

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

Edited by
the
Publisher's
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SAINT PAUL 1, MINNESOTA

1944

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A notice for bids for "one or more Diesel-powered motor patrol graders complete with snow plow and wing as per specifications on file in county engineer's office" is probably too indefinite, but the notice might properly call for separate bids on one motor patrol, on two motor patrols, etc. Op. Atty. Gen. (707a-1), Feb. 23, 1941.

Plans and specifications may not provide what contractor must pay haulers of gravel, nor require that trucks should be owned or operated by residents of the county. Op. Atty. Gen. (707b-7), Oct. 29, 1941; Nov. 7, 1941.

Where federal regulations require specified sum be paid for doing certain work on projects using federal money, they may be inserted. Id.

County welfare boards need not advertise for bids for purchase of supplies even though their value exceeds \$500. Op. Atty. Gen. (707A-7), Jan. 8, 1942.

It is not necessary that county board advertise for bids in purchasing a particular tract of land for use of the county. Op. Atty. Gen. (125a-41), Sept. 21, 1942.

County board must take its chances if it buys without bids on theory that an emergency exists. Op. Atty. Gen. (707a-8), Feb. 9, 1943.

Statute requires advertisement for bids before purchase of snow removal equipment, though War Production Board has released one piece of equipment and the county may purchase from one dealer and does not desire that advertisement be made for bids because it will create a demand upon its office. Op. Atty. Gen. (707a-7), Apr. 26, 1943.

Purchase of planks involving more than \$500 needed to repair bridges destroyed by flood may be purchased without calling for bids, if an emergency exists. Op. Atty. Gen. (707a-8), May 25, 1943.

Fact that purchase is to be made from the United States government is not an exception to the rule. Op. Atty. Gen. (707a-7), Dec. 2, 1943.

992. Same—Counties of more than 200,000.

In determining who is lowest responsible bidder for sale of trucks and heavy equipment, board may take into consideration cost of upkeep as well as experience of county in cost of operating such equipment. Op. Atty. Gen. (707A-7), Feb. 24, 1942.

Statutes do not prohibit specification of a patented article and do not prohibit specification of equipment which may be manufactured only by one factory. Id.

993-1. Purchasing contracts in certain counties.

Act Apr. 21, 1941, c. 348, requires county auditor in counties having population of more than 450,000 to advertise for bids for purchase of goods.

Election ballots and supplies might be deemed "supplies and materials". Op. Atty. Gen. (707a-7), June 12, 1940.

994. Actions against counties.

Where plaintiff by written assignment acquired a claim against county and it was audited and allowed, but through mistake or oversight on part of county officers warrant issued in payment was made payable to original claimant, who cashed it, plaintiff may recover from county as against defendants' claim that statute prevents suit by a claimant to enforce a money demand and that appeal from board's disallowance in whole or in

part is only remedy. *Leuthold v. R.*, 206M199, 288NW165. See Dun, Dig. 2295.

Board of welfare may reverse previous disallowance of a claim for hospital service furnished a poor person, or disallowed claim may be submitted to county board and direct action brought after lapse of reasonable time. Op. Atty. Gen. (125a-64), June 25, 1941.

997-4. Salary of county officers.

Act Apr. 10, 1941, c. 208, relative to salaries and other compensation of various county officers is, by its descriptive terms, applicable to Lake of the Woods county.

997-4a. Salaries of county officers in certain counties.

Act Apr. 17, 1941, c. 295, §§1 to 11, fixes the salaries of various county officers in counties having 76 to 80 congressional townships and assessed valuation of \$2,000,000 to \$5,000,000.

Laws 1941, c. 295, §§2, 3, 8, 9. Amended. Laws 1943, c. 124.

Laws 1943, c. 124, amends Laws 1941, c. 295, fixing salaries of various county officers in counties having 76 to 80 congressional townships and assessed valuation of \$2,000,000 to \$5,000,000.

Laws 1943, c. 531, amending Laws 1943, c. 411, §1, relating to salaries and clerk hire of certain county officials.

