot, the names of all the persons voted for, and the offices to which they are intended to be chosen, shall be written or printed on one ballot. Such ballot shall be delivered to one of the judges, so folded as to conceal its contents. (643)

1134. Poll list—Ballots, how cast—When an 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. The ballots shall be handed to one of the judges, and by him forthwith deposited in a box provided for that purpose. (644)

1135. Canvass of votes—When an election by ballot is closed, the judges shall publicly canvass the votes, which canvass, when begun, shall continue without adjournment or interruption until completed. (645)

G. S. 1894, § 945, cited (98-480, 108+3).

1136. Manner of canvassing—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. The person having the highest number of votes for any office shall be declared elected, but, if two or more persons have an equal and the highest number of votes for any office, the judges shall at once publicly determine by lot which of such persons 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 them immediately. (646)

G. S. 1894, § 946, cited (98-480, 108+3).

1137. Result of canvass read—When the canvass is completed, a statement of the result shall be entered at length by the clerk of the meeting in the minutes of its proceedings, and publicly read by him to the meeting. 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. (647)

1138. Clerk to report to auditor—Immediately after the annual town meeting each town clerk elected thereat shall, as soon as he has qualified, report to the auditor of his county the name and postoffice address of each town officer who was elected and for what term elected. ('07 c. 26 § 1)

1139. Votes on other questions—Every proposition to be voted upon by ballot at a town meeting, other than the election of officers, shall be specified in the notice of such meeting. The ballots cast upon such proposition shall be deposited in a separate box, and a separate poll list kept of the electors voting thereon, and shall be counted and canvassed, and the result ascertained, declared, and certified, in like manner as in the case of ballots cast for officers. (648)

1140. **Adjournments**—Any town meeting may be adjourned to any other day, and from time to time, for the purpose of transacting any business of the town except the election of officers. (649)

1141. **Failure to elect officers**—Whenever any town fails to organize or to elect town officers at the time fixed by law, twelve freeholders thereof may call a town meeting for such purpose by giving ten days' posted notice thereof, setting forth its time, place, and object. When assembled by virtue of such notice, the voters shall have all the powers conferred upon them by law at annual town meetings. If no such notice is given in such case within thirty days after the time for holding annual town meetings, the county board, on the affidavit of any freeholder of such town, filed with the county auditor, setting forth the facts, shall appoint officers for such town, who shall have all the powers of officers duly elected, and shall hold their offices until their successors qualify. (650)

TOWN BOARD

1142. **How constituted—Duties**—The supervisors of each town shall constitute a board to be designated "The town board of," and any two shall constitute a quorum, except when otherwise provided. They shall have charge of all the affairs of the town not by law committed to other officers. They shall draw orders on the treasurer for the disbursement of money to pay the town expenses, and for all moneys raised by the town to be disbursed for any other purpose. They may prohibit or license and regulate the keeping of billiard, pool, and pigeonhole tables and bowling alleys, fix the price and time of continuance of such license, and, whenever in their opinion the public interest requires it, revoke the same. They may select and designate a bank as the depository of town moneys for a time not extending beyond their official term, on the execution by such bank of a sufficient bond to the town, in double the sum deposited, to be approved by the board and filed in the office of the town clerk, and thereupon may require the treasurer to deposit all or any part of the town moneys in such bank. Such designation shall be in writing, and shall set forth all the terms and conditions upon which the deposits are made, be signed by the chairman and clerk, and filed with the clerk. The town treasurer shall not be liable for the loss of moneys while so deposited, and all interest thereon shall belong to the town. (651)

33-127, 130, 22+174.

Authority to purchase safe conferred on board, under §§ 1142-1145 (109-28, 122+468).

Cited (116-500, 134+129, 39 L. R. A. [N. S.] 43).

1143. **Billiard table, etc.—License**—Any person who shall keep a billiard, pool, or pigeonhole table, or a bowling alley in any town, without first obtaining a license therefor as provided in § 1142, shall be guilty of a misdemeanor, and be punished by a fine of not more than fifty dollars, or by imprisonment in the county jail for not more than thirty days. (652)

1144. **To prosecute bonds, etc.**—The town board shall prosecute, in the name of the town and for its benefit, all actions upon bonds given to the town, or to them or their predecessors in office for its benefit, and shall 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 in like manner prosecute for any trespass on town property. All moneys collected under this section shall be paid to the town treasurer. (653)

