

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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change shall thereafter be made which shall cause to be diverted to any other purpose any item so determined upon, except by unanimous vote of the county board at a regular meeting after at least three weeks published notice of a hearing thereon; provided, however, that at least ten per cent of the total sum authorized for each such fund shall be allotted to and carried as a reserve for emergencies, and such reserve for emergencies may be expended by the county board by unanimous action without such hearing for any purpose specified in said budget when the sum previously allotted to such purpose has been expended. (Act Apr. 17, 1933, c. 296, §5.)

997-10. County auditor to keep record of allotments.—The county auditor shall keep a record showing accurately the amount allotted to each item of the budget for each year and the amounts incurred and expended from time to time on account of each of such items, which records shall be presented and examined at each meeting of the county board and show the true condition of affairs at the date of such meeting. (Act Apr. 17, 1933, c. 296, §6.)

997-11. Provisions separable.—If any section, part or provision hereof be found unconstitutional such determination shall not affect the validity of the remaining provisions not clearly dependent thereon. (Act Apr. 17, 1933, c. 296, §7.)

Act. Apr. 17, 1933, c. 318, makes appropriation of \$15,000 for each of two years, payable July 1, 1933, and July 1, 1934, to counties in which more than 35% of area is school, swamp, and university land. It is omitted as temporary.

Act. Apr. 17, 1933, c. 322, makes appropriation of \$7,500 for each of two years, payable July 1, 1933, and July 1, 1934, to counties in which less than 25% of 1931 taxes were collected.

Laws 1935, c. 354. Legalizing of all municipal acts relating to relief.

Act Apr. 19, 1937, c. 300, legalizes salary payments in counties having 14 to 16 townships, assessed valuation of \$4,600,000 to \$4,800,000, and population of 9,000 to 10,000.

Laws 1937, c. 251, amends Laws 1903 c. 247, §2, respecting control and allocation of space in Hennepin county court house and city hall.

997-21. Tax relief for certain counties.—Any county in which the full value of all property which is exempt from local taxation, because taxes thereon are paid into the state treasury under the provisions of the gross earnings tax laws, exceeds the taxable value of all other non-exempt real and personal property, exclusive of moneys and credits, shall be entitled to receive from the state treasury such an amount annually as would be produced by computing a tax of one-fourth of the current tax rate for county purposes upon the full value of such property which is exempt from local taxation because of the provisions of the gross earnings tax laws. (Apr. 22, 1937, c. 344, §1.)

997-22. Shall make application to State Auditor.—Any such county desiring to take advantage of this act shall apply in writing therefor to the State Auditor, and such application shall contain the following facts:

(a) The valuation of the property in said county not subject to local taxation because the same is subject to taxation under the gross earnings tax law. Railroad valuation shall cover all railroad property located in said county except rolling stock, main tracks, and fills or bridges supporting the same.

(b) The value of all real and personal property, exclusive of moneys and credits, within any such county, subject to local taxation.

(c) The rate of taxation in mills for county purposes for the current and next preceding year.

(d) The total amount spent for all county purposes by any such county for the last preceding year, and an estimate of the expenses for the county for the current year.

The information called for in subdivision (a) shall be ascertained and certified, upon the request of any such county by the railroad and warehouse commission; and the information called for in subdivision (b); (c) and (d) shall be certified by the county auditor of such county. (Apr. 22, 1937, c. 344, §2.)

997-23. Auditor to fix amounts.—The State Auditor shall immediately consider said matter and determine whether or not any such county is entitled to aid under the provisions of this act, and if he finds that any such county is entitled to such aid, he shall determine the amount to which such county is entitled to within the limitations of this act and he shall draw his warrant upon the state treasurer in favor of any such county, for the amount to which it is entitled and deliver the same to such county, taking proper voucher or receipt therefor. (Apr. 22, 1937, c. 344, §3.)

997-24. Limit of payments.—That not more than \$30,000.00 in the aggregate shall be disbursed in any one calendar year to all the counties entitled to aid under the provisions of this act, and in the event that said amount of \$30,000.00 shall be insufficient to pay the full amount to which said counties shall be entitled annually hereunder, the State Auditor shall apportion the said sums pro rata to each of said counties. (Apr. 22, 1937, c. 344, §4.)

997-25. Purposes for which money may be expended.—Moneys received by any county under this act shall be used only for the purpose of

(a) Payment or providing for the payment of any bonded or other indebtedness of such county outstanding January 1, 1937.

(b) Any such revenue not required to pay or provide for the payment of any such indebtedness shall be used to cover and pay current operating expenses to reduce and replace tax levies on real and personal property. (Apr. 22, 1937, c. 344, §5.)

997-26. Appropriation.—For the purposes of carrying out the provisions of this act there is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of \$30,000.00 to be available for the year ending June 30, 1938, and the sum of \$30,000.00 to be available for the year ending June 30, 1939. (Apr. 22, 1937, c. 344, §6.)

CHAPTER 8

Towns and Town Officers

POWERS—DUTIES—LIABILITIES

999. Corporate powers.

Where an organized township constructs and maintains a town telephone system, under §§5312 to 5316 and furnishes ordinary telephone service thereby to private residents of township, town is engaged in operating a public utility and is liable for negligence of its officers and agents in so doing. *Storti v. T.*, 194M628, 261NW 463. See *Dun. Dig.* 9658.

Fact that township owned telephone system is also operated in part for governmental purposes, for protection from forest and prairie fires, promoting public wel-

fare, public health, and public safety, and facilitating work of public improvements, does not exempt town from liability for negligence in operating a public utility. *Id.*

A town board may lawfully rent its road equipment to another town in the county. *Op. Atty. Gen.*, Sept. 11, 1931.

Townships have no authority to expend public money to pay expenses of delegates to meetings of taxpayers' associations. *Op. Atty. Gen.*, Mar. 18, 1933.

Liability of township for negligent damage to tile laid under road depends upon facts. *Op. Atty. Gen.*, Nov. 4, 1933.

Township may purchase stock in rural electric company if necessary or more advantageous for purpose of lighting town hall. Op. Atty. Gen. (442a-14), Nov. 19, 1935.

Town may accept conveyance of home from poor person, but poor person may not be compelled to make such conveyance. Op. Atty. Gen., (339h), Oct. 14, 1933.

Conveyance of real estate. Op. Atty. Gen. (434a), July 5, 1939; note under §1007.

Where advertisement calling for bids for three lots stated that "each parcel will be sold separately to the highest bidder", a lump sum bid for all three lots could not be accepted even though it was in excess of combined bids on single lots. Op. Atty. Gen. (437B-8), Sept. 1, 1939.

(2).
Town board may not purchase building and land for use as township garage without having first received authority at annual township meeting.

Township may sell and convey lands to the United States but there must be a compliance with §§638(2,3), 663, 999(2), 1007, but authority may be obtained from voters at special election. Op. Atty. Gen. (700d-28), July 3, 1935.

(3).
A town may not employ an attorney at a monthly salary. Op. Atty. Gen., Apr. 19, 1933.

Town board may contract for lighting of public highway. Op. Atty. Gen., May 24, 1933, June 1, 1933.

Town board has power to enter into contract running for five years for lighting of public highways if such period is reasonable under all surrounding circumstances. Op. Atty. Gen. (377b-10(h)), Apr. 24, 1935.

(4).
A township cannot expend town money in opposing annexation of territory to village unless it will result in added assessments. Op. Atty. Gen., Aug. 7, 1933.

1000. Limitation of powers.

Board of supervisors of a town may not hire and pay a relief investigator, but if town comes under county-state agency, it may pay its share of expense of maintaining a central relief office. Op. Atty. Gen. (437a-7), Apr. 17, 1936.

Neither counties nor towns can license games of skill. Op. Atty. Gen. (722j), Mar. 3, 1937.

Town board may sell water to residents of township from fire plug even if town does not come within classification of §1027-6, if such sale is merely incidental to furnishing of fire protection. Op. Atty. Gen. (427c-5), Sept. 20, 1937.

Township has no authority to license dogs. Op. Atty. Gen. (434B-18), March 3, 1939.

In absence of authorization by electors town board may not expend money for purpose of extinguishing a fire breaking out in peat lands. Op. Atty. Gen., (203e-3), August 19, 1939.

1002. Powers of town meetings.

Op. Atty. Gen. (434a-4), Apr. 26, 1934; note under §1002-9.

Zoning restrictions in towns within counties having populations of more than 450,000 and a valuation of more than \$280,000,000. Laws 1939, c. 187.

Where a town has duly levied its tax for local purposes and listed and assessed personal property therein taxable on first of May in any year, a city thereafter organized so as to include part of such town may not levy a tax for city purposes on any of personal property so assessed and taxed for same year. State v. Republic Steel Corp., 199M107, 271NW119. See Dun. Dlg. 9649.

Includes interstate bridges. Op. Atty. Gen., Apr. 11, 1929.

Village and town may jointly own and maintain a public park. Op. Atty. Gen. (330c-5), Jan. 8, 1936.

Authority conferred on electors to transact "any other lawful business" of the town at special meetings authorizes electors to grant authority to town board to purchase a site for a town hall and sell real estate no longer needed for town purposes. Op. Atty. Gen., (434b-13(d)), March 18, 1938.

Town may not contribute to expenses of representing township interests in legislature. Op. Atty. Gen. (442a-2), April 6, 1939.

(3).
A taxpayer instituting suit on behalf of a town to recover illegal payments has no legal claim for attorneys' fees and expenses unless the town had previously authorized the action. Op. Atty. Gen., July 29, 1930.

Town may not employ attorney to appear in proceedings to enforce payment of delinquent real estate taxes, wherein taxpayers are seeking to have valuations reduced. Op. Atty. Gen., Oct. 1, 1930.

A town may not employ an attorney at a monthly salary. Op. Atty. Gen., Apr. 19, 1933.

Only electors may employ an attorney. Op. Atty. Gen. (442b-6), Mar. 8, 1935.

Township receiving benefit of services of an attorney was liable for the reasonable value thereof even though town board was without authority to employ him. Op. Atty. Gen. (434a-1), June 22, 1935.

There is no authority by which town board may engage services of attorney to represent town on a hearing for discharge of a war veteran or to incur fees and travel expenses of witnesses who were subpoenaed and testified, but such action having been taken and expenses incurred, electors at their next annual meeting or at a

special meeting called for that purpose may ratify it, though township is liable on a quantum meruit basis for benefits received. Op. Atty. Gen., (381a), July 19, 1939.

Money expended by a town for expenses and legal services in fighting a poor relief claim is a proper charge upon poor fund of town, and town board has authority to engage legal services in cases of emergency without authority of electors, who may ratify action. Op. Atty. Gen., (339i-3), July 26, 1939.

(6).
The town voters may appropriate money for construction of roads, but they cannot designate the particular road on which the money is to be spent, that being for the determination of the town board. Op. Atty. Gen., March 7, 1930.

(8).
This subdivision authorizes the sale of a town hall. Op. Atty. Gen., Oct. 24, 1929.

Township may sell and convey lands to the United States but there must be a compliance with §§638(2,3), 663, 999(2), 1007, but authority may be obtained from voters at special election. Op. Atty. Gen. (700d-28), July 3, 1935.

Conveyance of real estate. Op. Atty. Gen. (434a), July 5, 1939; note under §1007.

(9).
A leasehold interest in the land is sufficient title to support the designation of a site for a town hall. Op. Atty. Gen., May 29, 1930.

On the termination of such tenancy the designation fails and a new site may be selected upon a majority vote. Id.

Two-thirds majority of the votes cast at a meeting are sufficient, and it is immaterial whether the vote is to change the town hall site when it is already in the geographical center of the township. Id.

A majority of two-thirds of the votes present at a meeting is cast where there are not less than twice as many votes in the affirmative as there are in the negative. Op. Atty. Gen., June 7, 1930.

This subdivision and §§1031, 1032, 1046 set forth the conditions and procedure for change of a town hall site. Op. Atty. Gen., Oct. 24, 1929.

Special election may be called on same day as general election to vote on question of purchasing a site for a town hall. Op. Atty. Gen., Oct. 15, 1930.

Town board may not purchase building and land for use as township garage without having first received authority at annual township meeting.

Town constructing town hall on leased land could not buy the land and move building to it without vote of people. Op. Atty. Gen. (434c-5), Apr. 27, 1935.

Town of Stuntz if desiring to construct new town garage must call a special election for purpose of authorizing construction of building and amount of money to be raised for that purpose, and there must be judges and clerks of election and votes by ballots. Op. Atty. Gen. (434b-13(d)), Feb. 25, 1937.

Town board could not pay delinquent taxes on a residence in consideration of which administrator of estate owning house gave deed to township for use as a residence to house a poor family, where there was no authorization by electors of town. Op. Atty. Gen. (434a-9), Feb. 26, 1938.

Levy for village hall may be extended in addition to two mill limitation contained in §2060. Op. Atty. Gen. (519q), Dec. 21, 1938.

(11).
A town may accept as a gift real estate for park purposes but matter must be submitted to electors. Op. Atty. Gen., Feb. 15, 1934.

(12).
Community hall owned by club and used partially for town purposes is not exempt from taxation. Op. Atty. Gen., Mar. 22, 1934.

1002-1. Townships may be dissolved, when.—Whenever the voters residing within a duly organized civil township in this state have failed to elect any township officials for more than ten years continuously immediately prior to the taking effect of this Act, or said township has failed and omitted for a period of ten years to exercise any of the powers and functions of an organized civil township as provided by law, or whenever the assessed valuation of any duly organized civil township drops to less than \$40,000.00, or whenever the tax delinquency of any such township, exclusive of taxes that are delinquent or unpaid by reason of taxes being contested in proceedings for the enforcement of taxes, amounts to 50 per cent of its assessed valuation, or where the state or federal government has acquired title to 50 per cent of the real estate of such township, which facts or any of them may be found and determined by the resolution of the county board of the county in which said township is located, according to the official records in the office of the county auditor of said county, the county board by resolution may declare any such township, naming

the same, duly dissolved and no longer entitled to exercise any of the powers or functions of an organized township. Provided, however, that in counties having a population according to the 1930 Federal Census of not more than 16,000 nor less than 15,000 inhabitants and having not more than 77 nor less than 75 full or fractional Congressional Townships, and in counties having a population according to the 1930 Federal Census of not more than 28,000 nor less than 27,000 inhabitants and having not more than 91 nor less than 90 full or fractional Congressional Townships, and in counties having a population according to the 1930 Federal Census of not more than 210,000 nor less than 200,000 inhabitants and having not more than 202 nor less than 200 full or fractional Congressional Townships, before any such dissolution shall become effective the freeholders of said township may express their approval or disapproval of such dissolution. The township clerk of any such township shall upon the petition of ten legal voters of such township, filed with him at least fifteen days before any regular or special township election thereof, give notice at the same time and in the same manner of such election that the question of dissolution of such township will be submitted for determination at such election. At such election, when so petitioned for, said question shall be voted upon by a separate ballot the terms of which shall be either "for dissolution" or "against dissolution," which ballot shall be deposited in a separate ballot box to be provided, and the result of such voting shall be duly canvassed, certified and returned in the same manner and at the same time as other facts and returns of said election. If a majority of the votes cast at said election shall be for dissolution, such township shall be dissolved; and, if a majority of the votes cast at said election shall be against dissolution, such township shall not be dissolved. ('25, c. 40, §1; Apr. 24, 1937, c. 419, §1.)

Whenever a township is dissolved under the provisions of this act, the county shall acquire title to any telephone company or any other business being conducted by such township and such business shall be operated by the board of county commissioners until such time as a sale thereof can be made, provided that the subscribers or patrons of such businesses shall have the first opportunity of purchase. If such dissolved township has any outstanding indebtedness chargeable to such business the county auditor of the county wherein such dissolved township is located shall levy a tax against the property situated in such dissolved township for the purpose of paying such indebtedness as it becomes due. ('25, c. 40, §1; Apr. 21, 1933, c. 377; Apr. 29, 1935, c. 342, §1; Apr. 24, 1937, c. 419, §1.)

Sec. 2 of Act 24, 1937, cited, provides that the Act shall take effect from its passage.

While this section does not expressly provide for giving of notice to township board of intention to dissolve township, it would be advisable to give notice provided for in §1002-9. Op. Atty. Gen. (434a-4), Mar. 23, 1936.

On dissolution of township, county board should divide or arrange unorganized territory in voting district. Id.

Legislature by substituting words "may declare" for words "shall declare" by Laws 1937, c. 419, intended to make dissolution discretionary rather than mandatory. Op. Atty. Gen. (434a-4), April 19, 1939.

1002-1a. Effective January 1, 1936.—This act shall be in force and effect from and after January 1, 1936. (Act Apr. 29, 1935, c. 342, §2.)

Laws 1929, c. 345, provides for discontinuance of towns in counties with area of over 750,000 acres, and population of not more than 8,500, and having not more than 10 organized towns.

Act Apr. 24, 1937, c. 395, provides for levy of road tax in dissolved towns, in counties having 70 to 75 townships and assessed valuation of \$1,000,000 to \$5,000,000.

Dissolution of township is mandatory under amendment of this section by Laws 1933, c. 377. Op. Atty. Gen., July 25, 1933.

Dissolution of township is mandatory. Op. Atty. Gen., June 1, 1933.

On dissolution of township, county board has implied authority to operate and maintain a town telephone and

also to discontinue operation and dispose of property if operation appears impracticable. Id.

On dissolution of township, tax should be spread against taxable property of township sufficient to pay debts after applying funds and property of township thereon, procedure to be that prescribed by §1002-12. Id.

Upon dissolution of townships duty devolves upon county board to arrange voting districts and voting places. Op. Atty. Gen., July 31, 1933.