Notes of Decisions

Laws 1927, c. 392, fixing salaries of members of county board, is limited in application to counties having an assessed valuation of \$250,000,000, and where assessed valuation in St. Louis County fell below that amount that act no longer applied, and Laws 1935, c. 349, freezing salaries of county officials as of 1931 was in effect a new act, and provision in 1927 act that "each member of said board shall devote his entire time to the performance of the duties of his office" no longer governed. Op. Atty. Gen. (104a-9), Jan. 24, 1941.

Clerk of school board of Cass County cannot be paid a salary in excess of that allowed by Laws 1941, c. 295, §9, by reason of grants to state of federal money for Indian education. Op. Atty. Gen. (768d-4), Nov. 21, 1941.

997-4b. Minimum salaries. [Repealed.]

Repealed. Laws 1941, c. 295.

997-4m. Clerk hire in county offices including that of probate judge.

Section does not apply to Carlton County or to act of probate judge of that county fixing clerk hire for his office. Op. Atty. Gen. (348a), July 21, 1941.

This section is amended by Laws 1941, c. 169, art. 2, §11, in counties where applicable. Op. Atty. Gen. (399c), Jan. 21, 1943.

County board in its discretion may increase clerk hire for clerk or district court above the amount specified in Laws 1917, c. 476, relating to particular counties. Op. Atty. Gen. (144a-1), Feb. 9, 1943.

If clerk hire in a county for office of clerk of court is provided by law, this section is applicable, and a resolution authorized. Op. Atty. Gen. (144a-1), March 25, 1943.

CHAPTER 8

Towns and Town Officers

POWERS—DUTIES—LIABILITIES

1002. Powers of town meetings.

Unless a town has been given authority to do so by some special act it has no authority to construct sewers. Op. Atty. Gen., (387G), Oct. 12, 1939.

No town board has authority to enter into a town contract obligating it to expend a greater sum of money than is in township treasury plus taxes actually levied and in process of collection, although a town may raise revenue by issuance of orders, which may be stamped "Not Paid" and which bear interest from date stamped, or the issuance of bonds. Op. Atty. Gen., (688c-1), March 25, 1940.

Town board has no authority to license dairy companies or their trucks, where it has no platted portion which would give it additional powers of a village. Op. Atty. Gen., (292c), May 6, 1940.

Any funds, not presently needed, may be invested in War Savings Bonds. Laws 1943, c. 193.

Where supreme court held attempted incorporation of a village invalid, town in which village is situated has no right to liquidate unpaid warrants of village on theory of quasi contract or otherwise. Op. Atty. Gen. (442a-18), Apr. 9, 1942.

A town has no authority to assist a school district financially by supplying members of school patrol with a uniform, rain coats and equipment. Op. Atty. Gen. (442a-20), Apr. 9, 1942.

No statute is found authorizing investment of township general revenue funds in government defense bonds. Op. Atty. Gen. (551), Sept. 17, 1942.

Towns are not authorized to contribute out of public funds expenses of rationing. Op. Atty. Gen. (835), Dec. 22, 1942. This seems to have been changed by Laws 1943, c. 168.

(3).

In connection with proceedings to establish a town ditch, town board has no authority to employ an attorney not asked for in the petition. Op. Atty. Gen., (151B), Dec. 18, 1939.

Towns may authorize payment of reasonable value of services of attorney in an emergency defense of legal action brought against board for alleged negligence in maintenance of a town bridge. Op. Atty. Gen. (779a-4), Mar. 13, 1941.

(6).

Town board is authorized to appropriate and expend a reasonable sum as assistance for improvements and maintenance of a bridge outside limits of town on a road leading into town, but it may not contribute money to construction of a new bridge. Op. Atty. Gen., (442a-21), March 29, 1940.

(9).

Town has authority at a special meeting to authorize town board to remodel and enlarge town hall and determine amount of money to be raised for such purpose. Op. Atty. Gen., (434c-2), April 23, 1940.

(10).

It would not be improper to include in notice of annual town meeting a statement that a proposal to acquire additional land for a cemetery will be voted upon, but it is not necessary. Op. Atty. Gen. (870d), Feb. 10, 1941.

1002-1. Dissolution of township government, etc.

When a township is dissolved, it is duty of county commissioner to appoint an actuary for town cemetery until it is disposed of. Op. Atty. Gen. (870i), Dec. 10, 1940.