1145. **May repair village streets**—If any village included in the limits of a town neglects to keep its streets in repair, the town board of such town may cause repairs and improvements to be made on any such street needed as a highway. (654)

1146. **May transfer funds**—The town board of any township in this state, by unanimous vote thereof, may transfer any surplus beyond the needs of the current year in any town fund to any other town fund to supply a deficiency therein. ('13 c. 13 § 1)

BOARD OF AUDIT

1147. **How constituted—Meetings**—The town board shall constitute a board of audit, and shall meet each year on the Tuesday next preceding the annual town meeting for the purpose of auditing and settling all charges against the town, and all unpaid accounts of town officers for services rendered since the last annual meeting of the board shall be presented at such meeting. They may also meet at such other times as they deem necessary for the purpose of auditing and settling charges against the town; but no allowance of any account shall be made which does not specifically state each item of the same. If any supervisor fails to attend, a justice of the peace shall be called in to fill the vacancy. (655)

1148. **Duties**—It shall be the duty of such board of audit:

1. To examine and audit the accounts separately of each town officer, authorized by law to receive or disburse money.

2. To examine and audit every account presented against the town, and to indorse thereon the amount allowed and disallowed, stating the items; and no allowance shall be made on any account which does not specifically give each item, with the date, amount, and nature thereof, separately. Such statement shall be verified by the claimant, his agent or attorney, and filed with the town clerk, and no such claim against any town shall be considered or acted upon unless such statement shall be made and filed.

3. To examine into the character and circumstances of every other demand presented against the town which they are not authorized to audit, and in their report to give a summary thereof, with their recommendations in regard thereto.

4. To report in detail the items of accounts audited and allowed, the nature of each, and the person to whom allowed, and the same in respect to accounts disallowed. Such report shall also contain a statement of the fiscal affairs of the town, with an estimate of the sum necessary to be raised for the current expenses or other authorized purpose for the ensuing year, and such recommendations as they deem advisable. (656)

Filing claim condition precedent to action (67-1, 69+471).

1149. **Report posted and read**—The clerk shall post a copy of such report at the place of holding the town meeting at least half an hour before the time for opening the polls. Such report shall also be publicly read by the clerk to the meeting, and the whole or any portion thereof may be referred by the meeting to a committee, who shall examine the same and report to the meeting thereon. For making such report the clerk shall receive one-half the fees allowed by law for making the original report. (657)

TOWN CLERK

1150. **Bond and oath**—Every person elected or appointed to the office of town clerk, before he enters upon the duties of his office, shall give bond to the town, with sureties approved by the town treasurer, in such penal sum as the town board directs, conditioned for the faithful discharge of his duties. Such bond, with his oath of office, shall be filed with the clerk of the district court, and an action may be maintained thereon by the town or any person aggrieved. (658)

1151. **Deputy**—Each town clerk may appoint a deputy, for whose acts he shall be responsible, and who, in case of his absence or disability, shall perform his duties. (659)

1152. **Duties**—It shall be the duty of the town clerk:

1. To act as clerk of the town board, and keep in his office a true record of all its proceedings.

2. To have the custody of the records, books, and papers of the town, when no other provision is made by law, and to file and safely keep all papers required by law to be filed in his office.

3. To record in the book of town records minutes of the proceedings of every town meeting, and enter therein at length every order or direction and all rules and regulations made by the town meeting.

4. To file and preserve all accounts audited by the town board or allowed at a town meeting, and enter a statement thereof in the book of records.

5. To transmit to the clerk of the district court, immediately after the election of any justice of the peace of his town, a written notice stating therein the name of the person elected, and the term for which he was elected, and, if elected to fill a vacancy, the name of the last incumbent of the office, and likewise the name of every constable, after he shall have qualified, and, upon the resignation of a justice or constable to immediately transmit to such clerk notice thereof.

6. To record every request for any special vote or special town meeting, and properly post the requisite notices thereof.

7. To post, as required by law, fair copies of all by-laws made by the town, and enter, over his signature, in the town records, in connection with such by-laws, the time when and places where the same were posted.

8. To furnish to the town board of audit at its annual meeting every statement from the county treasurer of money paid to the town treasurer, and all other information respecting the fiscal affairs of the town in his possession, and all accounts, claims, and demands against the town filed with him.