Attorney general will not run counter to decision of district court in a particular judicial district. Op. Atty. Gen., Nov. 27, 1933.

A township which has been dissolved pursuant to this act may not reorganize pursuant to §787 so long as the conditions in such territory so dissolved still exists. Op. Atty. Gen. (441b), July 10, 1934.

Tax levies made by town prior to their dissolution should be extended and cannot be revoked by county board. Op. Atty. Gen. (427b), Aug. 8, 1934.

County board may not rescind or vacate a former resolution dissolving township. Op. Atty. Gen. (441b), July 12, 1934.

So long as conditions exist for which a township was dissolved under §1002-1 no new organization of such township would be possible under §787. Id.

After township has been duly dissolved by resolution of county board, it is no longer entitled to exercise any powers or functions of an organized township. Op. Atty. Gen. (442a-18), Sept. 6, 1934.

After a township has been dissolved by county board by resolution under §1002-1, it has same status as a town or territory which has never been organized into a township, and may under proper conditions be organized into a township pursuant to §787. Id.

1002-3. Same—Distribution of funds.

Section 1002-7 relates to a special situation while section 1002-3 is a complete enactment and general in its application. Op. Atty. Gen. (434a-4), Mar. 23, 1936.

1002-7. Same—Distribution of funds.

Section 1002-7 relates to a special situation while section 1002-3 is a complete enactment and general in its application. Op. Atty. Gen. (434a-4), Mar. 23, 1936.

1002-9. Dissolution of townships.—Whenever the electors of any town, at the annual meeting or at a special meeting called for that purpose, shall have voted by ballot to dissolve the town organization hereunder the town board thereof shall adopt a resolution setting forth such facts and asking for the dissolution of the town, and a copy of such resolution, duly certified by the town clerk, shall be presented to the board of county commissioners of the county in which such town is located, such board of county commissioners may, or whenever the tax delinquency in any town exceeds 70 per cent in any one year, the board of county commissioners of the county wherein such town is situated, on its own initiative, may by resolution, dissolve such town and attach the territory formerly embraced therein to the adjoining town or towns, or provide for the government of such territory as unorganized territory of the county. If such dissolved territory is added to an adjoining town the proposal therefor shall first have the approval of a five-eighths majority of the voting electors of such town to which the dissolved territory is added. Upon the adoption of such resolution by the county board such town shall be dissolved and no longer entitled to exercise any of the powers or functions of an organized town. Provided that the county auditor shall give ten days' notice by one publication in the paper in which the proceedings of the county board are published of the meeting of the county board at which such petition will be considered. (Act Mar. 27, 1931, c. 96, §1; Apr. 13, 1933, c. 235.)

Determination of dissolution of township may be made by electors who may or may not be freeholders. Op. Atty. Gen., July 20, 1932.

Resolution for dissolution of a town must be adopted by majority of voters present and voting upon such question. Op. Atty. Gen., Mar. 7, 1933.

Question of dissolution of township may be submitted on same ballot as that used for election of township officer. Op. Atty. Gen. (434a-4), Apr. 26, 1934.

Is mandatory on part of town board to take action in accordance with the mandate of the electors. Id.

Dissolution of township proposition must be adopted by a majority of the electors present and voting upon the question so submitted. Id.

Power of county board to levy taxes for payment of general operating expenses of dissolved territory. Op. Atty. Gen. (427h), Feb. 27, 1937.

1002-10. Copy of resolution to be filed with the Secretary of State.—A certified copy of the resolution of the county board declaring such town to be dissolved shall forthwith be forwarded by the county auditor to the secretary of state, who shall on receipt thereof make appropriate entry in the records of his office of the dissolution of such town. (Act Mar. 27, 1931, c. 96, §2.)

1002-11. Disposition of funds.—Any funds belonging to said town remaining in or thereafter coming into the county treasury of the county in which such town was located shall be disposed of in the following manner:

Any road or bridge fund shall be expended by the county board of such county for road and bridge improvements wholly within the limits of such town; any other funds of such town shall, by the county auditor of such county, be used to pay all outstanding bonds, warrants or judgments against said town. If the funds so remaining are not sufficient to pay such outstanding bonds, warrants or judgments then upon petition of the holders thereof, the county auditor shall spread a tax levy against the taxable property of said town in an amount sufficient to pay the same, which levy, however, shall not exceed the maximum amount which the town would have been authorized to levy for the purpose of paying such indebtedness if it had not been dissolved. If such levy shall not be sufficient to pay off such bonds, warrants or judgments the county auditor shall spread successive annual levies in the maximum amount which the town would have been able to levy for such purpose if it had not been dissolved until such warrants, bonds or judgments are paid in full, unless bonds are issued therefor as hereinafter provided. (Act Mar. 27, 1931, c. 96, §3.)

County is not liable for bonded indebtedness of dissolved township. Op. Atty. Gen. (434a-4), Mar. 23, 1936.

1002-12. Payment of indebtedness.—In the event that the outstanding bonds, warrants and judgments shall exceed the maximum amount which may be raised by one year's levy as provided for herein, the county board may issue funding or refunding bonds in the manner provided by law for the issuance of county funding or refunding bonds to take up such warrants, judgments or bonds without first submitting the question of such issue to the electors residing in said territory or in said county. Provided, that any bonds so issued shall not be an obligation of the county but shall be an obligation of the territory formerly included in such town, and shall be payable out of levies made against the property in such territory as herein provided, and such restriction shall be printed upon the face of such bonds. Except as herein otherwise provided such bonds shall be issued pursuant to the provisions of Laws 1927, Chapter 131, [§§1938-3 to 1938-13] and the tax levy required by Laws 1927, Chapter 131, Section 5, [§1938-7] shall be made against the property of the territory formerly included in such town at the time of the issuance of such bonds. (Act Mar. 27, 1931, c. 96, §4; Apr. 15, 1935, c. 189.)

County board of Lake County could issue funding or refunding bonds to take up outstanding orders of township which had been dissolved without first submitting matter to vote of electors. Op. Atty. Gen., Aug. 9, 1933.

1002-13. Property to revert to county.—Any property, real or personal, of such town which is needed for county purposes shall become the property of the county, but the reasonable value thereof, as determined by the county board, shall be credited to such town and used for the purpose of paying off outstanding bonds, warrants or judgments as herein provided. Any other property of such town shall become the property of the county without any allowance being made therefor. Any surplus funds of said town, after all obligations have been paid as herein provided, shall be credited to the general fund of the county. (Act Mar. 27, 1931, c. 96, §5.)

County board on dissolving township may continue to maintain township telephone line established by township under §5312, et seq. depending upon the utility there-

of, but it cannot levy special assessments for maintenance of such a line. Op. Atty. Gen. (98c-3), July 28, 1934.

1003. Certain towns to have certain powers of villages.

Sections 1003 and 1004 apply only to a town which has within its territorial limits a platted portion upon which there resides 1200 or more people when such platted portion is not incorporated in a city or a village. Op. Atty. Gen. (440c), May 10, 1935.

Platted portion may consist of contiguous plats made by different companies. Op. Atty. Gen. (434a-6), July 13, 1935.

This section is a later act than §1004 and prevails in case of any inconsistency. Id.

Subject to Laws 1939, c. 359, amending Mason's Stat., §2020-158, town of Minnetonka in Hennepin County through its board may enact and enforce ordinances or by-laws relating to streets and highways, vehicles thereon, parking, and traffic, and fines for violation should be paid into town treasury, and not into county treasury. Op. Atty. Gen., (989B-4), July 13, 1939.

1004. Towns having powers of villages of fourth class.

Section 1003 is a later act than this section and prevails in case of any inconsistency. Op. Atty. Gen. (434a-6), July 13, 1935.

1006. Taxes in certain towns.

Levy for general town purposes in towns having less than \$100,000 valuation is limited to \$250, notwithstanding salaries of supervisors exceed that amount. Op. Atty. Gen., Nov. 21, 1929.

Town board has no authority to make levy not exceeding two mills without vote of people. Op. Atty. Gen., Mar. 27, 1933.

In enacting Laws 1937, c. 379, amending §2060(3), legislature did not intend to repeal tax limitation provision found in §§2573, 2067 or 1006. Op. Atty. Gen. (519c), Nov. 1, 1937.

Town board must receive authorization from electors at annual meeting before constructing water mains and street hydrants. Op. Atty. Gen. (427c-5), Sept. 20, 1937.

1007. Sale of realty.

Township may sell and convey lands to the United States but there must be a compliance with §§638(2, 3), 663, 999(2), 1007, but authority may be obtained from voters at special election. Op. Atty. Gen. (700d-28), July 3, 1935.

Chairman of town board and town clerk may execute a conveyance of real estate, but only after being authorized to do so by electors at their annual meeting or special meeting. Op. Atty. Gen. (434a), July 5, 1939.

1011. Cemeteries.

Township supervisors may maintain cemeteries neglected for more than 10 years. Laws 1939, c. 227.

1012. Sale of lots—Proceeds.

Town may sell blocks of cemetery lots to fraternal organization which in turn resells them individually without profit to its members. Op. Atty. Gen. (870f), Dec. 13, 1938.

1016. Same—May accept gifts.

Will held not to create a gift in trust for perpetual care of cemetery lot. 174M568, 219NW919.

1023-1. Neglected cemeteries—Duties of town supervisors.—The board of township supervisors shall have authority to maintain in a proper and decent manner and keep free of weeds, any cemetery which has been neglected for a period of ten years or more. (Act Apr. 13, 1939, c. 227.)

1027-1. Fire protection and apparatus, etc.

The question of providing fire protection, purchasing fire apparatus, and determining the amount of money to be raised, may be considered only at an annual town meeting, and not at a special meeting. Op. Atty. Gen., Mar. 18, 1931.

Where question submitted was whether a city and four surrounding towns should purchase a fire truck, each town to bear one-fourth of the cost thereof, and only three of the towns submitted the question, the three towns were not authorized to purchase the truck with the assistance of the city, but if the fourth town shall vote favorably at the next annual meeting, the arrangement may be carried out. Op. Atty. Gen., June 6, 1931.

Where town board enters into contract with village for fire protection and spends money to defray cost of calls within town outside village, there is no statute providing for reimbursement of township by state. Op. Atty. Gen., July 11, 1932.

A town in which assessed valuation of platted lands exceeds 50% of assessed valuation of all lands may vote to establish waterworks system but may not issue bonds therefor. Op. Atty. Gen., Mar. 13, 1934.

Town board may not employ fire wardens and pay their salaries out of general town funds, but fire protection

must be provided only under provisions of §1027-1, §4031-11. Op. Atty. Gen. (442a-17), Oct. 13, 1934.

Town may appropriate money to co-operative telephone company if necessary for fire protection. Op. Atty. Gen. (916b), Feb. 21, 1936.

Question of providing fire protection, purchasing fire apparatus and determining amount of money to be raised may be considered only at annual town meeting. Op. Atty. Gen. (434b-13(a)), May 13, 1936.

Question of providing fire protection must be disposed of at annual town meeting and such meeting may not dispose of the matter by directing town board to submit question to vote of electors at a special meeting. Op. Atty. Gen. (427c-5), Apr. 21, 1938.

Upon affirmative vote of electors authorizing purchase of fire apparatus town board may issue warrants in anticipation of taxes levied. Op. Atty. Gen. (442B-6), March 18, 1939.

Village is not liable for negligence of fire department for failure to respond to calls outside limits in accordance with contract. Op. Atty. Gen. (688a), March 28, 1939.

In absence of authorization by electors town board may not expend money for purpose of extinguishing a fire breaking out in peat lands. Op. Atty. Gen. (203e-3), August 19, 1939.

1027-2. Same—Tax levy—Contracts—Control of apparatus.

Township maintaining telephone lines mainly for fire protection may pay switching charges out of fire fund. Op. Atty. Gen., (98a-23), Nov. 30, 1938.

1027-3. Same—Adjacent towns.

Towns may enter into agreement with near-by municipality or with individuals in groups living in adjoining townships. Op. Atty. Gen., (688k), Aug. 19, 1938.

1027-4. Same—Tax levy contracts with adjacent city or village.

Liability under Workmen's Compensation Law. Op. Atty. Gen., Feb. 1, 1929.

Except as provided in this section, and to protect property in village endangered, village cannot send fire trucks out of limits. Op. Atty. Gen., Feb. 25, 1929.

City is liable for compensation to members of fire department while on calls outside village limits under direction of village officers, whether or not there exists a contract with adjacent territory. Op. Atty. Gen. (688p), Aug. 29, 1934.

If members of city fire department have gone outside of corporate limits of city, pursuant to direction of city authority, or with consent of such authority, they are entitled to benefits of compensation act. Op. Atty. Gen. (688h), Sept. 21, 1935.

Cities and villages cannot recover for services in answering fire calls outside limits, in absence of an agreement, express or implied. Op. Atty. Gen. (688a), Mar. 23, 1937.

Town board may sell water to residents of township from fire plug even if town does not come within classification of §1027-6, if such sale is merely incidental to furnishing of fire protection. Op. Atty. Gen. (427c-5), Sept. 20, 1937.

1027-5. Same—Other laws not affected—Limit on tax.

It is permissible for town board to contract with a rural telephone company for use of its lines for fire protection purposes, compensation therefore to be paid out of fire fund, and if there is no fire fund one may be created by transferring surplus from some other fund. Op. Atty. Gen. (98c-2), Oct. 5, 1937.

1027-6. Fire protection, police protection, and use of roads, streets, and grounds for water mains in certain towns—Authority to provide for.—The electors of any town in which the assessed valuation of the platted lands thereon equals or exceeds 50 per cent of the total assessed valuation of all the lands of such towns, exclusive of mineral valuations, shall have power at a special election called for such purpose or at the regular annual meeting to authorize the town board (1) to provide for fire protection and apparatus therefor, (2) to provide for police protection and (3) to allow, permit, prohibit and limit the use of its roads, streets and public grounds for water mains, with all the necessary pipe, hydrants and other appliances and means and (4) to empower the town board to build and construct water mains with all the necessary pipe, hydrants, and other appliances for the purpose of providing water for the inhabitants thereof upon such terms and conditions as may be imposed by such town board and upon the condition that the water rates charged to the inhabitants of such town and the public shall be just and reasonable and not exceeding a fair return upon the fair value of the property used for such purpose, for a period of

not more than 20 years. ('27, c. 219, §1; Apr. 24, 1935, c. 249.)

Town board may purchase water from fire plugs and sell it to inhabitants of town at a stipulated price per month, even if town does not come within classification of this section, if such purchase and sale is merely incidental to furnishing fire protection to inhabitants. Op. Atty. Gen. (427c-5), Sept. 20, 1937.

Question of police protection may be voted on at annual meeting and special meeting is unnecessary. Op. Atty. Gen. (434b-13(d)), Jan. 17, 1939.

Upon favorable vote of electors of town, supervisors may employ police officers to enforce by laws regulating traffic on town roads. Op. Atty. Gen. (989B-4), May 20, 1939.

TOWN MEETINGS

1028 to 1048. [Repealed. Apr. 21, 1939, c. 345, Pt. 12, §1, ante §601-12, effective Aug. 1, 1939.]

ANNOTATIONS UNDER REPEALED SECTIONS

1028 TO 1048

1028. First meeting—Proceedings.

Reenacted as §601-11(1).

Corrupt Practices Act does not apply to town elections. Op. Atty. Gen., Apr. 23, 1932.

Filing fees paid to town clerk by candidate should be turned into town treasury and placed in general fund. Op. Atty. Gen. (911d-3), March 24, 1939.

If a meeting organizes between nine and ten A. M., by choosing a moderator, its action in voting to take a recess for a reasonable length of time when a larger representation may be expected is valid. Op. Atty. Gen. (437a-11), April 1, 1939.

1029. Annual meeting.

Reenacted as §601-11(1)a.

Amended Apr. 11, 1935, c. 156.

Where the town meeting place was burned and rebuilt, the annual meeting might be held in the rebuilt building by petition under §1030. Op. Atty. Gen., Feb. 15, 1930.

Where a two-thirds vote is required there must be twice as many votes of those present at the meeting for a proposition as there are against a proposition; and where a bare majority is required one vote difference in favor of the proposition is sufficient. Op. Atty. Gen., June 7, 1930.

Omission in notice of time of holding town meeting is irregularity which does not make meeting illegal. Op. Atty. Gen., Apr. 15, 1933.

Notice of annual meeting need not contain list of offices to be filled nor names of candidates for such offices. Id.

In absence of fraud, mistake, or other reason whereby will of electors was not fairly carried out, town meeting and election of officers was not invalid because only nine days' posted notice was given. Op. Atty. Gen., May 27, 1933.

Electors at annual meeting have no power to fix hours of labor or rate of pay of common labor. Op. Atty. Gen. (437a-13), May 3, 1934.

Election of town officers at annual town meeting is not known or designated as a general election, and neither the Corrupt Practices Act nor the General Election Contest Statute apply. Op. Atty. Gen. (434b-13(e)), Apr. 13, 1935.

Where roads are so impassable that town meeting cannot be held, there should be a subsequent meeting pursuant to §1048, and if only old officers are present at town meeting, they should not attempt to elect new officers. Op. Atty. Gen. (434b-13(a)), Mar. 4, 1936.

Statute is mandatory as to time and place of holding annual township meeting, and it is immaterial that roads are impassable on that date, but advantage may be taken of §1048 by calling of special meeting in place of annual meeting by proper posted notice by freeholders. Op. Atty. Gen. (434b-13(a)), Mar. 4, 1936.

It is not necessary to give two notices, one of annual meeting, and other for election of officers. Op. Atty. Gen. (434B-18), March 3, 1939.