A conveyance to a town "this town to maintain car tracks and wall gate, said land to revert to the party of the first part when ceased to be used by said town", constituted a condition subsequent, upon breach of which, coupled with re-entry, estate of town will be defeated, unless condition has become merely nominal, but such condition is directed toward a particular public use and not against succession of property to county upon dissolution of town, and there is no reverter resulting from failure to use the property unless there is a re-entry or an equivalent act before performance of condition as resumed. Op. Atty. Gen. (441B), Jan. 4, 1941.

Where land was conveyed to a town wherein grantee "agreed that the above described property shall be improved and kept improved, and that said grounds shall be used for a public park and picnic grounds only and for no other purpose whatsoever", property went to county upon dissolution of town by operation of law, including appurtenant rights, privileges and duties, and whether county could use property for uses other than as a public park or picnic grounds would depend upon whether there was a condition subsequent or language was intended to be merely directory, a question of fact to be determined from all circumstances. Id.

Voting is restricted to freeholders on question of approval or disapproval of action of county board in declaring a township dissolved under this section, but all electors of a town, whether freeholders or not, may vote on question of dissolution at a special or annual town meeting. Op. Atty. Gen. (441B), Feb. 19, 1942.

Title to township land passes to state, which must hold it subject to same covenants as the town, such as condition that it be used for park purposes. Op. Atty. Gen. (441b), July 28, 1942.

Though deed to town for use as dock purposes provided for a reversion when land ceased to be used "by said town", the dock property was a public utility which passed to county on dissolution of town, provided county continued to maintain dock. Op. Atty. Gen. (441b), July 29, 1942.

Resolution must declare fact of dissolution, and dissolution is not automatic from simple finding of tax delinquency exceeding fifty per cent. Op. Atty. Gen. (441b), July 29, 1942.

State rather than county takes title to town property following a dissolution under this section. Op. Atty. Gen. (441b), July 29, 1942.

A judgment against a dissolved town is not an obligation of county, but it is possible that county officers may be compelled to levy tax against property in old town to pay it. Op. Atty. Gen. (441b), Aug. 21, 1942.

1002-3. Same—Distribution of funds.

On dissolution of township, road and bridge funds must be expended by county board for road and bridge improvements within limitations of township and cannot be transferred to telephone fund. Op. Atty. Gen. (355d-1), Apr. 22, 1941.

1002-9. Dissolution of townships.

All electors of a town, whether freeholders or not, may vote on question of dissolution at a special or annual town meeting as provided by this section, but only freeholders may vote to approve or disapprove action of a county board in declaring a township dissolved. Op. Atty. Gen. (441B), Feb. 19, 1942.

1002a. Cutting weeds and grass upon town roads.

Subdivision 1. The town board at the annual town meeting may submit to a vote by ballot the following question: "Shall persons owning or occupying real estate adjoining a town road and not a part of any incorporated municipality be required to cut or remove all weeds and grass growing upon the town road adjacent to their land? Yes— No—"

Subdivision 2. If a majority of the electors voting on such question shall vote "Yes," any person owning or occupying real estate adjoining a town road and not a part of any incorporated municipality, shall cut or remove all weeds or grass growing upon the town road adjacent to his land. Any person who erects or maintains a mailbox on land not owned by him, such person shall cut or remove all weeds or grass within five feet of such mail box. If any such person fails to comply with this provision, the town board of the town in which his real estate is located may, after ten days' notice in writing, order the local weed inspector or other person to cut or remove the weeds or grass, and

the expense thus incurred shall be a lien on such real estate. The town board shall certify to the county auditor an itemized statement of the amount of the expense paid by the township, and the county auditor shall enter such amount on the tax books as a tax upon the land, which shall be collected in the same manner as other real estate taxes; provided, however, that no expense paid by the township shall be charged against any land or certified to the county auditor where the right of way adjoining such land is not reasonably accessible to a horse drawn or power propelled mower. (Act Apr. 16, 1941, c. 246, §1.)

[366.015]

Act is constitutional. Op. Atty. Gen. (322g), Nov. 12, 1941.

1003. Certain towns to have certain powers of villages.

Compensation of officers in Minnetonka Township in Hennepin County. Op. Atty. Gen. (439b), June 17, 1941.