9. To perform such other duties as are required of him by law. (660)

G. S. 1894 §§ 982, 983, cited (98-480, 108+3).

1153. Office in certain villages—The town clerk of any town in this state may hold his office in any village, the territory of which said village shall have been, prior to the incorporation thereof, a part of and included within the boundaries of such town. ('05 c. 98 § 1)

1154. New town—Papers—Whenever a new town is organized, embracing any part of an existing town, the clerk of such existing town shall deliver to the clerk of the new town all papers and files removable, and certified copies of all records, papers, and files not removable, pertaining to such new town; and the same, being deposited in the office of the clerk of the new town, shall have the same effect as if originals, and originally filed therein. (661)

TOWN TREASURER

1155. Bond—Every person elected to the office of town treasurer, before he enters upon the duties of his office, shall give bond to the town in double the probable amount of money to be received by him, to be determined by the board, conditioned for the faithful discharge of his duties as such treasurer. Within six days thereafter the chairman shall file such bond, with his approval indorsed thereon, for record, with the register of deeds. (662)

23-521, 525.

1156. Duties—It shall be the duty of the town treasurer:

1. To receive and take charge of all the moneys belonging to the town, or which are required to be paid into its treasury, and to pay out the same only upon the order of such town or its officers, made pursuant to law.

2. To preserve all books, papers, and property pertaining to or filed in his office.

3. To 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 for that purpose, and exhibit such account, together with his vouchers, to the town board of audit, at its annual meeting, for adjustment.

4. To deliver on demand all books and property belonging to his office, and all moneys in his hands as such treasurer, to his successor in office, when qualified.

5. To keep in a suitable book a register of all town orders presented for payment that he cannot pay for want of funds, with the date when so presented, and to indorse upon the back of all such orders the words, "Not paid for want of funds," with the date of such indorsement, signed by him as town treasurer.

6. To draw from the county treasurer from time to time such moneys as have been received by such treasurer for his town, and receipt therefor.

7. To make and file with the town clerk, within five days preceding the annual town meeting, a statement in writing of the moneys received by him.

from the county treasurer, and from all other sources, and all moneys paid out by him as such treasurer, setting forth the items thereof, from whom and on what account received, 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, and the unexpended balance in his hands.

8. To perform such other duties as are required of him by law. (663)

1157. **Neglect of duty**—Every town treasurer who refuses or neglects to comply with the provisions of § 1156 shall be guilty of a gross misdemeanor, and, in addition to the punishment prescribed therefor, shall forfeit his office as such treasurer. (664)

1158. **To pay audited accounts**—Accounts audited and allowed, 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 the town board, signed by the chairman and countersigned by the clerk. Such orders shall be received in payment of town taxes of such town. (665)

1159. **Order of payment—Interest**—Town orders shall bear interest from the date when presented to the treasurer for payment, and shall be paid in the order in which they are registered, out of the first money that comes into the treasurer's hands for that purpose. (666)

1160. **Certain orders or warrants—Curative**—That all town orders or warrants heretofore issued subsequent to the first day of January, 1911, by any town for work performed or for material used in the repair or construction of roads and bridges in such town are hereby legalized and made valid in so far as such invalidity arises from the fact that such town orders or warrants were issued in excess of the amount voted at the annual town meeting for the repair and construction of roads and bridges in such town for the year in which such road or bridge work was performed and for which such orders or warrants were issued. Provided, that this act shall not apply to any suit now pending involving the legality of said town orders or warrants. ('13 c. 553 § 1)

1161. **Fees**—Each town treasurer shall be allowed to retain two per cent. of all moneys paid into the town treasury, for receiving, safely keeping, and paying over the same according to law, provided that his compensation shall in no case exceed one hundred dollars in any one year. (667)

GENERAL PROVISIONS

1162. **Officers elected—Terms—New town**—There shall be elected at the annual town meeting in each town three supervisors as hereinafter provided. The supervisors now in office shall hold their office for the full term for which they were elected according to the provisions of the laws of 1903. One supervisor shall be elected in the year 1906 for a term of three years, and at each annual town meeting thereafter there shall be one supervisor elected for a term of three years to fill the place of the one whose term expires at that time. After the expiration of the term for which any supervisor has been elected chairman under the provisions of said amended act of 1903 the supervisors shall at their first meeting after the annual town meeting thereafter elect by ballot one of their number chairman for a term of one year, and each year thereafter shall in the same manner elect their chairman for one year, but a vacancy may be filled by an election for the unexpired term at any meeting of the supervisors. There shall also be elected at the annual town meeting in each year one town clerk, one treasurer, one assessor, each for a term of one year, and one overseer of highways for each road district in said town for one year, and there shall be elected, every two years, two justices of the peace and two constables, each to hold office for a term of two years and until their successors are elected and qualified, except a vacancy may be filled by election at any annual town meeting. Provided, that where a new town has been or may be organized and supervisors have been or may be elected for such town at a town meeting prior to the annual town meeting, such supervisors shall serve only till the next annual town meeting at which meeting three supervisors shall be elected, one for three years, one for two years and one for one year, so that one shall go out each year. The