1030. Place for holding annual town meeting or general election.

Reenacted as §601-6(5)b.

Op. Atty. Gen., Feb. 15, 1930; note under §1029.

Section has no application to change of polling place after it has been established. Op. Atty. Gen. (434b-18), June 22, 1938.

1031. Special meetings.

Reenacted as §601-11(1)b.

Separation of township from village cannot be considered at a meeting called under this section, but must be determined at an annual meeting under §1099. Op. Atty. Gen., June 3, 1930.

There is no limit to the number of special meetings that may be called to consider a given proposition. Op. Atty. Gen., June 7, 1930.

The question of providing fire protection, purchasing fire apparatus, and determining the amount of money to be raised, may be considered only at an annual town meeting, and not at a special meeting. Op. Atty. Gen., Mar. 18, 1931.

Where a village is organized and town supervisors residing within the proposed village resign, it is discretionary with the town board as to whether the vacancies

should be filled by appointment or by calling a special town meeting. Op. Atty. Gen., May 19, 1931.

Electors may increase levy for town road and bridge purposes at a special meeting duly called. Op. Atty. Gen., June 10, 1931.

A town can at a special town meeting revise or amend the tax levy made at the annual town meeting by reducing the same by calling a special meeting, stating in the notice that it is called for that purpose. Op. Atty. Gen., Oct. 8, 1931.

A town can at a special town meeting reduce the annual tax levy if action is taken in proper time. Op. Atty. Gen., Nov. 10, 1931.

Laws 1931, cc. 35, 279 (§1973-9), do not repeal Laws 1929, c. 133, so as to prevent vote to reimburse town treasurer at special town meeting. Op. Atty. Gen., July 8, 1932.

Town constructing town hall on leased land could not buy the land and move building to it without vote of people. Op. Atty. Gen. (434c-5), Apr. 27, 1935.

Township may sell and convey lands to the United States but there must be a compliance with §§638(2, 3), 663, 999(2), 1007, but authority may be obtained from voters at special election. Op. Atty. Gen. (700d-28), July 3, 1935.

Authority conferred on electors to transact "any other lawful business" of the town at special meetings authorizes electors to grant authority to town board to purchase a site for a town hall and sell real estate no longer needed for town purposes. Op. Atty. Gen., (434b-13(d)), March 18, 1938.

Conveyance of real estate. Op. Atty. Gen. (434a), July 5, 1939; note under §1007.

1032. Notice.

Reenacted as §601-11(1)c.

No business can be transacted at a special town meeting except that which is set forth in the notice of the meeting. Op. Atty. Gen., Nov. 10, 1931.

When notice must be published in newspaper. Op. Atty. Gen., Nov. 10, 1931.

1033. How organized.

Reenacted as §601-11(1)d.

Amended Apr. 11, 1935, c. 147, §1.

Annual meeting cannot be held between 8:00 and 9:00 o'clock A. M. Op. Atty. Gen., Feb. 18, 1929.

If town clerk is not present at town meeting, voters may elect a chairman by acclamation and then in the same manner choose a moderator. Op. Atty. Gen., Nov. 17, 1931.

If voters at town meeting are to vote on any question, polls shall be open between nine and 10 o'clock A. M., proclamation of which shall be previously made by the moderator, and proclamation shall likewise be made of adjournment and opening and closing of polls thereafter. Op. Atty. Gen., Nov. 17, 1931.

Special as well as annual town meetings must be called to order between nine and ten o'clock A. M. Op. Atty. Gen., Nov. 17, 1931.

A town has no authority to pay moderators for their services at town meetings. Op. Atty. Gen. (442a-17), Oct. 13, 1934.

Time for closing polls is a matter for determination of voters present at meeting and proclamation thereof made. Op. Atty. Gen. (434e-4), June 13, 1938.

1034. Clerk of meeting.

Reenacted as §601-11(1)e.

Only one clerk is necessary at township election. Op. Atty. Gen., May 27, 1933.

There is no statute authorizing town board to pay cost of publishing proceedings of board meetings out of town funds. Op. Atty. Gen. (442a-20), Mar. 26, 1936.

1035. Order of business.

Reenacted as §601-11(1)f.

Motion for reconsideration requires majority of all qualified electors entered upon poll list at election at which proposition was originally adopted. Op. Atty. Gen. (434b-13(a)), Mar. 19, 1937.

Motion to reconsider must be made at annual meeting at which original proposition was adopted. Id.

1036. Qualification of voters.

Reenacted as §601-11(1)g.

Women may vote at town meetings and town elections for offices, such as supervisors, road boss or any other office. Op. Atty. Gen., Mar. 3, 1933.

Voting is not restricted to those voters present at meeting proper, and others may continue to come to the voting place where not present at meeting. Op. Atty. Gen. (434B-18), March 3, 1939.

In conducting an election on question of incorporating as a village, there is no authority for appointment of voters representing different political parties or groups as challengers, but all qualified voters have a right to be present throughout election and interpose challenges. Op. Atty. Gen. (182), May 23, 1939.

1037. Judges of election.

Reenacted as §601-11(1)h.

In election in connection with annexation of territory to village, substitutes may be elected by electors on election day where regularly appointed inspectors refuse to serve. Op. Atty. Gen., Apr. 23, 1932.

Supervisors of townships who are candidates for re-election may not act as election judges. Op. Atty. Gen. (434b-12), Apr. 18, 1934.

Member of town board may be paid for his services as member of election board though such payments will

increase yearly compensation to more than maximum amount provided for compensation of a town supervisor. Op. Atty. Gen. (183k), Feb. 24, 1937.

1038. Polls opened and closed.

Reenacted as §601-11(1)i.

Op. Atty. Gen., Feb. 18, 1929; note under §1033.

Town election was not illegal because town meeting was had at 2:00 P. M. where no one was deprived of opportunity of voting. Op. Atty. Gen., May 27, 1933.

Time of closing of polls is a matter for determination for voters present at meeting, and proclamation thereof made. Op. Atty. Gen. (434b-13(e)), Apr. 13, 1935.

Time for closing polls is a matter for determination of voters present at meeting and proclamation thereof made. Op. Atty. Gen. (484e-4), June 13, 1938.

Closing of polls is to be determined by voters and proclaimed by moderator. Op. Atty. Gen. (434B-18), March 3, 1939.

1039. Officers, how elected.

Reenacted as §601-11(1)j.

One who filed for office on March 2, for an election to take place March 12 filed in proper time. Op. Atty. Gen. (434b-2), Mar. 12, 1935.

1040. Ballots.

Where a town has not adopted the Australian ballot system, no ballot can be officially prepared, but a printed ballot may be distributed provided no voter is compelled to use it. Op. Atty. Gen., May 27, 1933.

Elector may vote by writing in name of person on ballot. Op. Atty. Gen. (434b-2), Mar. 12, 1935.

1041. Poll list.

Reenacted as §601-11(1)k.

1042. Canvass of votes.

Reenacted as §601-11(1)l.

1043. Manner of canvassing.

Reenacted as §601-11(1)m.

Where two candidates at a town election receive the same number of votes, and a drawing was had, and the successful candidate was afterwards found to be a non-resident of the district, the unsuccessful candidate is not entitled to the office, but there is a vacancy to be filled by the town board. Op. Atty. Gen., Apr. 25, 1930.

Drawing of lot in case of tie vote must be done on day of annual town meeting, otherwise there is a vacancy to be filled by appointment. Op. Atty. Gen. (185a-7), Mar. 14, 1936.

Where there was a tie vote for office of supervisor and board failed to determine matter by lot at close of canvass, matter cannot be determined by lot later, with result that incumbent holds over until a successor is chosen pursuant to §1043 or §1086. Op. Atty. Gen. (434b-23), March 17, 1939.

1044. Result of canvass read.

Reenacted as §601-11(1)n.

1045. Clerk to report to auditor.

Reenacted as §601-11(1)o.

1046. Votes on other questions.

Reenacted as §601-11(1)p.

Op. Atty. Gen. (434a-4), Apr. 26, 1934; note under §1002-9.

Resolution for dissolution of a town must be adopted by majority of voters present and voting upon such question. Op. Atty. Gen., Mar. 7, 1933.

Town board may purchase snow removal equipment without vote of electors, if there is sufficient money on hand, plus taxes levied and in process of collection, for such purpose. Op. Atty. Gen. (434a-5), Mar. 20, 1937.

Voting upon proposed by-laws may be conducted at same time and place that voting is conducted for officers of township. Op. Atty. Gen. (434B-18), March 3, 1939.

1047. Adjournments.

Reenacted as §601-11(1)q.

Voters at annual town meeting may not bind town board by resolution that no new roads should be built, but board may not spend more money than has been raised at annual meeting. Op. Atty. Gen., Mar. 17, 1933.

Town meeting may not be adjourned in so far as it has to do with election of officers, but §1048 empowers 12 freeholders to call a meeting by giving 10 days' notice if a town fails to elect town officers. Op. Atty. Gen. (434B-13(e)), March 22, 1939.

A recess for a reasonable time during day of town meeting is an inherent right, and is not an adjournment. Op. Atty. Gen. (437a-11), April 1, 1939.

1048. Failure to elect officers.

Reenacted as §601-11(1)r.

See 1029.

Where result of township election for assessor is tie vote and judges do not draw lots, incumbent holds over until successor is elected or appointed under this section, and if no successor is so elected or appointed, then successor is chosen in odd numbered year at annual election as provided by sec. 1075. Op. Atty. Gen., Apr. 1, 1933.

Where highways are impassable and it is impossible to hold annual township meeting under §1029, advantage may be taken of this section and a special meeting called by ten freeholders. Op. Atty. Gen. (434b-13(a)), Mar. 4, 1936.

TOWN BOARD

1049. 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, bowling alleys, and the sale of fireworks, and may license and regulate public dancing places, 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 appropriate out of the general fund of the town and draw orders on the treasurer for the disbursement of money to pay the annual dues in the National Association of Town Officers, the actual and necessary expenses of such delegates as the town board may designate to attend meetings of such Association; provided that the aggregate amount for such purposes so expended by any such town in any one year shall not exceed the sum of \$25-00 provided, however, that such expenditures to pay actual and necessary expenses of delegates and annual dues in the National Association of Town Officers can only be appropriated out of the general fund of the town when such appropriation has been duly authorized by the annual town meeting, and that notice of such proposed appropriation be given at the same time and in the same manner as is now provided for notice of the annual town meeting. 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 depositors 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 money while so deposited, and all interest thereon shall belong to the town. (R. L. '05, §651; G. S. '13, §1142; '19, c. 343; '21, c. 478; Apr. 9, 1929, c. 143; Apr. 5, 1935, c. 120; Apr. 14, 1939, c. 255.)

Sec. 2 of Act Apr. 5, 1935, cited, provides that the act shall take effect from its passage.

Op. Atty. Gen., Mar. 5, 1929; note under §1973-1. Where town has prohibited roller skating rinks, owner of rink cannot rent or lease it to individual groups of people. Op. Atty. Gen., May 28, 1929.

Town board may designate as a depository a bank different than one selected by voters at an annual town meeting. Op. Atty. Gen., Apr. 8, 1931.

If money is on hand in the treasury of a town to the credit of the general fund, town board can expend it, notwithstanding that it is the result of an excessive levy, where such levy is not attacked by the taxpayers. Op. Atty. Gen., July 23, 1931.

Town board can ratify road contract executed without advertising and by an individual member of the board, but may ratify the project and pay for benefits received. Op. Atty. Gen., Sept. 3, 1931.

Chairman of township board does not have the power to hire men in the name of the township. Op. Atty. Gen., Sept. 3, 1931.

The individual members of a township board do not have the power to employ men without action of the board at a meeting. Op. Atty. Gen., Sept. 3, 1931.

A member of a town board maliciously opposing the allowance of a proper bill would be liable for punitive damages. Op. Atty. Gen., Sept. 9, 1931.

A town board may temporarily lease its road equipment for hire to private individuals for private work. Op. Atty. Gen., Sept. 11, 1931.

A township may use money from its general fund to purchase an automobile truck. Op. Atty. Gen., Jan. 25, 1933.

Town treasurer who is also cashier of depository bank designated by town board is not personally liable for loss of town money. Op. Atty. Gen., June 10, 1933.

Town board may pay for rent and timekeeper in connection with Civil Works Administration town projects. Op. Atty. Gen. (442a-11), Apr. 19, 1934.

Money represented by warrants issued for illegal purposes may be used for other legal purposes. Op. Atty. Gen. (442a-17), Oct. 13, 1934.

There is no statute authorizing a town to employ a milk inspector and pay salary out of town funds. Id.

There is no statute authorizing town board to employ recreational directors and pay for their services out of town funds. Id.

There is no statutory provision authorizing town board to employ a purchasing agent. Id.

Right of town to carry liability insurance on its cars depends on whether they are being used for proprietary or governmental functions. Id.

New board may meet and attend to their work of organization as soon as they qualify, providing they have notice of meeting or all are present. Op. Atty. Gen. (437a-11), Mar. 18, 1935.

Neither counties nor towns can license games of skill. Op. Atty. Gen. (733j), Mar. 3, 1937.

Town board may not pay reward for apprehension of criminals. Op. Atty. Gen. (47b), Mar. 15, 1937.

In purchase of snow removal equipment it is not necessary for all three supervisors of town board to concur in kind of equipment and price to be paid. Op. Atty. Gen. (434a-5), Mar. 20, 1937.

A city or town may insure property in a mutual company so long as policy will not create a contingent liability which might exceed statutory limit of indebtedness of municipality. Op. Atty. Gen. (476b-9), May 24, 1937.

One need not be a freeholder to be eligible for township office. Op. Atty. Gen. (434b-4), Mar. 16, 1938.

Provisions of laws 1929, c. 1943, were not repealed by laws 1935, c. 120, and town board may license or prohibit roller skating rinks. Op. Atty. Gen. (802c), July 29, 1938.

Section gives no authority to license games of skill, player pianos or slot machines or any gambling device of any character. Op. Atty. Gen. (381a), March 22, 1939.

Town orders may be issued only when there is money available for payment of same, or where a tax has been levied and is in process of collection, proceeds of which will be available for payment thereof. Op. Atty. Gen. (442a-21), April 4, 1939.

Town may not contribute to expenses of representing township interest in legislature. Op. Atty. Gen. (442a-2), April 6, 1939.

Actual and necessary expenses of delegates and annual dues in national association of town officers not exceeding \$25 can only be appropriated out of general fund of town when such appropriation has been duly authorized by annual town meeting and notice of such proposed appropriation has been given, at same time and in same manner as is provided for notice of annual town meeting. Op. Atty. Gen. (442a-19), May 4, 1939.

Laws 1939, c. 255, amending this section, does not change the rights and duties of board as to issuance of dance hall licenses. Op. Atty. Gen., (802a-20), August 15, 1939.

1049-1. Depositories of town fund.—Whenever any town or village treasurer shall so request in writing, it shall become the duty of the town board or village council to designate one or more state or national banks or trust companies as depositories of town or village funds, and thereafter the treasurer shall deposit all town or village funds therein. Such designation shall be in writing and shall set forth the terms and conditions upon which the deposits are made, be signed by the chairman and clerk of the town board, or by the president of the village council and village clerk or recorder, as the case may be, and be filed with the clerk or recorder. Provided, that such depository or depositories, not exceeding four in number, shall be authorized to accept deposits of town or village funds in an amount not exceeding \$2,000 in each such depository without furnishing a bond or other security therefor. (Act Apr. 20, 1931, c. 216, §1; Mar. 7, 1933, c. 62, §1.)

Op. Atty. Gen., Jan. 24, 1933; note under §10933(2). Exemption provided by §1973-10 is not in addition to \$2,000 provided in this section. Op. Atty. Gen., Mar. 27, 1934.

Municipal funds may not be deposited in excess of amount that such deposits are insured under provisions of federal reserve act without requiring collateral security. Op. Atty. Gen. (29a-12), May 31, 1935.

1049-2. Treasurer may select depository.—Whenever a town board or village council so requested shall fail to act as provided in section 1 hereof within 30 days after request is filed with the clerk or recorder, the treasurer may select one or more depositories, not exceeding four in number, for the safe keeping of town or village funds and deposit town or village funds therein to the extent of not more than \$2,000 in each depository so selected, without requiring security therefor. (Act Apr. 20, 1931, c. 216, §2; Mar. 7, 1933, c. 62, §2.)

1049-3. Treasurer not liable when.—The town or village treasurer, in the absence of negligence, shall not be liable for the loss of moneys while so deposited,

within the limits above specified, occasioned by the closing or insolvency of a designated depository. (Act Apr. 20, 1931, c. 216, §3; Mar. 7, 1933, c. 62, §3.)

1049-4. Interest on funds.—All interest received on funds deposited under the provisions of this Act shall be credited to the respective town or village funds. (Act Apr. 20, 1931, c. 216, §4; Mar. 7, 1933, c. 62, §4.)

1049-5. Additional powers of town board—Application of Act—duties of town board.—This act shall apply only to those towns now or hereafter having a population (including population of all villages within such town not separated from the town for election and assessment purposes) exceeding 2,000 and not exceeding 10,000 inhabitants, and an assessed valuation, exclusive of money and credits, such that a tax levy of 17 mills upon the dollar of such assessed taxable valuation would produce a total levy in excess of an average of \$1,000.00 per governmental section of the entire area of such town, according to the government survey thereof. If any such town within this state comes within this classification it shall not thereafter cease to be governed by the provisions of this law, notwithstanding any change in valuation or population.