There is no statutory provision for filing of any qualifying certificate, and any certificate filed would be of no effect. Op. Atty. Gen. (434a-6), Apr. 16, 1942.

This section controls over Mason's St., §1004. Id. Powers conferred are exercised by enactment of proper ordinances and vote of people is unnecessary. Id. "A platted portion" includes total of platted areas within township, whether contiguous or not. Id.

1004. Towns having powers of villages of fourth class.

Mason's St., §1003, is controlling over this section. Op. Atty. Gen. (434a-6), Apr. 16, 1942.

1010. Procuring town hall.

A special town meeting to vote on buying of site for a town hall and on building a town hall may be called for day on which general election is to be held, but place of that meeting may not be in polls where general election is being conducted. Op. Atty. Gen. (185B-2), Oct. 16, 1940.

Property to be acquired as building site need not be described in detail on ballot. Id.

1011. Cemeteries.—When authorized by a vote of its electors, any town may acquire, by purchase or gift, land within its limits, to be used as a cemetery for the burial of its dead. The town board shall have control and management of every such cemetery, and may lay the same out into lots, streets, and walks, and cause plats and maps thereof to be made and filed in the office of the town clerk. If any such cemetery becomes separated from the town by being included in a village thereafter organized from its territory, it may be sold and conveyed by the town board to such village. When authorized by a vote of its electors at a town meeting the town may sell or lease any part of such cemetery to a charitable, religious, or cemetery corporation upon the terms and conditions expressed in such authorization, but the part so sold or leased shall continue to be used for the burial of the dead of the town. (As amended Act Apr. 16, 1943, c. 464, §1.)

1027-1. Fire protection and apparatus, etc.

Where several towns desire to enter into a contract with a city for fire protection, electors of each town should adopt a resolution at their annual town meeting and vote money to be raised for purpose. Op. Atty. Gen. (519e), Feb. 13, 1940.

Statute contemplates that electors shall annually vote amount of money to be raised for maintenance of fire apparatus purchased. Op. Atty. Gen. (688c-1), Feb. 23, 1940.

Special meeting may not be called for purpose of voting on question. Op. Atty. Gen., (434B-15), March 25, 1940.

No town board has authority to enter into a town contract obligating it to expend a greater sum of money than is in township treasury plus taxes actually levied and in process of collection, although a town may raise revenue by issuance of orders, which may be stamped "Not Paid" and which bear interest from date stamped, or the issuance of bonds. Op. Atty. Gen., (688c-1), March 25, 1940.

Proposal to authorize town board to provide general fire protection is not required to be determined by ballot and therefore need not be specified in notice of annual town meeting, but matter of an appropriation for the purpose must be determined by ballot and proposal must be shown in notice of meeting. Op. Atty. Gen. (618K), Feb. 10, 1941.

Power of electors extends only to authorizing town board to provide fire protection and vote an appropriation, and authority to determine in what manner fire protection shall be provided is vested solely in town board. Id.

*Fire protection must be the real and primary purpose of purchasing water service or installing a well. Op. Atty. Gen. (916b), Nov. 28, 1941.

A tax levy for fire protection purposes may be had at a special town meeting only in towns "having platted lands the assessed valuation of which is 50% or more of the total assessed valuation of the lands of such town". Op. Atty. Gen. (5190), June 3, 1943.

Question of providing fire protection, purchasing fire apparatus and determining the amount of money to be raised may be considered only at the annual town meeting. Id.

1027-3. Same—Adjacent towns.

By authorizing pooling of amounts raised by towns legislature did not intend to permit departure from established method of paying claims against a township upon verified and allowed claims. Op. Atty. Gen. (916-B), Mar. 31, 1942.

1027-4. Tax levy—Contracts with adjacent city or village.—Whenever the electors of any town shall have authorized the providing of fire protection and/or for apparatus therefor and determined the amount of money to be raised for that purpose, the town board may levy a tax for the amount so authorized or for such lesser amount as the board may determine to be necessary, and may enter into a contract with the county in which the town is located or with any adjacent city or village for the furnishing of such fire protection within the limits of town and/or for the care, maintenance and operation of such apparatus, on such terms and conditions as mutually may be agreed upon. (As amended Act Apr. 10, 1943, c. 389, §1.)