number of years for which each is elected shall be indicated on the ballot, and at each annual town meeting thereafter one supervisor shall be elected for three years to fill the place of the one whose term expires at that time. (G. S. 1894 § 928, amended '03 c. 64; '05 c. 243 § 1; '07 c. 103 § 1)

G. S. 1894 § 928, was G. S. 1866 c. 10 § 13, which, as well as 1903 c. 64, was repealed by §§ 9428, 9456, their provisions being incorporated in part in R. L. § 668, which is superseded by this section.

This section, so far as it relates to assessors, is superseded in part by the section following. 37-475, 35+179; 97-221, 106+904.

1163. Town and village assessors—Election—Term—Town and village assessors in all towns and villages, except those operating under special laws, shall be elected in odd numbered years and shall hold their office for two years and until their successors qualify. All assessors in towns or villages affected by this act, elected at the annual town meeting or village election in 1909, or who are appointed to fill a vacancy, shall hold office until their successors are elected and qualified in 1911. ('09 c. 316 § 1)

See preceding section. See, also, note under § 1246.

1164. Persons elected notified—The clerk of every town meeting, within ten days thereafter, shall transmit to each person elected to a town office, whose name is not entered on the poll list as a voter, notice of his election. (669)

1165. When to take oath—Every supervisor, town clerk, assessor, treasurer, and constable, within ten days after receiving notice of his election or appointment, shall take and subscribe the oath required by law. If taken before the town clerk or a justice of the peace, such oath shall be administered and certified without fee. (670)

1166. Oath and bond, when filed—Before entering upon his duties, the person taking such oath shall file the same with the town clerk. Failure to file his oath and bond within the time prescribed by law shall be deemed a refusal to serve. (671)

1167. Acceptance of office—Every person elected or appointed to the office of overseer of roads or poundmaster, before he enters upon his duties, and within ten days after he is notified of his election or appointment, shall file his acceptance with the town clerk. (672)

1168. Failure to take oath—Any town officer who enters upon the duties of his office before taking the oath required by law shall forfeit to the town the sum of fifty dollars. (673)

26-25, 27, 1+43.

1169. Term of office—Chairman—The supervisors shall hold office for three years and until their successors qualify, one of whom shall be named as chairman at the first meeting of the board after each annual town meeting. Justices of the peace and constables shall hold office for two years and until their successors qualify. All other town officers elected at the annual town meeting shall hold office for one year and until their successors qualify. (674)

1170. Justice's bond—Before entering upon his duties, and within ten days after he is notified of his election or appointment, every person chosen to the office of justice of the peace shall give bond to the town in a sum not less than five hundred dollars nor more than one thousand dollars, with sureties approved by the chairman of the town board, conditioned for the faithful discharge of his official duties. The approval of the chairman shall be indorsed on the bond, which, together with his oath of office, such justice shall forthwith file with the clerk of the district court for the benefit of any person aggrieved by his acts, and any person so aggrieved may maintain an action on such bond in his own name against the justice and sureties. (675)

64-51, 66+130; 72-116, 75+13.

1171. Constable's bond—Before entering upon his duties, and within ten days after he is notified of his election or appointment, every person chosen to the office of constable shall give bond to the town, in a sum directed and

with sureties approved by the chairman of the town board, conditioned for the faithful discharge of his official duties. The chairman shall indorse such approval on the bond, and cause it to be filed with the town clerk, for the benefit of any person aggrieved by the acts or omissions of such constable, and any person so aggrieved, or the town, may maintain an action thereon in his own name against such constable and sureties. (676)

35-167, 28+191.