In addition to all other powers and duties provided by law the town board, in such towns herein designated, shall have the power to:

(a) Fix monthly salaries to be paid by the town to the town clerk and treasurer in lieu of the amounts otherwise provided by law to be paid by the town. Provided the compensation so fixed shall not in the case of the town clerk exceed the sum of One Hundred Fifty (\$150.00) Dollars per month, and in the case of the treasurer shall not exceed the sum of Seventy-five (\$75.00) Dollars per month.

(b) Employ when necessary clerical help and/or stenographers or assistants to the town clerk not to exceed Five (\$5.00) Dollars per day.

(c) Provide by resolution for the division of such township into not more than two voting districts for the purpose of electing town officers, and shall designate by resolution at each election a polling place for each voting district established. Such division shall be only for the purpose of electing candidates for town office and shall not change the manner of transacting any other business at town meetings. The notice of the annual meeting in such case shall describe the different voting districts and the polling places in each and shall state that candidates for town office will be voted on only at such polling places, and that all other business of the annual meeting will be transacted at the usual place of meeting, the time and place of which shall be specified in such notice.

(d) Publish, if there be a legal newspaper within said town, the minutes and proceedings of the town board meetings and of the annual meeting, and all other notices and publications which said town is required by law to publish.

(e) Repair and improve any street, sidewalk or alley of any village included in the limits of such town if such village neglects to keep its streets, sidewalks and alleys in repair.

(f) Establish, maintain and regulate the location of a public market and/or potato warehouse and market houses and to provide for the use thereof. (Apr. 17, 1937, c. 256, §1.)

Sec. 2 of Act Apr. 17, 1937, cited, provides that the Act shall take effect from its passage.

1053. May transfer funds.

This section is not limited by §3194 except as to the funds arising from transfer from county to town systems of poor relief provided for in §3193. Op. Atty. Gen., Mar. 24, 1930.

Town board by unanimous vote may transfer any surplus in the bond and interest fund to another town fund to supply a deficiency therein. Op. Atty. Gen., Sept. 8, 1931.

A town has authority to spend money from township road and bridge fund for fire fighting where a road would

be endangered by spreading of fire. Op. Atty. Gen., Oct. 3, 1932.

A township has authority to use money from general township funds for purpose of fire fighting. Op. Atty. Gen., Oct. 3, 1932.

Town board may not transfer money from fire fund to any other fund. Op. Atty. Gen., Feb. 27, 1933.

Town board may transfer moneys from one fund to another when not needed in fund from which transferred. Op. Atty. Gen., Feb. 27, 1933.

Town funds may be transferred from the road and bridge funds to the poor funds when no tax is voted if there is a surplus beyond the needs of the current year in the fund from which the transfer is to be made. Op. Atty. Gen., Apr. 3, 1933.

By unanimous vote town board may transfer any surplus needs of current year from road and bridge fund, or revenue fund, to the poor fund. Op. Atty. Gen. (442a-23), Mar. 16, 1936.

Surplus in road and bridge fund may be transferred to "fire fund." Op. Atty. Gen. (98c-2), Oct. 5, 1937.

Town may transfer temporarily surplus in fire fund to general fund. Op. Atty. Gen. (916b), Oct. 26, 1937.

Proceeds of a bond issue by a town, if paid into town treasury, are included in computing compensation. Op. Atty. Gen. (455d), Jan. 21, 1938.

Town may transfer money from dragging fund to road and bridge fund. Op. Atty. Gen. (355d), April 17, 1939.

1054. [Repealed.]

Repealed by Act Apr. 21, 1939, c. 345, Pt. 12, §1, ante, §601-12, effective Aug. 1, 1939.

Reenacted as §601-6(8).

See §401-1 fixing hours of opening and closing of polls.

BOARD OF AUDIT

1056. Duties.

No claim against a town shall be considered or acted upon unless properly verified. Op. Atty. Gen., Mar. 11, 1931.

1057. Report posted and read.

A township need not publish a financial statement. Op. Atty. Gen., Sept. 30, 1931.

Town may not contribute to expenses of representing township interests in legislature. Op. Atty. Gen. (442a-2), April 6, 1939.

1060. Not to be issued until affidavit filed.

No bond is required of state or officer with respect to lost warrant issued to state. Op. Atty. Gen. (59a-49), Oct. 12, 1937.

Auditor cannot issue duplicate warrant under any circumstances unless bond is posted. Op. Atty. Gen. (18a), Mar. 28, 1938.

Owner of lost county warrant must file bond. Op. Atty. Gen., Mar. 15, 1933.

TOWN CLERK

1062. Bond and oath.

Offices of county commissioner and town clerk are incompatible. Op. Atty. Gen., Jan. 6, 1933.

1064. Duties.

Town clerk is only bailee of books, papers and records, and is not an insurer of their safety. Op. Atty. Gen., Aug. 13, 1929.

Town clerk is not entitled to any fees for sweeping up the floor of the meeting room. Op. Atty. Gen., July 23, 1931.

Township clerk is entitled to no fee for writing township warrants but is entitled to ten cents per folio for recording same in township books. Op. Atty. Gen., Apr. 4, 1933.

There is no authority for destruction of town records such as verified accounts. Op. Atty. Gen. (442B-1), March 8, 1939.

(1).

Town clerk is entitled to be present at all meetings of board but board may transact business in absence of town clerk where special notice is not required. Op. Atty. Gen., Apr. 11, 1933.

(4).

After a claim has been duly allowed by board of audit, it is duty of chairman and clerk to sign the same. Op. Atty. Gen., Jan. 4, 1934.

1065. Office in certain villages.

Office of township clerk became vacant when clerk moved into a village located within township, if such village was separated from town for election and assessment purposes. Op. Atty. Gen. (436n), Mar. 1, 1938.

TOWN TREASURER

1067. Bond.

Where a defalcation occurs on the part of a public official who has succeeded himself as such for one or more terms and given different bonds assuring his fidelity to his trust, the liability falls upon the bondsmen who were such at the time of the defalcation, following Board of Education v. Robinson, 81M305, 84NW105, 83AmStRep 374, 183M9, 235NW615. See Dun. Dig. 8020(27).

Expense of recording a town treasurer's bond should be paid by county. Op. Atty. Gen., May 1, 1933.
Township may not legally compromise shortage of treasurer unless there exists a reasonable ground to doubt legality of claim against him, or persons liable are of questionable and doubtful financial responsibility. Op. Atty. Gen. (455), March 22, 1939.

1068. Duties.

(5).
Six-year statute of limitation runs against the warrant, but only from time money is available for its payments. Op. Atty. Gen. (442b-10), Aug. 21, 1935.

1070. To pay audited accounts.

Assignee of a town order given in place of preceding orders was equitable owner of such preceding orders. 181M510, 233NW236. See Dun. Dig. 7855, 9656.
Four town orders issued by clerk signing his own name and also the chairman's name by the clerk, pursuant to custom, were valid. 181M510, 233NW236. See Dun. Dig. 9656.

Town officers held estopped from questioning validity of town orders executed by clerk, signing his own and chairman's name. 181M510, 233NW236.

Town orders were non-negotiable. 181M510, 233NW236. See Dun. Dig. 886, 9656.

Town orders must be signed by the chairman of the town board, and cannot be signed by a chairman pro tem. Op. Atty. Gen., Jan. 20, 1931.

Town treasurer is authorized to accept town order drawn on revenue fund in payment of so much of taxes against property of person tendering order as is levied for revenue fund. Op. Atty. Gen., July 15, 1932.

After a claim has been duly allowed by board of audit, it is duty of chairman and clerk to sign the same. Op. Atty. Gen., Jan. 4, 1934.

1071. Order of payment—Interest.

The proper method of paying interest on warrants of a village is to procure an additional order from the recorder representing the amount of accrued interest, which order is to be paid at the time the original registered order is paid. Op. Atty. Gen., Mar. 18, 1931.

Six per cent is the maximum rate of interest that may be paid on town orders. Op. Atty. Gen., June 26, 1933.

Warrants must be paid in order in which they are registered by treasurer and this includes warrants issued to cover election expenses. Op. Atty. Gen. (442b-10), June 25, 1934.

Where warrants have been issued for salaries of township officers in excess of a maximum salary authorized by law, they are to be paid in order of registration, but only to extent they are below maximum salaries authorized. Op. Atty. Gen. (442b-10), June 23, 1935.

Six-year statute of limitation runs against the warrant, but only from time money is available for its payments. Op. Atty. Gen. (442b-10), Aug. 21, 1935.

There is no statutory procedure by publication or otherwise for stopping of interest on outstanding town orders owned by unknown holders, but statute of limitations bars town order six years from time money is available for its payment. Op. Atty. Gen. (442B-9), August 15, 1939.

1073. Fees.

The limitation with respect to townships whose assessed valuation is over \$1,000,000 is a limitation on the 1917 amendment and not on the rest of the section as it originally read. Op. Atty. Gen., Jan. 17, 1930.

Doubt expressed as to whether this section can be applied to villages operating under the 1905 act. Op. Atty. Gen., Feb. 23, 1929, Apr. 15, 1930.

Fixing of salary at annual town meeting applies to the ensuing year, the salary for the preceding year being governed by this section. Op. Atty. Gen., Mar. 19, 1930.

Balance remaining in treasury at end of fiscal year, and then turned over to incoming treasurer, should not be included in calculating the compensation of the outgoing treasurer. Op. Atty. Gen., Aug. 20, 1930.

It is not necessary that town board or the annual town meeting allow a bill for the treasurer's compensation, and he may simply deduct it. Op. Atty. Gen., Aug. 20, 1930.

Moneys in the treasury when treasurer assumes office cannot be said to have been "paid into the town treasury," and town treasurer is not entitled to allowance of two per cent thereon. Op. Atty. Gen., Aug. 20, 1930.

Town treasurer is not entitled to allowances on sums which are transferred from one fund to another within the town treasury. Op. Atty. Gen., Aug. 20, 1930.

The limitation that none of the provisions of the act shall affect the salary of any town treasurer in any township whose assessed valuation is over \$1,000,000 is a limitation upon the 1917 amendment, and not upon Gen. Stats., 1913, §1161, and such town treasurers are governed by the section as it was before the amendment of 1917. Op. Atty. Gen., Apr. 13, 1931.

It is necessary for the voters at the annual town meeting to vote each year on the matter of increasing the maximum compensation of the town treasurer. Op. Atty. Gen., Mar. 3, 1932.

Where annual town meeting electing treasurer votes to increase his maximum compensation to a certain sum, the voters can change the salary at the next annual town meeting. Op. Atty. Gen., Mar. 3, 1932.

In towns having an assessed valuation of over \$1,000,000, salary of treasurer should be computed on basis of 2% of money paid into treasury subject to \$100 maximum limitation. Op. Atty. Gen. (455d), Aug. 6, 1935.

Compensation of village treasurer, under the general law, is governed by laws relating to compensation of town treasurers. Op. Atty. Gen. (456f-2), Oct. 18, 1935.

Interest received on loan of township funds belongs to township and not to treasurer. Op. Atty. Gen. (442a-16), Mar. 13, 1936.

Town treasurer is entitled to retain 2% of town telephone charges and toll charges handled by him. Op. Atty. Gen. (434a-8), Mar. 25, 1938.

GENERAL PROVISIONS

1074 to 1074-3, 1074-3½ to 1074-3½b, 1074-4, 1074-5. [Repealed by Act Apr. 21, 1939, c. 345, Pt. 12, §1, ante §601-12, effective Aug. 1, 1939.]

**ANNOTATIONS UNDER REPEALED SECTIONS
1074 TO 1074-5.**

1074. Officers elected.
Reenacted as §601-11(1)rr.
Laws 1935, c. 354. Legallizing of all municipal acts relating to relief.

Correction—Note with respect to election and term of office of clerk and treasurer, should read, "See §§1074-4, 1074-5, herein."

Superseded by §2575. Op. Atty. Gen., Mar. 18, 1930.
Members of town board, owning property in town do not vacate their offices by removing to a village within the town unless the village is a separate election district and the removal is permanent. Op. Atty. Gen., Mar. 6, 1930.

This section was repealed by Laws 1913, c. 235, §42, which was in turn repealed and re-enacted by Laws 1921, c. 323, §35 (§2575 herein), and the election of an overseer was without effect. Op. Atty. Gen., Mar. 18, 1930.

Person convicted in federal court cannot vote or hold office of town clerk. Op. Atty. Gen., Apr. 3, 1930.

A town cannot be divided into three districts for the purpose of having one supervisor elected from each district. Op. Atty. Gen., Mar. 23, 1931.

Town treasurer appointed assessor automatically vacated his position as treasurer by qualifying as assessor, and it was immaterial that town board refused to accept his resignation as treasurer. Op. Atty. Gen., May 11, 1931.

A town constable may not be paid for doing general police duty in a thickly settled portion of a township. Op. Atty. Gen., July 23, 1931.

Offices of game warden and constable are not incompatible. Op. Atty. Gen., Aug. 25, 1932.

Resident of village not separated from township may hold office of justice of peace in township. Op. Atty. Gen., Feb. 24, 1933.

Offices of town clerk and justice of the peace are compatible. Op. Atty. Gen., Mar. 10, 1933.

This section fixes a definite term for supervisors with no holdover and supersedes section 1081, a prior enactment. Op. Atty. Gen., Apr. 4, 1933.

Constable of town may be dispensed with at election and judges have authority to appoint special peace officers to meet an emergency. Op. Atty. Gen., Apr. 11, 1933.

A town may not employ an attorney at a monthly salary. Op. Atty. Gen., Apr. 19, 1933.

Town road overseers are to be appointed by town board. Op. Atty. Gen., Sept. 25, 1933.

Section 1074 is a later enactment than §1081 and town supervisors do not hold over on failure of new member to qualify and vacancy exists which should be filled by remaining supervisors and town clerks under §§1086 and 6953(6). Op. Atty. Gen. (437a-15), June 21, 1935.

Resident of village entirely surrounded by township which is separated for assessment and election purposes is not qualified to hold office of township justice of the peace. Op. Atty. Gen. (266a-12), July 27, 1935.

Term of justice of peace is constitutionally limited to two years and he may not hold office until successor is chosen. Op. Atty. Gen. (266a-11), Jan. 31, 1936.

Office of town treasurer becomes vacant when incumbent moves into village entirely surrounded by town. Op. Atty. Gen. (439f), Feb. 28, 1939.

Town road overseers are appointed by town board and are not elected at annual town meeting. Op. Atty. Gen. (381a), March 22, 1939.

Corrupt practices act is not applicable to town elections in townships which have not adopted Australian Ballot System. Op. Atty. Gen. (434B-7), March 27, 1939.

Distribution of stickers at an annual town meeting in a township which has adopted Australian Ballot System constitutes a technical violation of Corrupt Practices Act and may invalidate election of one participating therein. Id.

Term of office of justice of the peace is for two years and does not extend until successor is elected and qualified. Op. Atty. Gen. (266a-11), April 12, 1933.

1074-1. Establishment of voting districts, etc.

Amended Apr. 15, 1929, c. 196.

Polling places for town elections may be same as polling places for general election, but separate ballot boxes must be used for special election. Op. Atty. Gen. (434b-17), Oct. 12, 1936.

Town holding special election at same time and place as general election may provide different time for closing ballot boxes on special election. Id.

1074-2. Same—Canvass of votes.

After results of an election have been announced, and candidates have been notified of their election, only way results can be challenged is by a proper action in court, and town board does not have power to declare any office vacant because of a violation of corrupt practices act. Op. Atty. Gen. (434B-7), March 27, 1939.

1074-3½. Certain township to establish election districts.

Consisted of Act Apr. 20, 1931, c. 265, §1; Apr. 6, 1937, c. 147, §1.

Reenacted as §601-11(1)s.

1074-3¼a. Town board to canvass votes.

Consisted of Act Apr. 20, 1931, c. 265, §2.

Reenacted as §601-11(1)ss.

1074-3¼b. Election supplies to be furnished.

Consisted of Act Apr. 20, 1931, c. 265, §3.

Reenacted as §601-11(1)ss.

1074-5. Town treasurer—Election—Term of Office.

A township treasurer elected at a legal election in an odd-numbered year would take office for two years as against a treasurer for two years in an even-numbered year. Op. Atty. Gen. (455h), Mar. 26, 1935.

1074-6. Application of act.—Every organized town in the State of Minnesota having a total population of more than 15,000 and a total assessed valuation of more than \$60,000,000.00, including villages therein which are not separated from the town, for election and assessment purposes, may adopt the provisions of this Act as hereinafter set forth. Any such town which may wish to avail itself of the provisions of this Act, may do so by a resolution of its Town Board, expressly accepting the provisions hereof, which resolution shall be adopted by a majority vote of its Board. The adoption of such resolution shall be a condition precedent to the exercise of any of the powers herein granted. After the adoption of such resolution, such town, its officers and electors, shall be subject to the powers, duties, and limitations as provided in this Act; provided, however, if within twenty days thereafter a petition be filed with the Town Clerk, signed by more than twenty-five per cent of the number of legally qualified or registered voters in said town voting at the last regular town election demanding that a special election be called of the electors thereof to review the action of the Town Board and to determine whether such resolution shall be rescinded, a special election shall be called, pursuant to the laws of this State, to be held within thirty days after the filing thereof, at which election the following proposition shall be submitted to the electors by a ballot:

“Shall the resolution of the Town Board of
 adopting the provisions of Chapter
 Laws of Minnesota for 1935 be rescinded?
 Yes
 No

“Unless a majority of the electors voting on the proposition, vote in favor of rescinding, the changes, powers and limitations of this Act shall henceforth control the town, its officers and electors.” (Act Apr. 11, 1935, c. 137, §1.)

Not expressly repealed by new election law.