1172. **Bonds, how executed**—Every bond required of a town officer shall be executed to the town by its name, and, when no other provision is made, shall be in a sum fixed by the town board; and, if none be fixed, then in the sum of the bond of the last incumbent of the office. Every such bond shall be approved by the chairman in writing thereon and filed with the town clerk within the time prescribed for filing the oath of office, except the bonds of the clerk and treasurer, which shall be filed with the clerk of the district court and register of deeds, respectively. Whenever the town board deems any bond insufficient, it may require an additional bond to be made and filed, in a sum, and within a time not less than ten days, to be fixed by them. (677)

1173. **Resignations**—The town board, for sufficient cause shown to them, may accept the resignation of any town officer, in which case they shall forthwith give notice thereof to the town clerk. (678)

1174. **Vacancies**—Whenever a vacancy occurs in any town office, the town board shall fill the same by appointment. The person so appointed shall hold his office until the next annual town meeting and until his successor qualifies: Provided, that vacancies in the office of supervisor shall be filled by the remaining supervisors and town clerk until the next annual town meeting, when his successor shall be elected to hold for the unexpired term. (679)

26-313, 3+977.

1175. **Auditor to appoint assessor**—Whenever a vacancy in the office of assessor is not filled by the town board before June 1 of the year in which it occurs, the county auditor shall appoint some resident of the county as assessor of such town. (680)

1176. **Delivery to successor**—Every town officer shall, immediately after qualifying, demand of his predecessor, or other person having control or possession thereof, all books, records, and other property belonging to his office; and every person having control or possession of any such books, records, or property shall, upon such demand, deliver the same to such officer. (681)

1177. **Compensation**—The following town officers shall be entitled to compensation for each day's service necessarily rendered as follows; viz.: Assessor; three dollars; and mileage at the rate of five (5) cents per mile for each mile necessarily traveled by him in going to and returning from the county seat of the county to attend any meeting of the assessors of the county which may be legally called by the county auditor, and also for each mile necessarily traveled by him in making his return of assessment to the proper county officer; supervisors and clerks, two dollars; when the service is rendered within the town, and two dollars when rendered without the town; but no supervisor shall receive more than sixty dollars as compensation in any one year except that in counties having a population of two hundred and ninety thousand or more, the assessors shall receive five dollars per day; and supervisors and clerks, two dollars per day, when the service is rendered within the town, but no supervisor shall receive more than seventy-five dollars as compensation in any one year. For the following services the clerk shall receive fees, and not a per diem, viz.: For certifying each notice of election, twenty-five cents; posting notices, each, twenty-five cents; filing each paper, ten cents; recording orders and other instruments, six cents per folio; copying and certifying any record or instrument recorded or filed in his office, six cents per folio, to be paid by the person applying therefor. The voters at any town meeting, before balloting for officers begins, may by resolution increase the compensa-

tion of town officers, not to exceed fifty per cent. (R. L. § 682, amended '11 c. 37; '13 c. 558 § 1)

By 1913 c. 558 § 2, the act takes effect January 1, 1914.

1178. Compensation of supervisors in certain towns—In every organized township in this state having an area of forty sections or more, the compensation allowed each supervisor shall not exceed the sum of sixty dollars in any one year. ('07 c. 313 § 1)

1179. Compensation of clerk in certain towns—That in all townships in this state having taxable real and personal property of an assessed valuation of over \$50,000,000, the town clerk thereof shall be allowed and paid for all services to be rendered by him as such, a salary of one hundred dollars per month. ('11 c. 371 § 1)

1180. Same—Assessor and deputies—In all such townships the town assessor shall be allowed and paid for his personal services the sum of six dollars per day for each day actually employed, not exceeding ninety days in any one year, and the deputies that may be appointed by such assessor, shall be paid three dollars per day for each day actually employed, not exceeding seventy-five days for any one deputy. ('11 c. 371 § 2)

1181. Same—Treasurer—In all such townships the town treasurer shall be allowed for his personal services the sum of forty dollars (\$40.00) per month. ('11 c. 371 § 3)

1182. Fees and duties of poundmaster—Poundmasters shall be allowed fees as follows, viz.:

1. For taking animals into the pound and discharging the same:

a. Sheep, three cents each.

b. Hogs, five cents each.

c. All other animals, ten cents each.

2. Keeping animals in pound, twenty cents for each twenty-four hours.

3. For selling impounded animals, two per cent. of the amount of sale.

The poundmaster shall have a lien on impounded animals for his fees, which shall be paid before such animals are discharged. If not discharged within four days, they shall be advertised by the poundmaster for sale at public auction to the highest bidder, at the place where impounded, upon fifteen days' posted notice. At the time and place fixed in the notice, the poundmaster shall sell the same pursuant thereto. Out of the moneys received from such sale, he shall deduct his fees and charges, and pay the balance to the chairman of the town board, and at the same time deliver to such chairman a correct written description of each animal sold, and a statement of the amount received for the same. He shall take duplicate receipts therefor, one of which shall be filed with the clerk. If the owner of any animal so sold appears within six months, the money received by said chairman shall be paid to him. If not claimed within that time, the same shall be paid into the town treasury. (683)

31-451, 18+315.

1183. Guideposts—Every town shall erect and maintain suitable guideposts and boards at such places on the public roads therein as shall be convenient for the direction of travelers. (684)

1184. Pounds—Whenever the electors of any town determine at the annual town meeting to maintain one or more pounds, the same shall be under the control of such poundmasters as are chosen for that purpose. (685)

38-186, 191, 36+454.

1185. Town charges—The following shall be town charges:

1. The compensation of town officers for services rendered their towns.

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

3. The moneys authorized to be raised by the vote of the town meeting for general purposes.

4. Every sum directed by law to be raised for any town purpose.

But no tax for town purposes shall exceed the amount voted to be raised at the annual town meeting, as provided by law. (686)
14-248, 181; 38-186, 190, 36+454.

1186. Town charges—Damages caused by work on supposed highway— That in all towns in this state where any road work has been performed, or may hereafter be performed, upon a supposed highway thereof, by order of the proper officer or officers of such town, on the belief that the same is a lawful public highway, and where an action at law has been or may hereafter be commenced, in any court of competent jurisdiction, in which it is or may be determined that such supposed highway was not a legal highway at the time said work was performed, all necessary costs and expenses incurred by the defendant or defendants therein, and any damages that may have been allowed or shall be allowed in any such action because of such road work shall be a charge against such town in favor of the defendant or defendants, and shall be allowed and paid by such town the same as other claims. Provided, that before such cost, expenses and damages shall be a charge, and be paid by said town the same shall be authorized by a majority of all legal voters present and voting in favor thereof at any annual or special meeting of such town, after due notice that such question will be submitted and voted upon at such meeting. ('07 c. 150 § 1)

1187. Public places—The voters at each annual town meeting shall designate three places in the town as public places at which legal notices shall be posted, and provide facilities for posting notices at such places. (687)

27-38, 43, 6+408.

To be reasonably construed (99-499, 110+1).

1188. Officers—Contracts—No supervisors, town clerk or town board shall become a party to or be directly or indirectly interested in, any contract made or payment voted by the town board, and all contracts involving an expenditure of one hundred dollars or more, if not to be paid from road or poll tax, shall be let to the lowest responsible bidder, after public notice of ten days, posted in the three most public places in said township or published for two weeks in a newspaper generally circulated in said township, of the time and place of receiving bids. Provided, in cases of special emergency amounts in excess of one hundred dollars may be expended without such notice being given, and provided further, that in towns having less than twenty-five (25) legal voters, said officers may be employed upon road work by the day at such price as may have been fixed for such work by the town at its annual meeting; and every contract made and payment voted or made contrary to the provisions of this section shall be void, and any such officer violating the provisions of this section shall be guilty of a misdemeanor and in addition to the provisions prescribed by law, shall be removed from office. (R. L. § 688, amended '13 c. 164 § 1)

Previously amended by 1911 c. 351.

Payments may be recovered back (112-1, 127+420; 112-94, 127+452, 140 Am. St. Rep. 464).

1189. Town taxes—Taxes to raise money for defraying town charges shall be levied on the taxable property in the town in the manner prescribed in the chapter on taxation. (689)

23-368, 370.

1190. Limit of debts, etc.—No town shall contract debts or make expenditures for any one year exceeding in amount the taxes assessed for such year, unless such debt or expenditure is authorized by the vote of a majority of the electors of such town, and no taxes in excess of the amounts authorized by law shall be levied by any town in any one year. (690)

1191. Separation from village—Upon filing with the town clerk of any town a notice, signed by not less than fifty voters thereof residing either within or without the village to be separated, stating that the question of the separation of such town for all purposes from any village located therein will be voted upon at the next annual town meeting, the clerk shall insert such statement in the notice of such meeting, and the question shall be voted upon

by ballot. If a majority of the votes cast upon such proposition be in favor of such separation, such town shall thereafter be separated from such village for all purposes. (691)