Polling places for town elections may be same as polling places for general election, but separate ballot boxes must be used for special election. Op. Atty. Gen. (434b-17), Oct. 12, 1936.

1074-7. Date of election changed.—In all such towns the time of election of all officers is hereby changed from the date of the annual meeting held on the second Tuesday of March of each year to the first Tuesday after the first Monday in November of each year commencing the first Tuesday after the first Monday in November, 1936, and no election shall be held in November, 1935, nor in March, 1936. Such election and the canvassing of votes shall be conducted as is now provided by law. (Act Apr. 11, 1935, c. 137, §2.)

Not expressly repealed by new election law.

1074-8. Terms of certain officers extended.—The terms of office of all officers of such towns whose terms would expire in March, 1936, are hereby continued and extended to the end of December 31, 1936; the terms of office of all officers of such towns whose

terms would expire in March, 1937, are extended to the end of December 31, 1937, and the terms of office of all officers of such towns whose terms would expire in March, 1938, are hereby extended to the end of December 31, 1938. All officers so elected at the elections held on the first Tuesday after the first Monday in November, commencing in November, 1936, shall take office on the 1st day of January following their election and the length of the terms of the various officers of such towns so elected shall be the same as is now provided by law. (Act Apr. 11, 1935, c. 137, §3.)

Not expressly repealed by new election law.

Chairman of town board whose term of office would expire in March, 1936, holds office until January, 1937, and board cannot appoint a new chairman until that time. Op. Atty. Gen. (439h), Apr. 9, 1936.

1074-9. Annual meeting not changed.—In such towns the annual meeting shall continue to be held on the second Tuesday in March of each year and all business conducted heretofore at such annual town meeting shall continue to be so conducted with the exception of the holding of the election of officers which shall take place as hereinbefore provided by this act. (Act Apr. 11, 1935, c. 137, §4.)

Not expressly repealed by new election law.

Town of Stuntz if desiring to construct new town garage must call a special election for purpose of authorizing construction of building and amount of money to be raised for that purpose, and there must be judges and clerks of election and votes by ballots. Op. Atty. Gen. (434b-13(d)), Feb. 25, 1937.

1074-10. Clerk to report to auditor.—Immediately after the election of officers the clerk of such town shall report to the auditor of his county the name and post office address of each town officer who was elected and the term for which he was elected. Supervisors elected after this act comes into force and effect shall hold office for three years and until their successors qualify, and the chairman of the board of supervisors shall be named at the first meeting of the board each year. (Act Apr. 11, 1935, c. 137, §5.)

Not expressly repealed by new election law.

1074-11. 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 town election 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 election, when his successor shall be elected to hold for the unexpired term. (Act Apr. 11, 1935, c. 137, §6.)

Not expressly repealed by new election law.

Chairman of town board may resign upon acceptance by board. Op. Atty. Gen. (439e), Apr. 29, 1936.

Justice appointed to fill vacancy holds office only to next town election, and not until end of term of predecessor. Op. Atty. Gen. (266a-12), Oct. 23, 1936.

Person appointed to fill vacancy holds office only until next annual town meeting, and person then elected takes office immediately for remainder of unexpired term. Op. Atty. Gen., (437a-21), Sept. 21, 1938.

Section is construed as though it read “filled by appointment.” Op. Atty. Gen. (437a-21), May 22, 1939.

1074-12. Fiscal year to be calendar year.—The fiscal year of all such townships of this state shall be the calendar year and when a town has once come under the operation of this act it shall continue under its provisions notwithstanding its total population may fall below 15,000 and its total assessed valuation may fall below \$60,000,000.00, including villages therein which are not separated from the town for election and assessment purposes. (Act Apr. 11, 1935, c. 137, §7.)

Not expressly repealed by new election law.

1074-13. Invalidity of portion not to affect remainder of law.—The various provisions of this act shall be severable and if any part or provision of this act shall be held to be invalid it shall not be held to invalidate any other part or provision thereof. (Act Apr. 11, 1935, c. 137, §8.)

Not expressly repealed by new election law.

Sec. 9 of Act Apr. 11, 1935, cited, provides that the act shall take effect from its passage.

1075 to 1081. [Repealed Apr. 21, 1939, c. 345, Pt. 12, §1, ante §601-12, effective Aug. 1, 1939.]

ANNOTATIONS UNDER REPEALED SECTIONS

1075 TO 1081

1075. Town and village assessors.

Op. Atty. Gen., Apr. 1, 1933; note under sec. 1048. A village assessor once elected to the office and qualified holds over until his successor is elected and qualified. Op. Atty. Gen., June 5, 1931. In view of Laws 1929, c. 413, village assessors are now to be elected in even numbered years. Op. Atty. Gen., Nov. 13, 1931.

Where person elected assessor refused to qualify and county auditor appointed a person to perform the duties of the office, town board in even-numbered year could elect an assessor to serve until town meeting in odd-numbered year. Op. Atty. Gen. (12c-4), Feb. 28, 1936.

Where town assessor was elected in March, 1935, followed by appointment of deputy assessor by board with approval of county auditor, and assessor died in June, 1935, and deputy took up duties of office, and there was no appointment by assessor either by the board or the county auditor following the death, there existed a vacancy which must be filled by appointment under §1086 or §1087, and one elected assessor in even-numbered year was not entitled to take office. Op. Atty. Gen. (12c-4), Apr. 9, 1936.

Assessor appointed by town board to fill a vacancy holds office until next annual meeting in an odd numbered year. Op. Atty. Gen. (12c-4), Apr. 20, 1938.

1076. Persons elected notified.

Reenacted as §601-11(1)t.

1077. When to take oath.

Reenacted as §601-11(1)tt.

Failure to take office within the time specified by law does not ipso facto create a vacancy which will prevent an officer from qualifying thereafter, if it is done before any steps are taken to declare a vacancy. Op. Atty. Gen., May 11, 1931.

Failure of town clerk to take his oath of office and to give official bond results in a vacancy. Op. Atty. Gen. (104b-13), Mar. 5, 1935.

Failure of village treasurer to qualify by filing bonds does not ipso facto create vacancy. Op. Atty. Gen. (456g), Feb. 18, 1937.

1078. Oath and bond, when filed.

Reenacted as §601-11(1)u.

Failure of treasurer to qualify creates vacancy which may be filled by appointment. Op. Atty. Gen., Mar. 21, 1929.

Offices of town assessor and member of school board in same town are not incompatible. Op. Atty. Gen., Mar. 6, 1933.

Section 1074 is a later enactment than §1081 and town supervisors do not hold over on failure of new member to qualify and vacancy exists which should be filled by remaining supervisors and town clerks under §§1086 and 6953(6). Op. Atty. Gen. (437a-15), June 21, 1935.

1079. Acceptance of office.

Reenacted as §601-11(1)v.

1080. Failure to take oath.

Reenacted as §601-11(1)w.

1081. Term of office.

Term of justice of peace is constitutionally limited to two years and he may not hold office until successor is chosen. Op. Atty. Gen. (266a-11), Jan. 31, 1936.

Chairman of town board in town governed by Laws 1935, ch. 137 (§§1074-6 to 1074-13) whose term of office would expire on March, 1936, holds office until January, 1937. Op. Atty. Gen. (439h), Apr. 9, 1936.

Term of office of justice of the peace is for two years and does not extend until successor is elected and qualified. Op. Atty. Gen. (266a-11), April 12, 1939.

1081-1. County boards may appoint justices and constables in certain unorganized territory.—In any county in this state, in which the distance from any full and fractional unorganized townships is more than 20 miles from the nearest organized township or municipality or county seat, and which full and fractional unorganized townships are entirely separated from such organized townships or municipality or county seat by water, the county board of such county may appoint one or more Justices of the Peace and one or more constables for such unorganized townships who shall have the same powers and duties as like officers in organized townships in said county. (Act Apr. 1, 1935, c. 85, §1.)

1081-2. Officers to give bonds.—Before entering upon their duties, such officers shall give bond to the county in such penal sum as the county board shall determine, and which bonds shall be otherwise conditioned as bonds for such officers in organized townships in such county. Such bonds shall be approved by the county board and filed with the clerk of the district court. (Act Apr. 1, 1935, c. 85, §2.)

1082. Justice's bond.

Bond and oath of a village justice should be approved by village council and filed with clerk of district court. Op. Atty. Gen. (266a-2), Dec. 19, 1938.

1084. Bonds, how executed.

Section 1087 is controlling over §1084, and township assessor's bond should be filed with county auditor and not with town clerk. Op. Atty. Gen. (439a), Apr. 16, 1937.

1085. Resignations.

Chairman of town board may resign upon acceptance by board. Op. Atty. Gen. (439e), Apr. 29, 1936.

1086. Vacancies.

Where two candidates at a town election received the same number of votes, and a drawing is had, and the successful candidate is afterwards found to be a non-resident of the district, the unsuccessful candidate is not entitled to the office, but there is a vacancy to be filled by the town board. Op. Atty. Gen., Apr. 25, 1930.

Town board having appointed town treasurer as assessor had no right to rescind that appointment or to reconsider it. Op. Atty. Gen., May 11, 1931.

Where a village is organized and town supervisors residing within the proposed village resign, it is discretionary with the town board as to whether the vacancies should be filled by appointment or by calling a special town meeting. Op. Atty. Gen., May 19, 1931.

Upon removing from the town, a town officer vacates his office. Op. Atty. Gen., Sept. 11, 1931.

Where the vote for member of town board was a tie and the candidates refused to decide election by lot, there is a vacancy, to be filled by appointment pursuant to this section. Op. Atty. Gen., Mar. 29, 1933.

Appointment of treasurer hereunder should be until the next annual town meeting, at which time his successor should be elected, his term to expire at the next annual town meeting held in odd-numbered year. Op. Atty. Gen., Apr. 3, 1933.

A candidate who demands that his name be erased from ballot may qualify if elected and if he declined to do so, office shall be declared vacant. Op. Atty. Gen., May 27, 1933.

Section 1074 is a later enactment than §1081 and town supervisors do not hold over on failure of new member to qualify and vacancy exists which should be filled by remaining supervisors and town clerks under §§1086 and 6953(6). Op. Atty. Gen. (437a-15), June 21, 1935.

Resident of village entirely surrounded by township which is separated for assessment and election purposes is not qualified to hold office of township justice of the peace. Op. Atty. Gen. (266a-12), July 27, 1935.

Drawing of lot in case of tie vote must be done on day of annual town meeting, otherwise there is a vacancy to be filled by appointment. Op. Atty. Gen. (185a-7), Mar. 14, 1936.

Where town assessor was elected in March, 1935, followed by appointment of deputy assessor by board with approval of county auditor, and assessor died in June, 1935, and deputy took up duties of office, and there was no appointment of assessor either by the board or the county auditor following the death, there existed a vacancy which must be filled by appointment under §1086 or §1087, and one elected assessor in even-numbered year was not entitled to take office. Op. Atty. Gen. (12c-4), Apr. 9, 1936.

Vacancy in office of town justice of the peace is to be filled by town board until next annual town meeting, term of office of a judge is for two years. Op. Atty. Gen. (266a-12), Jan. 20, 1937.

Assessor appointed by town board to fill a vacancy holds office until next annual meeting in an odd numbered year. Op. Atty. Gen. (12c-4), Apr. 20, 1938.

Where there was a tie vote for office of supervisor and board failed to determine matter by lot at close of canvass, matter cannot be determined by lot later, with result that incumbent holds over until a successor is chosen pursuant to §1048 or §1086. Op. Atty. Gen. (434b-23), March 17, 1939.

1087. Auditor to appoint assessor.

Township assessor appointed by county auditor must be paid by township and not out of county funds. Op. Atty. Gen., Oct. 7, 1933.

Where person elected assessor refused to qualify and county auditor appointed a person to perform the duties of the office, town board in even-numbered year could elect an assessor to serve until town meeting in odd-numbered year. Op. Atty. Gen. (12c-4), Feb. 28, 1936.

Where town assessor was elected in March, 1935, followed by appointment of deputy assessor by board with approval of county auditor, and assessor died in June, 1935, and deputy took up duties of office, and there was no appointment of assessor either by the board or the county auditor following the death, there existed a vacancy which must be filled by appointment under §1086 or §1087, and one elected assessor in even-numbered year was not entitled to take office. Op. Atty. Gen. (12c-4), Apr. 9, 1936.

1089. Compensation; per diem, mileage; annual basis; certain towns; fees; road overseer; change at town meeting; other acts not repealed.—The following town officers shall be entitled to compensation for

each day's service, ^{fees} necessarily rendered as follows, viz.: Assessors, four dollars, and mileage at the rate of five (5) cents per mile for each mile necessarily traveled by him in going 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; provided, however, that the electors at the annual town meeting after reading and disposing of the annual report may fix the compensation of the assessor on an annual basis, but such compensation of the assessor in any town having an assessed valuation of more than \$200,000 and less than \$1,000,000 when so fixed shall not exceed \$240.00 in any one year, and provided further, that in all towns having an assessed valuation including money and credits of less than \$200,000, the maximum compensation for assessor in any year shall not exceed \$200.00; provided further, that in all cases where the compensation of any village assessor is determined by the provisions of this act the compensation of such assessor may be fixed by the governing board of such village, not to exceed \$240.00 in one year; supervisors and clerks, three dollars when the service is rendered within the town, and three dollars when rendered without the town; and mileage at the rate of five cents per mile for each mile necessarily traveled by them on official business out of the town, but not exceeding the sum of \$30.00 for such mileage for any one town officer, in any year; but no supervisor shall receive more than ninety dollars as compensation in any one year; provided, however, that any towns containing over 50 but not more than 55 sections, the salary of the supervisors, in addition to mileage herein allowed, shall be three dollars per day when the service is rendered within the town and three dollars per day when the service is rendered without the town, but no supervisor in any such town shall receive more than one hundred thirty-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 and ten cents for each mile necessarily traveled; filing each paper, ten cents; recording orders and other instruments, ten cents per folio; copying and certifying any record or instrument recorded or filed in his office, ten cents per folio, to be paid by the person applying therefor. The voters at any town meeting, after reading and disposing of the annual report, may by resolution fix the scale of wages and the hours of employment of the road overseer and of any other person, or persons, employed by any town on any town road. The voters at any town meeting, after reading and disposing of the annual report, may by resolution increase or decrease the compensation of town officers, not to exceed fifty per cent.

Nothing herein contained shall be construed to repeal any law wherein any towns are classified for the purpose of fixing the salaries, or maximum salaries, of any of their officers. (R. S. '05, §682; '07, c. 402; '11, c. 37; '13, c. 558; '19, c. 384; '23, c. 219; '27, c. 403, §31, 2; Apr. 21, 1933, c. 411; Apr. 11, 1935, c. 151; Apr. 29, 1935, c. 375; Apr. 6, 1937, c. 153, §1; Apr. 17, 1937, c. 249, §1; July 14, 1937, c. 16, Sp. Ses., §1.)

Act Apr. 15, 1939, c. 268, fixes compensation of supervisors of towns in Hennepin County.

Op. Atty. Gen., Nov. 21, 1929, note under §1006.

Village councils of villages operating under Laws 1885, c. 145, have authority to fix compensation of village assessors. Vesely v. V., 190M318, 251NW680. See Dun. Dig. 6575.

Member of town board may act as health officer and receive compensation therefor, in view of Mason's St. 1927, §5348. Op. Atty. Gen., Feb. 7, 1929.

Members of the town board cannot be reimbursed for actual expenses incurred while engaged on township work, and they have no authority to hire a car and have the owner present a bill to the town. Op. Atty. Gen., July 22, 1930.

Town clerk cannot charge to the town a specified sum for drawing and recording an order and filing the same after it has been cashed, but he is entitled to \$3 per day for services rendered to the town whether rendered at board meetings or not. Op. Atty. Gen., July 23, 1930.

A town supervisor who was sued to compel him to repay money to the town, and who had judgment against him for such money and then resigned, was legally qualified to later become a candidate. Op. Atty. Gen., Feb. 28, 1931.

Town supervisors are not allowed to charge for use of their automobiles. Op. Atty. Gen., Feb. 28, 1931.

If a resolution increasing compensation of town supervisors is adopted after balloting for officers had commenced, it is ineffective to bring about an increase. Op. Atty. Gen., Feb. 28, 1931.

There is no limitation on the total amount of fees which a town clerk may receive during the year. Op. Atty. Gen., July 23, 1931.

A town chairman appointed health officer pursuant to §5348 is entitled to compensation in addition to the \$90.00, but is not entitled to extra compensation if he is merely a member of the health board. Op. Atty. Gen., July 23, 1931.

Town board is without authority to decrease the amount fixed as compensation of assessor. Op. Atty. Gen., Sept. 9, 1931.

Assessor is not entitled to mileage while actually engaged in assessing property. Op. Atty. Gen., July 6, 1932.

Voters at annual town meeting may not lower wages of town officers fixed by this section. Op. Atty. Gen., Apr. 3, 1933.

The compensation of a town clerk is three dollars per day for services in connection with his official duties within or without the town, but such compensation may not exceed \$90 a year unless the voters by resolution increase the compensation not to exceed 50%. Op. Atty. Gen., Apr. 11, 1933.

Compensation of town clerk is \$3 per day for services performed in connection with his official duties within or without town. Op. Atty. Gen., Apr. 11, 1933.

Town clerk is entitled to compensation for drafting bonds and administering oaths of newly elected officers and road overseers. Id.

It is no part of duties of town clerk to administer oaths in connection with preparation of verified accounts and he may require claimants to pay therefor. Id.

Town supervisor held entitled to \$4 per day for 67 days' work, though it exceeds manual limit of \$240. Op. Atty. Gen., May 3, 1933.

Town assessor is entitled to \$4 for each day's services including time spent in taking farm census. Op. Atty. Gen., July 5, 1933.

Maximum limit as to amount township assessors would receive is \$240. Op. Atty. Gen., July 14, 1933.

City assessor of Blue Earth is limited to \$2 per day for compensation under Home Rule Charter. Op. Atty. Gen., July 25, 1933.

Village assessor should be paid same compensation as town assessor. Op. Atty. Gen., Dec. 22, 1933.

Per diem compensation of village assessors can only be for days worked during May and June unless auditor requires additional work by reason of omission of property. Op. Atty. Gen., Feb. 19, 1934.

Compensation of township officers may be increased 50% even though it exceeds maximum of \$90 per year. Op. Atty. Gen. (439b-1), Apr. 19, 1934, overruling prior opinion of Mar. 7, 1933.

There is no provision for increase of compensation of town supervisors for year preceding annual meeting. Op. Atty. Gen., Mar. 7, 1934.

Assessor can receive compensation only for work performed in months of May and June where village comes within statutory provision applying to townships. Op. Atty. Gen. (12c-1), Apr. 11, 1934.

Compensation of town officers may be increased fifty per cent above maximum of \$90 provided. Op. Atty. Gen., Apr. 19, 1934.

Assessor is entitled to compensation for extra time spent in taking farm census, but such services must be performed during the months of May and June. Op. Atty. Gen. (12c-1), July 10, 1934.

Where electors at annual meeting did not formally take action by way of decreasing salary of township assessor, he is entitled to receive compensation at the rate of \$4 for each day's service. Id.

Compensation of assessor may not be fixed at an arbitrary sum per year. Id.

Neither assessor nor assistant is entitled to mileage or car expense while engaged in assessing property within district. Op. Atty. Gen. (442a-17), Oct. 13, 1934.

Where county emergency relief administration has approved a township project upon condition that town supervisors at different times, or one of them at all times, act as foreman or supervisor, supervisor may receive compensation therefor but not in a total amount in excess of that permitted by statute. Op. Atty. Gen. (437a-3), Nov. 15, 1934.

Electors may decrease assessor's per diem from \$4 to not less than \$2 per day, but it should be noted that basis for compensation is on a "per diem basis," meaning a calendar day, and neither town board nor electors have any right to change per diem basis of compensation, meaning that basis of compensation is \$4 per diem. Op. Atty. Gen. (12c-1), Jan. 23, 1935.

Filing fee which is paid to town clerk by candidate for office at time he files his application, or affidavit of candidacy, should be turned into town treasury and placed in general town fund. Op. Atty. Gen. (442a-12), Feb. 5, 1935.

Fact that an assessor is elected for a term of two years does not prohibit voter from increasing or decreasing his compensation for either the first or second years, or both. Op. Atty. Gen. (12c-1), Feb. 11, 1935.

Where warrants for salaries are drawn in excess of maximum provided by statute, warrants issued up to amount of first legal warrant were valid and remaining warrants are invalid. Op. Atty. Gen. (442b-6), Mar. 8, 1935.

Members of town board may not receive compensation for time spent in supervising construction of bridge nor for labor on such bridge, nor for gasoline used in automobile in looking after town business, and minor son of member of board may not receive compensation for work on bridge. Op. Atty. Gen. (437a-4), Mar. 15, 1935.

Members of town boards are not entitled to additional compensation for administration of seed loan act, but expenses necessarily incurred are allowable. Op. Atty. Gen. (833k), Apr. 6, 1935.

Filing fees paid by candidate for office are to be paid into town revenue fund. Op. Atty. Gen. (436h), Apr. 22, 1935.

Per diem compensation of township assessor can only be paid during months of May and June except where auditor notifies him of an omission, and he can only be paid for days he actually worked. Op. Atty. Gen. (442b-10), June 28, 1935.

Voters at annual town meeting did not have power to increase compensation of township officers in a township classified under Laws 1907, ch. 316. Op. Atty. Gen. (442b-10), Aug. 20, 1935.

Resolution purporting to decree salaries of town officers adopted before reading of annual report was without legal effect. Op. Atty. Gen. (12c-1), Sept. 4, 1935.

Compensation of members of board making appointment to fill vacancy in office of county commissioner. Op. Atty. Gen. (1934k), Dec. 19, 1935.

Laws 1935, Chap. 151 and Chap. 375, are not inconsistent and both should be given effect, and assessor may now be compensated on an annual basis. Op. Atty. Gen. (12c-1), July 20, 1936.

Member of town board may be paid for his services as member of election board though such payments will increase yearly compensation to more than maximum amount provided for compensation of a town supervisor. Op. Atty. Gen. (183k); Feb. 24, 1937.

Members of town board are entitled to mileage and expenses necessarily incurred in administering Laws 1937, ch. 65 (Seed Loan Act). Op. Atty. Gen. (833k), Apr. 19, 1937.

A vote to decrease compensation of assessor was only effective for one year, and compensation reverts to statutory amount for following year in absence of vote thereon at next annual meeting. Op. Atty. Gen. (12c-1), July 6, 1937.

Laws 1935, c. 151 and c. 375, are not inconsistent, and c. 151 contemplates that mileage provided for in this section should be paid in addition to any sum that may be set by electors at annual town meeting as compensation for an assessor upon an annual basis. Op. Atty. Gen. (12c-1), Jan. 3, 1938.

Section does not authorize employment of supervisors on town road work. Op. Atty. Gen. (437a-19), May 7, 1938.

1089 1/2. Same—Not applicable to counties containing city of first class.—This act shall not apply to any county containing a city of the first class. (Apr. 11, 1935, c. 151, §2.)

1089-1. Salaries of town officers in certain organized towns.

Laws 1907, c. 316, is still in force as to those townships not coming within classification set forth in this section. Op. Atty. Gen., Mar. 8, 1933.

1089-5. Deputy assessors and stenographer to town clerk in certain towns.

Assessors are not entitled to a greater compensation than that provided for in this section. Op. Atty. Gen. (442a-17), Oct. 13, 1934.

1089-6. Supervisors' compensation not to exceed \$60.—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 (\$60) in any one year. (Act Apr. 23, 1907, c. 316, §1.)

Sec. 2 makes the act effective from date of enactment. This section has never been repealed, and members of town board in townships consisting of 40 or more sections are entitled to receive a maximum of \$60 per year, based on a per diem of three dollars for each day necessarily consumed in the transaction of township business. Op. Atty. Gen., Mar. 30, 1933.

1093. Town charges.

A town supervisor has no legal right to charge township for use of his automobile in official business or for his personal expenses of any kind in transacting the business of the town. Op. Atty. Gen. (442a-11), June 27, 1934.

Members of town board may not receive compensation for time spent in supervising construction of bridge nor for labor on such bridge, nor for gasoline used in automobile in looking after town business, and minor son of member of board may not receive compensation for work on bridge. Op. Atty. Gen. (437a-4), Mar. 15, 1935.

Members of town boards are not entitled to additional compensation for administration of seed loan act, but expenses necessarily incurred are allowable. Op. Atty. Gen. (833k), Apr. 6, 1935.

Members of town board are entitled to mileage and expenses necessarily incurred in administering Laws 1937, ch. 65 (Seed Loan Act). Op. Atty. Gen. (833k), Apr. 19, 1937.

1095. Designation of places for posting of legal notices.—The voters at each annual town meeting shall designate three places in the town as public places at which the legal notice shall be posted, and provide facilities for posting notices at such places—; provided, however, that in any town in which there is located within its geographical limits a city or village, one or more such notices may be posted in such city or village. (R. L. '05, §687; G. S. '13, §1187; Apr. 16, 1931, c. 182.)

Taxpayer participating in proceedings, held estopped to assert that notices were insufficient. 181M192, 231NW 924. See Dun. Dig. 3217.

1096. Officers—Contracts.

No recovery could be had for \$80 worth of work on the wings of a bridge for a township, where the work was never completed so that it could be accepted, and the work was of no value so that a recovery might be had as for a benefit received. 172M259, 214NW838.

Member of town board may act as health officer and receive compensation therefor, in view of §5348. Op. Atty. Gen., Feb. 7, 1929.

Town treasurer may be interested in contract with town. Op. Atty. Gen., Apr. 27, 1929.

Employment of member of board of supervisors to clearing and burning brush on road was illegal and town could not pay him expenses of prosecution wrongfully brought against him. Op. Atty. Gen., Aug. 28, 1929.

A town supervisor may be lawfully employed on the construction of a county aid road in his town, though the town board has appropriated to the county 30% of the cost thereof under Laws 1929, c. 283. Op. Atty. Gen., May 3, 1930.

Payments to minor sons of a supervisor for work on town roads is illegal where such sons have not been emancipated and are living with their parents. Op. Atty. Gen., July 29, 1930.

A town treasurer does not violate this section by purchasing town orders at a discount and then receiving payment from the town treasury for the full amount thereof; but since he is an agent for the town, the town could probably recover the profit made by him. Op. Atty. Gen., Oct. 6, 1931.

Town board authorized by electors to purchase particular real estate need not first advertise for bids. Op. Atty. Gen., Mar. 3, 1934.

Town is required to advertise for bids in letting contract for printing of election supplies exceeding \$100. Op. Atty. Gen. (442a-11), Apr. 19, 1934.

Whether township board members who are stockholders in a cooperative association may purchase township supplies from the association is a question of fact. Op. Atty. Gen. (442a-8), May 29, 1934.

Town board may not employ one of its members to act as timekeeper and foreman on emergency relief project. Op. Atty. Gen. (90d), July 23, 1934.

Where county emergency relief administration has approved a township project upon condition that town supervisors at different times, or one of them at all times, act as foreman or supervisor, supervisor may receive compensation therefor but not in a total amount in excess of that permitted by statute. Op. Atty. Gen. (437a-3), Nov. 15, 1934.

Members of town board may not receive compensation for time spent in supervising construction of bridge nor for labor on such bridge, nor for gasoline used in automobile in looking after town business, and minor son of member of board may not receive compensation for work on bridge. Op. Atty. Gen. (437a-4), Mar. 15, 1935.

Member of town board may not sell gravel to township, and cannot do so indirectly by selling gravel pit to county. Op. Atty. Gen. (437a-4), Apr. 27, 1935.

Arrangement whereby trucks would be hired at an agreed price per mile in graveling of town road does not constitute day labor which would excuse calling for bids. Op. Atty. Gen. (707a-14), May 11, 1935.

Town treasurer may draw pay for work performed on roads in town. Op. Atty. Gen. (707b-6), Mar. 13, 1936.

Bids are not required on purchase of snow removal equipment if purchase price is to be paid out of road and

bridge funds on hand. Op. Atty. Gen. (434a-5), Mar. 20, 1937.

A town may construct a garage with day labor on a federal project, and need only advertise for bids for materials, and for such specialized work as plumbing, heating, etc. Op. Atty. Gen. (707a-1), June 1, 1937.

Town board may not employ one of supervisors to act as a supervisor of road work and timekeeper on road work being done by town, except as provided in this section. Op. Atty. Gen. (437a-19), July 9, 1937.

Emergency which will excuse advertising for bids must be real and public must be in danger of suffering substantial injury if situation is not promptly met. Op. Atty. Gen. (707a-1), Sept. 29, 1938.

Exception of contract "to be paid from the road or poll tax" is not now applicable to contract for construction or repair of town roads and bridges. Id.

It would be a violation of this section for town board to compensate a supervisor for use of his own automobile on town business. Op. Atty. Gen. (437a-8), April 18, 1939.

1097. Town taxes.

Town board has no authority to make levy not exceeding two mills without vote of people. Op. Atty. Gen., Mar. 27, 1933.

1098. Limit of debts, etc.

Lack of proof of proper attendance by members of town boards did not preclude recovery for construction and repair of a town line road. Lindgren v. T., 244NW 70. See Dun. Dig. 8471.

Fiscal year is from Jan. 1, to Dec. 31, in computing amount that town may spend. Op. Atty. Gen., Jan. 25, 1933.

In disbursing town funds, supervisors are controlled only by statutory restrictions, and authority of electors ends when town meeting adjourns. Op. Atty. Gen., Mar. 13, 1933.

A town board has no authority to enter into a contract for improvement of roads obligating it to spend a greater sum of money than is in township treasury plus taxes levied and in process of collection. Op. Atty. Gen. (442a-21), April 4, 1939.

1099. Separation from village.

Separation of township from village must be determined at a meeting called under this section, and not at a special meeting under §1031. Op. Atty. Gen., June 3, 1930.

Personal property taxes levied in 1930 and paid to a town in March, 1931, could not be recovered back by the village after the town voted to separate from the village at an election held in March, 1931. Op. Atty. Gen., May 20, 1931.

Statute permits separation even without action or consent of town. Op. Atty. Gen. (440e), Mar. 4, 1935.

Village located in two towns may be separated from one town. Op. Atty. Gen. (440), Mar. 28, 1938.

Where there has been no separation of township from village for election and assessment purposes as provided by §1099, there is no way in which village can prevent holding of annual town meeting within village limits under §356. Op. Atty. Gen. (434b-13(c)), March 1, 1939.

When town wishes to separate from village there must be a petition by voters living within or without village and residents of both town and village vote on the question, but if village wishes to separate from town residents of village may vote on the question without notice to the town, and without vote of persons outside village. Op. Atty. Gen. (440e), March 30, 1939.

1100. Filing claims—Demand.

This section is later than §766 of Mason's Stat., 1927, and claim need not be itemized or verified. 178M411, 227 NW358.

A physician taking care of a pedestrian struck by an automobile may file a claim at any time within six years. Op. Atty. Gen. (442a-7), Dec. 22, 1936.

1108-4. Certain towns not to draw orders without funds in treasury.—That from and after January 1st, 1934, no organized town which in the year 1933 had a population (including the population of villages within such town not separated from the town for election and assessment purposes) exceeding 2,000 and not exceeding 10,000 inhabitants, and an assessed valuation of taxable property, exclusive of moneys and credits, such that a tax levy of 17 mills upon the dollars of such assessed taxable valuation would produce a total levy in excess of an average of \$1,000 per government section of the entire area of such town, according to the government survey thereof, shall draw any order or warrant on any fund until there is sufficient money in such fund to pay the same together with all orders previously issued against said fund. (Act Apr. 17, 1933, c. 293, §1.)

Laws 1935, c. 360. Expenditures of towns and villages on cash basis legalized.

There is a cut-off Jan. 1, 1934, thus leaving to town board during year 1934 an entire year's tax levy avail-

able for obligations incurred during that year. Op. Atty. Gen., Nov. 28, 1933.

1108-5. Last preceding census to determine.—In determining the application of this law to any such town, the population thereof shall be determined by the last preceding state or federal census and the valuation shall be that used as a basis for spreading the 1932 taxes of said town. (Act Apr. 17, 1933, c. 293, §2.)

1108-6. Indebtedness in excess of limit to be personal claim against officials creating same.—Whenever from and after January 1st, 1934, the expense and obligations incurred, chargeable to any particular fund of such town in any calendar year, are sufficient to absorb 85 per cent of the entire amount of the tax levy payable in that year, including such amount as may remain in the fund from the levy of the prior year or years, no officer or board of such town shall have the power, and no power shall exist, to create any additional indebtedness (save as the remaining 15 per cent of said tax levy is collected) which shall be a charge against that particular fund or shall be in any manner a valid claim against such town, but such additional indebtedness attempted to be created shall be a personal claim against the officer or members of the board voting for or attempting to create the same. (Act Apr. 17, 1933, c. 293, §3.)

1108-7. May issue certificates of indebtedness.—At any time after the annual tax levy has been certified to the county auditor, and not earlier than October 10th in any year, the governing body of such town may, for the purpose of meeting the obligations of the succeeding year, by resolution issue and sell as many certificates of indebtedness as may be needed in anticipation of the collection of taxes so levied for any fund named in said tax levy for the purpose of raising money for any such fund, but no certificate shall be issued for any of said separate funds exceeding 50 per cent of the amount named in said tax levy as spread by the county auditor, to be collected for the use and benefit of said fund, and no certificate shall be issued to become due and payable later than December 31st of the year succeeding the year in which said tax levy, certified to the county auditor as aforesaid, was made. The said certificates shall not be sold for less than par and accrued interest and shall not bear a greater rate of interest than 6 per cent per annum. Each certificate shall state upon its face for which fund proceeds of said certificate shall be used, the total amount of said certificates so issued, the whole amount embraced in said tax levy for that particular purpose. They shall be numbered consecutively and be in the denominations of \$100 or a multiple thereof and may have interest coupons attached, and shall be otherwise of such form and terms and be made payable at such place as will best aid in their negotiation. The proceeds of the tax assessed and collected, as aforesaid on account of said fund, and the faith and credit of such town shall be irrevocably pledged for the redemption of the certificates so issued. Such certificates shall be paid from the moneys derived from the levy for the year against which such certificates were issued, or if they be not sufficient for such purpose, from other funds of the town. The money derived from the sale of said certificates shall be credited to such fund or funds for the calendar year immediately succeeding the making of such levy and shall not be used or spent until such succeeding year. No certificates for any year shall be issued until all certificates for prior years have been paid, nor shall any certificate be extended; provided that money derived from the sale of the certificates for any one year may, if necessary, be used to redeem unpaid certificates issued in a prior year. (Act Apr. 17, 1933, c. 293, §4.)

If it becomes a question of whether municipal or town organization is to continue to function, certificates of indebtedness issued pursuant to act may be deposited with town treasurer and warrants issued against them within limitations provided in this section. Op. Atty. Gen., Nov. 28, 1933.

Town board of town operating under cash basis law must offer certificates of indebtedness for sale on bids after published notice. Op. Atty. Gen., Feb. 14, 1934.