1192. Separation from villages and cities in certain cases legalized—That in all cases where there has been heretofore an attempted separation from a village or city under the provisions of chapter 52 of the General Laws of 1897, whether such city or village was organized under a general or special law, where the petition for the separation was signed by at least twenty (20) electors of the township and filed with the town clerk and notices thereof were duly given for the annual election of the township, and a majority of the votes cast were in favor of the separation of the township from the village or city, but the legality of such action is questioned on the ground that the word town is not inserted in the title of said chapter 52, and on the further ground that said law does not include cities organized under special act, each and every such case is hereby legalized and declared valid, effectual separation for all purposes. Provided, that nothing in this act shall affect or apply to any action or proceeding now pending in any court of this state. ('07 c. 294 § 1)

1193. Towns and detached territory—Liability for prior bonds—Whenever any territory in this state has heretofore been incorporated, or has been attempted to become incorporated into a town under the laws of this state, and has acted or assumed to act as a town, or has exercised, or assumed, or purported to exercise or assume the prerogatives, privileges, functions or duties of a town and where the said town or purported town has prior to such division or detachment of territory therefrom, actually issued its bonds, for a valuable consideration received by said town, or purported town, and the said town or purported town was thereafter, and after issuance of said bonds and the receipt of the consideration therefor, divided or constituted into one or more additional towns, or the territory constituting, or purporting to constitute a portion of such town or purported town has been detached or set off therefrom, either by the vote of the people, or by operation of law, or by reason that at the time of the incorporation or attempted or purported incorporation of said town, territory not proper or lawful to be included therein was so included, or purported to be included, or by reason that at the time of said incorporation or purported incorporation the boundary lines of the county wherein said town was so incorporated or purported to be incorporated was in doubt, or was unknown, and because thereof or for any other reason, territory not within such last mentioned county was included or purported to be included within said town so incorporated or purported to be incorporated, and where such original town has, since such division, or such detachment of territory therefrom, continued to act as and perform the functions and duties of a town under the laws of this state, and has, since such division or detachment of territory, and either before or after six years prior to the time of the passage of this act, paid the said bonds so issued as aforesaid, or the interest thereon, or either of the same, or any part thereof, and such territory so detached or set off has since the issuance of said bonds been incorporated or purported to become incorporated into a new town under the laws of this state and has been since, and is now exercising the powers, duties and functions of a town under the laws of this state, and such portion thereof so detached or set off therefrom or such new town comprising the same, has not, since such division or detachment, paid any portion of the amount of such bonds or interest thereon, then and in that case, or either or any of them, the said territory so set off or detached and the said town comprised thereof shall nevertheless be liable for and shall pay to such original town which has paid the said bonds such pro rata share of the whole of such amount or amounts so paid on such bonds as principal or interest or either or both thereof by such original town after such division or detachment of territory, as the proportion of the assessed valuation of all taxable property in such new town or such detached or set off territory as fixed by the state board of equalization next preceding the time of payment of or on said bonds and interest thereon or either of them bears to the assessed valuation of all taxable property as then likewise equalized in the entire territory comprising

such town or such purported or de facto town at the time of the issuance of such bonds. Provided, that nothing herein contained shall in any manner affect any action or proceeding now pending in any of the courts of this state in relation to any bonds so issued. ('09 c. 492 § 1)

Cited (113-203, 129+381).

1194. Same—Recovery from new town—Judgment, how enforced—Any town which has paid any of said bonds and interest as hereinbefore provided may maintain an action in any of the courts of this state against the new town comprising such territory detached or divided from such original town as provided in section 1 [1193] hereof, to determine and establish the amount for which such new town or the territory comprising the same is liable as provided in section 1 [1193] hereof and may obtain judgment therefor against such new town comprising the territory liable therefor and all the provisions of section 696 and 697 of Revised Laws of 1905 [1200, 1201] shall be applicable to the enforcement of any judgment so obtained or rendered, provided, that, if said judgment is not paid or proceedings thereunder stayed, and at the annual town meeting mentioned in said section 697 [1201] the town board does not add the amount of such judgment to the tax levy as therein provided, the court shall thereupon on motion on behalf of the plaintiff, and in such original action, and upon proof of such failure, order the county auditor of the county wherein such town against which judgment was rendered is situated, to enter the amount of such judgment as a tax against the taxable property of such town liable therefor and it shall thereupon become and be the duty of such county auditor to forthwith assess, enter, and spread the same as a tax against such taxable property, and enter the same as such tax on the next succeeding tax duplicates of his said county and the same shall be levied and collected as other taxes and shall with interest when and as the same is collected be paid over by the said county treasurer to the town treasurer of such town obtaining such judgment. ('09 c. 492 § 2)

Cited (113-203, 129+381).