Certificates of indebtedness issued pursuant to this section, where there are insufficient funds to pay all of such certificates, should be paid on a pro rata basis and town should not issue new certificates for purpose of calling in outstanding certificates. Op. Atty. Gen. (442b-5), June 15, 1934.

1108-8. To be on cash basis after January 1, 1934.—From and after January 1st, 1934, such town shall be deemed for all purposes to be on a cash basis and shall thereafter remain on a cash basis. All taxes levied in 1933 shall be considered as the tax revenues for the year 1934 and thereafter in any such town taxes shall be levied as now provided by law, but for the succeeding year. (Act Apr. 17, 1933, c. 293, §5.)

1108-9. Bond issue to retire existing indebtedness.—If any such town prior to January 1st, 1933, has incurred by proper authority a valid indebtedness, excluding bonds, in excess of its cash on hand, such town may for the purpose only of paying and discharging such valid indebtedness (except bonds) and interest thereon, issue its bonds in the manner now provided by law, upon approval of the proposition of the issuance of said bonds by the electors of the town in the manner now provided by law; provided, that if any moneys received from taxes levied in 1932 and payable in 1933, or income from local sources received since January 1st, 1933, have been used prior to the passage of this Act for the retirement of indebtedness existing January 1st, 1933, such bond issue may include the amount of such payments for the purpose of reimbursing the funds from which such moneys were so paid. (Act Apr. 17, 1933, c. 293, §6.)

1108-10. Tax levy to retire bonds.—The town board of any such town issuing bonds pursuant to the authority of this act shall at the time of the issuance thereof by resolution provide for a levy for each year until the principal and interest of said bonds are paid in full, of a direct annual tax in an amount sufficient to pay the principal and interest thereon when and as such principal and interest become due. Such tax levy shall be within the limitations provided by Laws 1927, Chapter 110, and other laws, upon the tax levies of said town, and the county auditor at the time of spreading the annual tax levy of said town shall reduce the same so that the total levy shall be within the limitations of such laws. (Act Apr. 17, 1933, c. 293, §7.)

1108-11. Violation a misdemeanor.—Any member of the town board of such town or any other town officer or employee knowingly participating in or authorizing any violation of this Act shall be guilty of a misdemeanor, punishable by a fine not exceeding \$100, or by imprisonment in the county jail not exceeding three months, for each offense; and each contract attempted to be entered into or indebtedness or pecuniary liability attempted to be incurred in violation of the provisions of this Act shall be null and void in regard to any obligation thereby sought to be imposed upon the town, and no claim therefor shall be allowed by the town board of said town; nor shall the claim of said town or any other town officer or employee issue or execute, nor shall the town treasurer pay, any warrant or certificate of indebtedness issued on account thereof. Each member of the town board and each other town officer or employee participating in or authorizing any violation of this Act shall be individually liable to the town or to any other person for any damages caused thereby and for the purpose of enforcing such liability without impairing any other remedy, one-fourth of the salary of each such officer and employee shall be withheld from him and applied towards reimbursing the town or any such other person for such damages until all claims by reason thereof have been fully paid. Every member of the town board present at a meeting of the board when any action is taken with reference to paying money or incurring indebtedness or entering into any contract shall be deemed to have participated in and authorized the same, un-

less he shall have caused his dissent therefrom to be entered upon the minutes of the meeting. (Act Apr. 17, 1933, c. 293, §8.)

1108-12. Officers may be suspended from office for violation of act.—Any member of the town board knowingly participating in or authorizing the violation of this Act shall be liable to suspension from office. Any vacancy created thereby shall be filled according to law. (Act Apr. 17, 1933, c. 293, §9.)

1108-13. Shall continue under provisions of act.—When a town has once come under the provisions of this Act, it shall continue under its provisions notwithstanding any subsequent change in assessed valuation or population. (Act Apr. 17, 1933, c. 293, §10.)

1108-14. Provisions separable.—If any section, part or provision hereof be found unconstitutional, such determination shall not affect the validity of the remaining provisions not clearly dependent thereon, provided that the funding of the indebtedness existing on January 1, 1933, is necessary to the functioning of this law and if any town shall find it impossible to sell the bonds herein provided for for the purpose of funding such indebtedness prior to January 1, 1934, or if the voters of such town should refuse to authorize the issuance of such bonds, this act shall not take effect therein. (Act Apr. 17, 1933, c. 293, §11.)

1108-15. This Act shall take effect and be in force from and after its passage, except as herein otherwise provided, and all Acts and parts of Acts inconsistent herewith are hereby repealed and declared of no effect insofar as they may be inconsistent with this Act. (Act Apr. 17, 1933, c. 293, §12.)

1108-16. Certain towns may employ attorneys.—The Board of Supervisors in all towns in the State of Minnesota having a population of more than 3,000 exclusive of incorporated villages or cities therein and an assessed valuation of taxable property exclusive of monies and credits of more than \$10,000,000.00 shall have the power to employ an attorney or attorneys without a vote of the electors and shall have the power without a vote of the electors to acquire land by purchase or condemnation and build on such land garages, warehouses, offices and other buildings for the use of such town, provided, however, that the total expenditure for such land and buildings during any one year shall not exceed 8% of the total annual township levy, and provided further that all expenditures shall be within the present millage tax limitation. (Apr. 21, 1937, c. 319, §1.)

Sec. 2 of Act Apr. 21, 1937, provides that the act shall take effect from its passage.

A town may construct a garage with day labor on a federal project, and need only advertise for bids for materials, and for such specialized work as plumbing, heating, etc. Op. Atty. Gen. (707a-1), June 1, 1937.

1108-21. Certain towns to receive special state aid on account of shortage of tax revenues.—Whenever the value of the property within the boundaries of the corporate limits of any town in the state of Minnesota, which is exempt from local taxation because taxes thereon are paid into the state treasury under the provisions of the gross earnings tax law, is equal to or greater than the taxable value of all real and personal property, exclusive of money and credits within any such town, then such town shall be entitled to receive from the state treasury, in addition to all other taxes received thereby, such an amount as would be produced by computing a tax of one-third of the current tax rate for town purposes upon such property so exempt from local taxation, provided, that the amount which any such town shall receive shall not exceed \$1,000.00 in any year. (Apr. 22, 1937, c. 347, §1.)

1108-22. Same—Shall make application to the state auditor.—Any such town desiring to take advantage of this act shall apply in writing therefor to the state auditor, and such application shall contain the following facts:

(a) The valuation of the property within such town but not within the corporate limits of any city or village therein subject to taxation under the provisions of the gross earnings tax law.

(b) The value of all real and personal property, exclusive of moneys and credits, within any such town subject to local taxation.

(c) The rate of taxation in mills for town purposes for the current and next preceding year.

(d) The total amount spent for all town purposes by such town for the last preceding year, and an estimate of the expenses for town purposes for the current year.

(e) The number of persons actually residing in said town but not within the corporate limits of any city or village located therein, who are members of an immediate family in which some member thereof is employed in or on the property on which the gross earnings tax is paid.

The information called for in paragraph (a) shall be ascertained and certified upon the request of any such town by the railroad and warehouse commission; and information called for in paragraphs (b) and (c) shall be certified by the county auditor of the county or counties in which any such town is situated, and the information called for in paragraphs (d) and (e) shall be certified by the clerk of any such town. (Apr. 22, 1937, c. 347, §2.)

1108-23. Same—Auditor to determine amount due.—The state auditor shall immediately consider said matter and determine whether or not any such town is entitled to aid under the provisions of this act, and if he finds that any such town is entitled to aid he shall determine the amount to which it is entitled within the limitations of this act, and shall draw his warrant upon the state treasurer in favor of any such town, for the amount to which it is so entitled, and deliver the same thereto, taking proper vouchers and receipts therefor. (Apr. 22, 1937, c. 347, §3.)

1108-24. Same—Limitation of payments.—Not more than \$5,000 in the aggregate shall be disbursed in any one calendar year to all the towns entitled to aid under the provisions of this act, and in the event that said amount of \$5,000 shall be insufficient to pay the full amount to which said township shall be entitled annually hereunder, the state auditor shall apportion the said sums pro rata to each of said towns. (Apr. 22, 1937, c. 347, §4.)

1108-25. Same—Appropriation.—The sum of \$10,000, or so much thereof as may be necessary, is hereby appropriated from any moneys in the state treasury not otherwise appropriated to be used to make the payments provided for in this act. (Apr. 22, 1937, c. 347, §5.)

1108-26. Same—Act in force for two years after passing.—This act shall be in force for two years from and after its passage. (Apr. 22, 1937, c. 347, §6.)

1108-31. Certain towns may establish sewage system, sewer districts, and sewage treatment plants.—In any town of this state having a population of not less than 1,500 nor more than 2,000 inhabitants, according to the last Federal census, and having an assessed valuation of more than \$1,200,000.00 and less than \$1,750,000.00 and having an area of not less than 23,000 acres nor more than 26,000 acres, the town board thereof shall have power to establish and maintain a general system of sewers, to create sewer districts and change, diminish or enlarge the boundaries thereof from time to time and to relay, alter or extend any existing sewer system and to establish and maintain sewage treatment plants when deemed necessary. Any and all proceedings heretofore taken by any such town to establish and construct such a sewer system, are hereby validated, ratified, approved and confirmed and declared to be valid and effective, and the town board of any such town is

hereby authorized to issue warrants to pay therefor and to levy assessments for the cost thereof in the same manner as though said proceedings had been commenced and said construction started after the effective date of this act. (Act July 14, 1937, Sp. Sess., c. 32, §1; Feb. 24, 1939, c. 28.)

Towns having more than 3,000 population exclusive of villages or cities and valuation of \$10,000,000 may construct sewage disposal plants. Laws 1939, c. 287.

1108-32. Same—Plan of system.—The town board of such town may at any time establish a general sewer system and may classify sewers as general, district, joint-district and lateral. General sewers shall be the designation of such large sewers as shall be common to the entire area used as outlets for district or joint-district sewers, and shall not include those which may or shall be constructed for the immediate draining of any particular district. District sewers shall be the designation of all main sewers laid for the immediate draining of a particular sewer district. Joint-district sewers shall be the designation of such large sewers as may be laid through or be used jointly by two or more sewer districts between a district sewer and a general sewer or independently of general sewers, and for all purposes of construction, maintenance, repairing and taxation or providing for the cost thereof, shall be treated as though in a single district. Lateral sewers shall be the designation of all sewers of whatever size, capacity or length, which may be constructed to drain any portion of a sewer district directly into any district, joint-district or general sewer. (July 14, 1937, Sp. Sess., c. 32, §2.)

1108-33. Same—Use of public grounds; acquisition of rights in other lands.—All general, district and joint-district sewers shall be laid when practicable, in public grounds, streets or alleys. Whenever it shall be necessary in the judgment of the town board to lay and maintain any general, district, joint district, or lateral sewer in or through other than public lands, the town may acquire the right thereto by purchase, gift, or by condemnation under the right of eminent domain. (July 14, 1937, Sp. Sess., c. 32, §3.)

1108-34. Same—Motion of or petition to town board; determination by board; resolution; districts, surveys, and plans.—The town board of any such town may by resolution, on its own motion or by petition as hereinafter provided, determine that the public health and sanitation of an area in such town to be described in said resolution require that a sanitary sewer or sewers shall be constructed or it may be made on petition made by the owners of at least fifty-one per cent in area of real property within such proposed sewer district. Such petition may be in informal language and may pray that such improvement be made and sewer constructed. It shall be filed with the town clerk and the town board shall examine the same and be satisfied that the persons signing same are owners of real estate within such proposed sewer district. The town board may thereupon determine by resolution whether or not the petition has been signed by the required percentage of owners and its determination so made shall be final and conclusive unless set aside by any court having jurisdiction thereof.

No action shall be taken for the construction of an entire or partial system, or for the extension of an existing sewer, except upon the adoption of a resolution by a majority vote of all the members of the town board. The creation of sewer districts and the alteration of the boundaries thereof shall be by resolution and the town board may at all times cause inspection, surveys, plans and profiles to be made by a competent engineer selected by said town board and reported to the town board for its guidance in determining the form and extent of any sewer district to be created, enlarged or diminished and such sewer districts shall be consecutively numbered. (July 14, 1937, Sp. Sess., c. 32, §4.)

1108-35. Same—Fund available.—The cost of constructing a general sewer, plant or plants for treating the sewage therein or the securing an outlet therefor shall be paid out of the sewer fund, if any, or if there is no sufficient sewer fund then out of the general fund of the town. (July 14, 1937, Sp. Ses., c. 32, §5.)

1108-36. Same—District sewer; special assessments.—The cost of constructing any district sewer, plant or plants for treating the sewage therein and the securing of an outlet for such district sewer or treatment plant may be assessed against all the land in the sewer district subject to assessments for local improvements, according to special benefits to each lot, piece or parcel of land, in the district without regard to cash valuation. (July 14, 1937, Sp. Ses., c. 32, §6.)

1108-37. Same—Joint district sewer; special assessments.—The cost of constructing every joint district sewer, plant or plants for treating the sewage therein and the securing of an outlet for such joint district sewer or treatment plant may be assessed against all the land in the two or more sewer districts which it drains, and for that purpose all of the districts so drained by any joint district sewer shall be treated as one district, and the same plant, method and means employed as in assessing for the cost of a district sewer, treatment plant for same or outlet therefor. (July 14, 1937, Sp. Ses., c. 32, §7.)

1108-38. Same—Lateral sewers; special assessments.—The entire cost of constructing all lateral sewers may be assessed against every lot, piece or parcel of land abutting thereon, subject to assessment for local improvement at an equal sum per front foot without regard to cash valuation. (July 14, 1937, Sp. Ses., c. 32, §8.)

1108-39. Same—Estimates; plants and specifications; filing and public inspection; copies, cost.—Whenever the town board shall determine by resolution to establish, alter, repair, relay or extend any existing sewer or to construct any new sewer, the cost thereof shall be estimated by a competent engineer to be selected by the town board, who shall draw plans and specifications and tabulate the results of his estimate of the cost and report the same to the town board, and such plans and specifications shall be filed with the clerk of the town before any proposals for bids for work thereunder shall be advertised and shall remain on file open to the inspection of all persons until after the contract for such work shall be let and copies of such plans and specifications shall be furnished by the engineer who shall prepare the originals, to any person applying therefor, at a cost of seventy-five cents (75c) per hour for the time necessarily employed in making such copies. (July 14, 1937, Sp. Ses., c. 32, §9.)

1108-40. Same—Bids for construction; letting contract, bond; town may itself do work; supervision by engineer.—The town board shall then cause proposals for bids for such work to be advertised in the nearest newspaper published in said county and in some trade paper published in a City of the first class in the State. Said publications to continue at least once in each week for two successive weeks, which advertisement shall specify the work to be done and shall call for bids upon a basis of cash payment for the work, and shall state the time within which bids will be received and the time at which the same will be open for consideration by the town board. No bids shall be considered unless the same shall be accompanied by a cash deposit or duly certified check payable to the order of the treasurer of the town for at least five per cent of the amount bid and be directed to the clerk of the town securely sealed, so as to prevent its being opened without detection and be endorsed upon the outside wrapper with a brief statement as to the work for which the bid is made. In

letting contract for any such work it shall be the duty of the town board to require the execution of a written contract and a bond in such sum as the town board may require, conditioned for the faithful performance of the contract and for saving the town harmless from any and all liability in the prosecution and completing of the work. The town board, if a contract is awarded, shall award the same to the lowest responsible bidder. If any bidder to whom such contract is awarded shall fail to enter promptly into such written contract and to furnish such bond, then such defaulting bidder shall forfeit to the town the amount of his cash deposit or certified check and the town board may thereupon award the contract to the next lowest responsible bidder; provided the town board shall have the right to reject all bids, and providing further, that whenever the estimates made for the town board for the entire work projected, shall be less than \$500.00, then the town board may directly purchase the materials therefor and cause the work to be done by day labor. Every contract awarded under this act shall be made between the town as one party in the name of the town and the successful bidder as the other party, and such contract shall be executed on behalf of the town by the chairman of the town board and countersigned by the clerk of said town and an attested copy thereof shall be filed and remain in the office of the clerk of said town.

In every contract executed under this act whether or not so stated therein, there shall be reserved the right of the town board to have the work supervised by an engineer or other person in behalf of the town and in case of improper construction, or unreasonable delay in the prosecution of the work by the contractor, to order and cause suspension of the work at any time and to re-let the contract therefor or to order a reconstruction of any portion of the work improperly done or where the remaining work to be done or the work of reconstruction to be made shall call for an expenditure of less than Five Hundred Dollars to complete the work of reconstruction by the employment of day labor. (July 14, 1937, Sp. Ses., c. 32, §10.)

1108-41. Same—Advances to contractor.—In case the contractor to whom such contract may be let shall properly perform the work therein designated the town board may, from time to time, before the completion of the work, in its discretion, pay to such contractor Eighty (80%) per cent of the amount already earned thereunder upon the estimate of the engineer selected by the town board. (July 14, 1937, Sp. Ses., c. 32, §11.)

1108-42. Same—Estimate for assessment; land-owners may install laterals; spreading assessment; notice; objections; hearing; approval; payment; interest; installments; extending on tax rolls; penalties.—Whenever any work or improvement provided for by this act shall have been determined upon and a contract let therefor, or outlet secured, the engineer selected by the town board, shall forthwith calculate the proper amount to be specifically assessed for such district, joint-district and lateral sewers, treatment plants or outlet against every assessable lot, piece or parcel of land within the sewer district affected, without regard to cash valuation, in accordance with the provisions of sections 6, 7 and 8 of this act.

Provided that in calculating the special assessment for any district sewer or joint-district sewer, the cost of laying or relaying such sewer in any public ground or public highway; and all catch basins, manholes, lamp holes and flushing valves and tanks and treatment plants shall be taken as a part of such district sewer or joint-district sewer and to be paid for by such special assessment.

Provided further, that private owners may lay, relay or extend any lateral sewer through any public

ground, street or alley and connect the same with any general, district or joint-district sewers, upon permission granted by a majority of the town board and that any private owner alone, or two or more owners jointly, may lay, relay or extend lateral sewers through private ground pursuant to rights acquired therefor by agreement or purchase from any private owner or owners. In the event that any private owner alone or jointly with others lay, relay or extend any such lateral sewer through public ground, the town shall not be or become in any manner or in any respect liable for any act or negligence involved therein.

When such engineer shall have finished his calculation of the amount to be specially assessed as aforesaid against each tract, piece or parcel of land in the sewer district affected, he shall at once prepare and file with the clerk of the town tabulated statements in duplicate, showing the proper description of each and every tract, piece or parcel of land to be specially assessed, and the amount he has calculated against the same and such statements shall be the basis of the assessment and be known as the proposed assessment to be made by the town board, as hereinafter prescribed and shall be laid before the town board for its approval at a meeting to be held not less than ten days thereafter. The clerk of the town shall thereupon cause notice of the time and place when and where the town board will meet in regular session to pass upon such proposed assessments to be published in a newspaper in said county once in each week for two successive weeks and by three posted notices thereof in said town at least one of which posted notices shall be within the sewer district to be affected.

During all the time between the filing of said proposed assessment with the clerk of the town and such meeting of the town board such proposed assessment shall be opened to inspection and copying by all persons interested.

At such meeting of the town board all persons aggrieved by such proposed assessment may appear before the town board and present their reasons why such proposed assessment or any particular item thereof should not be adopted, and the town board shall hear and pass upon all objections thereto, if any, and may alter, or affirm and adopt such proposed assessment as may be deemed just in the premises, and upon the adoption by resolution of such proposed assessment the same shall be certified by the clerk of the town and filed in his office and shall thereupon be and constitute the special assessment. The amount assessed against each lot, tract, piece or parcel of land by such special assessment shall bear interest from the date of the adoption of such special assessment until the same have been paid, at the rate of interest to be designated by resolution of the town board at the time of the adoption of such special assessment but not to exceed six (6%) per cent per annum and such special assessment with the accruing interest thereon shall be a paramount lien upon the property included therein from the time of the adoption of such assessment by the town board and shall remain such lien until fully paid, and shall have precedence over all other liens, except general taxes and as to such shall be concurrent, and shall not be divested or impaired by any judicial sale and no mistake in the description of the property or in the name of the owner shall invalidate the lien.

The town board may at any time by resolution direct the clerk of the town, to make up and file in the office of the county auditor a certified statement of the amount of all such unpaid assessments and the amount of interest which will be due thereon on the first day of January of the following year, and the clerk of said town shall within twenty (20) days thereafter make up and file such certified statement in the office of the auditor of the county, which statement shall also contain a description of the lands

affected by the assessment. Such resolution may also direct that such special assessment shall be payable in equal annual installments not exceeding five, and payable on the first day of January of each year, each of said installments to bear interest at the rate hereinbefore provided until fully paid, and the certified statement of the clerk shall show the amount of each of such installments, the date when each installment becomes due and the amount of interest to be paid on each installment in each year. After said statement is filed in the office of the County Auditor it shall be the duty of such Auditor to extend upon the tax roll of each year the amount of such assessment or installment thereof, as the case may be, and the amount of interest which will become due on the first day of January of the following year as shown by said certified statement against the different lots or parcels of land therein described, and such amounts when so extended each year shall be carried into the tax becoming due or payable in January of the following year, and enforced and collected in the manner provided for the enforcement and collection of the state and county taxes and the assessment and interest paid to the County Treasurer shall be paid over by him to the treasurer of such town upon the apportionment of general taxes, but in case such assessments or installments thereof are to cover payments due for a district or joint district sewer outlet as herein provided, then such payments shall be applied on same. Provided that any person named at any time before the transmission of the certified statement of the clerk of such town to the county auditor pay such special assessment as to any lot, piece or parcel of land affected thereby, together with the interest accrued thereon at the date of such payment, to the town treasurer, and receive the proper receipt therefor, and the clerk of the said town shall upon the presentation of such receipt from said town treasurer, cancel upon the special assessment roll the special assessments so paid.

Provided further, that any person may pay any such assessment with accrued interest thereon after the same has been so certified to the County Auditor, provided the tax roll containing such assessments has not in due course been delivered to the County Treasurer for collection and the receipt of such town treasurer shall be sufficient authority upon presentation to the County Auditor for him to mark such assessment "Paid" upon his roll, but after the roll has been delivered to the County Treasurer for collection, the said assessment must be paid to him, with the penalties allowed by law.

The same penalties and interest shall attach and be collected by the County Treasurer on assessments as upon general taxes, which penalties and interest shall belong to the town and to be turned over by the County Treasurer to the town with the assessment. (July 14, 1937, Sp. Ses., c. 32, §12.)

1108-43. Same—Supplemental assessment.—In case of omission, errors or mistakes, in making such assessments in respect of the total cost of such improvement, or otherwise, it shall be competent for such town board to provide for and make supplemental assessments to correct such omissions, errors or mistakes; and such supplemental assessments shall be a lien as in case of the original assessment, drawing interest at the same rate and be payable and enforceable in the same manner as is herein provided with respect to the original assessment. (July 14, 1937, Sp. Ses., c. 32, §13.)

1108-44. Same—Fund; anticipation warrants.—All moneys collected on any such special assessment shall constitute a fund for the payment of the cost of improvements for the district for which such assessment was made and the same shall be credited to the proper sewer district fund under the designation: "Fund of Sewer District No." and in anticipation of the collection of such special assessment, the

town may issue warrants on such funds to be known as "Sewer Warrants" payable at such times and in such amounts as, in the judgment of the town board, the collections of such special assessments will provide for, which warrants shall bear interest at a rate not to exceed five (5%) per cent per annum, payable annually and may have coupons attached representing each year's interest. Each warrant shall upon its face state for what purpose it is issued and specify the particular fund against which it is drawn and shall be signed by the chairman of the town board and countersigned by the town clerk and be in denominations of not less than Fifty Dollars nor more than Five Hundred Dollars. The town board of any such town may by resolution adopted prior to the issuance of such warrant pledge the full faith and credit of the town for the payment of the principal and interest of such warrants out of funds in the treasury of the town when the moneys on hand in the appropriate sewer fund are insufficient to meet the payment of such principal and interest as the same matures. Provided, however, that as to any such warrants for the payment of which the full faith and credit of the town is not pledged, such warrants shall be payable solely out of the proper sewer fund. It shall be the duty of the town treasurer on presentation to pay such warrants and interest coupons as they mature out of any funds on hand in the proper sewer fund, or out of the general fund of the town if directed by the town board. Such warrants may be used in making payments on contracts for the improvements and may be sold by the town for not less than par and the proceeds thereof used in paying for such improvements, provided however that no indebtedness created under this act shall exceed two per cent of the assessable valuation of said town and provided further that the town board of any town which shall have issued any such sewer warrant shall have power by a majority vote to levy a tax not exceeding two mills in any one year for the support of the fund of any sewer district or districts. (July 14, 1937, Sp. Ses., c. 32, §14.)

1108-45. Same—Warrants received in payment of assessments.—Any matured sewer warrant or interest coupon may be used in payment of any such special assessment on any particular property situate within the district for which such warrant or coupon shall have been issued; and the warrants and coupons so used shall be cancelled and retired by the town treasurer. (July 14, 1937, Sp. Ses., c. 32, §15.)

1108-46. Same—Conveyance not recordable until assessment paid.—No conveyance of any land upon which any such special assessment, or portion thereof, is due and unpaid, shall be recorded until such delinquent assessment, or portion thereof, shall have been paid. (July 14, 1937, Sp. Ses., c. 32, §16.)

1108-47. Same—Assessment roll; letters, marks and figures.—In all proceedings and records prepared or used in the making, levy or collection of such special assessments, letters, figures and proper ditto marks may be used to denote lots, pieces, and parcel of land, and blocks, sections, townships, ranges and parts thereof and dates. (July 14, 1937, Sp. Ses., c. 32, §17.)

1108-48. Same—Irregularities not to invalidate assessment.—No errors or omissions which may be made in any of the proceedings of the town board or of the engineer or any officer of such town in refusing to, reporting upon, ordering or otherwise acting, concerning any local improvement provided for in this act or in making any such special assessment or in levying or collecting the same, shall invalidate such assessment; unless it shall appear that by reason of such error or omission substantial injuries has been done to the party claiming to be aggrieved. (July 14, 1937, Sp. Ses., c. 32, §18.)

1108-49. Same—Reassessment in case of invalidity.—In all cases where any assessment or any part thereof as to any lot or lots, tracts or parcels of land assessed under any of the provisions of this act, for any cause whatever whether jurisdictional or otherwise, shall be set aside or be declared void by any court, the town board shall without unnecessary delay cause a reassessment or new assessment to defray the expenses of such improvements to be made, whether such improvements were made under this act or any other laws of this State, and such reassessment or new assessment shall be made as nearly as may be, as herein provided for making the assessment therefor in the first instance; and when the same shall have been made and confirmed by the town board, it shall be enforced and collected in the same manner that other assessments are enforced and collected under this act and in all cases where judgments shall hereafter be refused or denied by any Court for the collection and enforcement of any special assessment, or where any court shall hereafter set aside or declare void any assessment upon any lot, tract or parcel of land for any cause, the said lot, tract or parcel may be reassessed or newly assessed from time to time until each separate piece or parcel of land has paid its proportionate part of the costs and expenses of said improvements as near as may be. (July 14, 1937, Sp. Ses., c. 32, §19.)

1108-50. Same—Confirmation of assessment; notice and hearing; statement of objections.—The notice of the time and place when and where the town board will meet in regular session to adopt any proposed assessment under Section 12 of this act and to be prepared by the Clerk of the town to be published and posted as hereinbefore required shall specify the particular sewer district or districts in which the improvement is to be made and shall describe with reasonable certainty the location, extent and termini of the sewer or sewers to be laid, relayed or extended; provided that no omission or inaccuracy in such notice shall invalidate the notice or the assessment, unless substantial injury shall be shown by the person claiming to be aggrieved thereby.

When the town board shall meet for the purpose of adopting any proposed assessment under the provisions of this act, no grievance or objection thereto or to any item therein shall be heard by the town board unless the party objecting or his duly authorized agent or attorney shall on or before the date of such session file with the clerk of the town board for presentation to the town board a complete written statement of the objection with specific reference to the matter or items in question and to which objection is made. (July 14, 1937, Sp. Ses., c. 32, §20.)

1108-51. Same—Appeal; procedure; mode and scope of review.—Any person feeling himself aggrieved by such special assessment may, by notice in writing served upon the chairman of the town board and also upon the clerk of the town, a copy whereof, with proof of service shall be filed in the office of the clerk of the District Court of the county wherein such town is situated, within twenty days after the adoption of such special assessment, appeal from such special assessment to the District Court aforesaid and such appeal shall be disposed of in a summary manner by the court. At the trial of such appeal no pleadings shall be required but the party appealing shall in his notice of appeal specify and enumerate the particular grounds of his objection to such special assessment and shall not be entitled to have considered on such appeal any grounds of objection or items other than those specified in such notice and no question shall be tried on such appeal as to any fact which may have arisen or existed prior to the letting of the contract or contracts for the improvement and a copy of the assessment roll in question and of the resolution of the town board confirming or adopting the same certified by the clerk of the town or the origin-

als thereof shall be prima facie evidence of the facts therein stated or denoted and that such assessment was regular, just and made in conformity to law and the judgment of the court on the determination of such appeal shall be final. Such appeal shall be entered and brought on for hearing and be governed by the same rules as far as applicable as in appeals from justices of the peace in civil actions, and like bonds shall be given to the town by the person appealing as are required in appeals from justices of the peace in civil actions, but such bond shall, surrender such appeal affective shall be approved by the judge of such district court or court commissioner of such county. Provided that no appeal to the District Court shall be made, heard or determined as to such special assessment or any item therein unless such objection shall have been as in this act specified, previously presented to and passed upon by the town board. (July 14, 1937, Sp. Ses., c. 32, §21.)

1108-52. Same—Repair of sewers.—Whenever any such sewer shall be laid, relaid or extended, it shall be the duty of the town board to maintain and keep the same in repair at the expense of the town. (July 14, 1937, Sp. Ses., c. 32, §22.)

1108-53. Same—Private connections with sewers; supervision.—All private connections shall be made with lateral sewers, unless some insurmountable obstacle of a practical nature shall prevent and no private connection with any sewer whatever shall in any event be made without permission therefor granted by the town board and the making of all private connections with any sewer shall be subject to supervision and control by the town board; provided that such supervision and control may be delegated by the town board to any engineer or other person selected by the town board at its discretion. (July 14, 1937, Sp. Ses., c. 32, §23.)

1108-54. Same—Eminent domain proceedings.—Whenever it shall become necessary for the town to exercise the right of eminent domain for the purpose included within this act all proceedings therein shall conform as near as may be to the provisions of Section 2620 to 2632, both inclusive, of the General Statutes of 1894 and amendments thereto. (July 14, 1937, Sp. Ses., c. 32, §24.)

1108-55. Same—Town to possess powers of village.—For the purpose of carrying out the provisions of this act a Town as defined in Section 1 hereof shall have and possess all the power and have the same authority now possessed by villages under the general laws of this State and the chairman of the town board shall be deemed the chief executive officer thereof and the town clerk shall be charged with the duty of performing all the clerical functions necessary therefor and the town board shall have and possess all the power and authority now possessed by a village council, under said general laws of this State. (July 14, 1937, Sp. Ses., c. 32, §25.)

1108-56—Same—Town may bear part of cost of sewer system.—The town may contribute to the cost of the construction of such sewer such proportionate share thereof, as shall be determined by the Town Board before making the assessments for such sewer and may pay the said share so determined, out of the general funds of the Town. (July 14, 1937, Sp. Ses., c. 32, §26.)

Act Mar. 25, 1939, c. 79, applicable to Ramsey County, authorizes the county board in counties having a population of 240,000 to 350,000 to regulate housing, within townships which consent to the application of the law. The act provides for no standards of regulation, and seems to be unconstitutional as a clear delegation of legislative power, and as local and special without any valid basis of classification.

Act Apr. 10, 1939, c. 187, limited to Hennepin County, authorizes the board of supervisors of towns in such county to regulate the construction of buildings and make zoning regulations. The act is omitted as local and probably unconstitutional as a delegation of legislative power.

1108-57. Towns may construct sewers and sewage disposal plants.—The board of supervisors of all towns in the state of Minnesota having a population of more than 3,000 inhabitants exclusive of incorporated villages or cities therein and an assessed valuation of taxable property exclusive of moneys and credits of more than \$10,000,000 shall have the power to erect, construct, maintain and operate a sewage disposal plant, and to lay and construct within the platted area thereof such sewers leading to said plant and such other equipment incidental and necessary to the operation thereof as such board deems necessary and advisable. (Act Apr. 17, 1939, c. 287, §1.)

Act does not authorize town to construct water works to supply water necessary for operation of disposal plant, not being "incidental equipment." Op. Atty. Gen. (387G-9), Sept. 7, 1939.

1108-58. Payment of cost—Bonds—Interest.—The cost of such erection, construction, maintenance and operation may be paid from the general revenue funds of such towns, and in case such funds are insufficient for that purpose, said boards of supervisors are hereby authorized and empowered for the purposes hereinbefore designated, to issue the negotiable bonds of such towns to the amount authorized by such board; said bonds to be made in such denominations and payable in such places and at such times, not exceeding 30 years from the date thereof, as may be deemed best. Said bonds shall mature serially and bear interest at a rate of not to exceed five per cent per annum payable semi-annually. No such bonds shall be sold for less than the par value thereof and accrued interest thereon. Provided also that such bonds shall be issued, negotiated and sold in accordance with the provisions of Mason's Minnesota Statutes of 1927, Section 1943. (Act Apr. 17, 1939, c. 287, §2.)

General revenue fund need not be exhausted before bonds may be issued. Op. Atty. Gen. (387G-9), Sept. 7, 1939.

1108-59. Tax levy to retire bonds.—The full faith and credit of any such towns shall at all times be pledged for the payment of any bonds issued under this act and for the payment of the current interest thereon, and said board of supervisors of such town shall each year include in the tax levy a sufficient amount for the payment of such interest as it accrues, and for the accumulation of a sinking fund for the redemption of such bonds at their maturity. (Act Apr. 17, 1939, c. 287, §3.)

1108-60. Form of bonds.—All bonds issued under the authority of this act shall be sealed with the seal of the town issuing the same and signed by the chairman and clerk thereof, except that the signatures to the coupons attached to such bonds, if any, may be lithographed thereon. The sale of such bonds shall be in such manner and in such proportions of the whole amount authorized by this act and at such times as may be determined by said board of supervisors of such town. (Act Apr. 17, 1939, c. 287, §4.)

1108-61. Proceedings to be used for purposes enumerated.—The proceeds of any and all bonds issued and sold under the authority of this act shall be used for the purposes hereinbefore enumerated. (Act Apr. 17, 1939, c. 287, §5.)

1108-62. Powers additional.—The powers granted by this act are in addition to all existing powers of such towns. (Act Apr. 17, 1939, c. 287, §6.)