1195. Alterations of certain town boundaries legalized—Whenever a petition for the detaching of a part of one town from such town and the annexation of such territory to another town has been presented to a county board and such county board shall have acted thereon without a notice of its hearing on said petition having been served upon the town clerks of each or any of the towns whose territory would have been affected by the granting of such petition, the town to which such territory shall have been so annexed without the service of notice of the hearing on said petition upon the clerks of the interested towns shall be deemed to have been enlarged by the annexation of said territory and said territory to have been legally annexed and attached thereto, and said town shall have all the rights, powers and privileges which it would have had had said territory been annexed by proceedings in all respects according to law, as against all persons and municipalities, and particularly as against the town from which such territory was detached. And said rights and powers shall be deemed to have become effective and vested in such town in all respects at and from the date when the county board shall have granted the petition for the detaching and annexation of said territory and shall have made and filed its report and final order thereon. Provided, however, that nothing in this act shall affect any action or proceeding now pending in any court of this state. ('13 c. 177 § 1)

1196. Cities or villages—Nothing in this chapter contained shall apply to territory embraced within the limits of any city or village, but each such city and village shall have and exercise within its limits all the powers conferred by this chapter upon towns. (692)

33-351, 353, 23+526; 37-475, 476, 35+179; 38-186, 189, 36+454; 41-136, 138, 42+930; 90-406, 408, 97+103.

1197. Actions between towns, etc.—Actions and proceedings between towns, or between a town and an individual or corporation, shall be begun, tried, and conducted in the same manner, and a judgment therein shall have

a like effect, as in similar actions and proceedings between individuals.
(693)

20-74, 59.

1198. Actions, in what name—In all actions or proceedings the town shall sue and be sued in its name, except where town officers are authorized to sue in their official names for its benefit. In every action against a town, process and papers shall be served on the chairman of the town board, or, in his absence, on the town clerk; and such chairman shall attend to the defence of such action, and lay before the voters at the first town meeting a full statement of the facts relating thereto, for their direction in defending the same.
(694)

13-383, 355; 106-269, 118+1025.

1199. Filing claims—Demand—No action upon any claim or cause of action for which a money judgment only is demandable, except upon town orders, bonds, coupons, or written promises to pay money, shall be maintained against any town, unless a statement of such claim shall have been filed with the town clerk. No action shall be brought upon any town order until the expiration of thirty days after payment thereof has been demanded.
(695)

1200. Judgments against towns—When a judgment is recovered against a town, or against any town officer in an action against him in his official name, no execution shall be issued thereon; but, unless reversed or stayed, it shall be paid by the town treasurer upon demand, and the delivery to him of a certified copy of the docket thereof, if he has in his hands sufficient town money 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 the town levied for the purpose of paying such judgment, execution may issue, but only town property shall be liable thereon. (696)

1201. Tax to pay judgment—If a judgment for the recovery of money is rendered against a town, and is not satisfied or proceedings thereon stayed before the next annual town meeting, upon presentation of a certified copy of the docket of such judgment to such town meeting the town board shall add to the tax levy for said year the amount of such judgment. (697)

CHAPTER 9

VILLAGES AND CITIES

1202. Villages and boroughs—Until reorganized as provided in § 1203, the several villages and boroughs existing as such, at the time of the taking effect of the Revised Laws, under special legislative charter, or under any general law, shall continue thereunder and in all things continue to be governed by such general or special laws: Provided, that any village or borough of either class, having the requisite population, may reorganize as a city in the mode hereinafter prescribed. (698)

De facto village (102-340, 113+887; 13 L. R. A. [N. S.] 533, 12 Ann. Cas. 260).

1885 c. 145 § 48, is not part of village charter continued by this section, but was superseded by § 3142 (112-365, 128+295).

1891 c. 146 subc. 11 § 28, providing for appeals to municipal court, is not perpetuated by this section (112-482, 128+834).

1203. Surrender of charter—Reincorporation—Any village or borough organized under general law or special charter may relinquish the same, and thenceforth be governed as herein provided. The council or other governing body may propose such relinquishment by a resolution ordering a special election thereon. Notice of such election, and the conduct thereof, shall be as prescribed by law for other special village elections. The ballots used shall bear the printed words, "For reincorporation—Yes—No," with a square after each of the last two words, in one of which the voter may insert a cross,