Town board may not donate any sum to a village toward purchase of a fire truck, but town board upon previously granted authority of electors may enter into contract with village for furnishing fire protection to town and pay consideration therefor. Op. Atty. Gen. (688k), March 14, 1940.

A town may levy a tax in excess of \$600 per year under a contract with a city for fire protection. Op. Atty. Gen. (916B), Oct. 2, 1940.

1027-5. Same—Other laws not affected; etc.

Limit of \$500 on yearly expenditures for forest fire protection, pursuant to §4031-11, is not a limitation on expenditures for general fire protection. Op. Atty. Gen. (916B), Oct. 21, 1940.

1027-9. Same—Powers granted to be exercised only at town meeting.

Section does not have effect of authorizing a tax levy for fire protection purposes at a special town meeting as to town generally, but only as to town "having platted lands the assessed valuation of which is 50% or more of the total assessed valuation of the lands of such town". Op. Atty. Gen. (5190), June 3, 1943.

TOWN MEETINGS

1029. Annual meeting. [Repealed.]

Repealed. Laws 1939, c. 345.
Reenacted as 601-11(1)a.

1031. Special meetings. [Repealed.]

Repealed. Laws 1939, c. 345.
Reenacted as 601-11(1)b.

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 money 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 meet-

ings 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 \$12.00. They may select and designate a bank as the depository of town money 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 money 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. (As amended Act Apr. 16, 1941, c. 247, §1.)

Town boards of certain towns having population in excess of 6,000 are empowered to print and distribute to electors at annual town meetings copies of town's annual financial statement, as approved by town board of audit. Act Apr. 16, 1941, c. 262, §1.

Town board may by resolution adopt calendar year as fiscal year and require town officers to keep their reports on that basis. Op. Atty. Gen. (353a-3), Jan. 11, 1940.

Services rendered by township supervisors as members of national draft registration board are voluntary and uncompensated unless federal government otherwise provides, and may not be made basis of claims against township. Op. Atty. Gen. (437a), Oct. 17, 1940.

Offices of village recorder and town clerk are not incompatible. Op. Atty. Gen. (358E-7), Mar. 6, 1941.

Township supervisor cannot hire one of their own members to check gravel on roadwork and pay him a salary, even though voters at annual meeting voted to pay supervisor. Op. Atty. Gen. (437a-4), Mar. 27, 1941.

Where member of town board is absent and will not be present when it meets as board of audit, and town has no justice of the peace, remaining two members constitute a quorum and may perform duties of the board. Op. Atty. Gen. (437b-1), March 1, 1943.

1049-6. Application of act.—This act shall apply to 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 money and credits, of more than \$10,000,000. (Act Apr. 25, 1941, c. 446, §1.)

1049-7. Telephone lines—Sale or lease.—The board of supervisors of such towns is empowered to lease, sell or otherwise dispose of the town telephone lines of any such town upon the terms and conditions as the board may agree. (Act Apr. 25, 1941, c. 446, §2.)

1049-8. Validation of expenditures and contracts.—All expenditures made and all contracts heretofore entered into by the board of supervisors of any such town are hereby legalized and made valid obligations of such towns. (Act Apr. 25, 1941, c. 446, §3.)

1053. May transfer funds.

On dissolution of township, road and bridge funds must be expended by county board for road and bridge improvements within limitations of township and cannot be transferred to telephone fund. Op. Atty. Gen. (355d-1), Apr. 22, 1941.

Surplus in town fire fund may not be transferred to road and bridge fund in which there is a deficiency. Op. Atty. Gen. (916B), Jan. 23, 1942.

Moneys received by a town from tax-forfeited land fund go into general fund of town and must first be used for payment of indebtedness, and where there is no existing indebtedness town may transfer part of fund to road and bridge fund. Op. Atty. Gen. (442a-23), June 6, 1942.

BOARD OF AUDIT

1055. How constituted—Meetings.

There is no statutory provision determining fiscal year of township, but custom has developed of regarding fiscal year as extending from March to March. Op. Atty. Gen. (353a-3), Jan. 11, 1940.

Public examiner has power to recommend that townships use calendar year as their fiscal year. Id.

Absence of chairman of town board in Canada or Alaska without abandonment of residence does not create a vacancy and board of audit may call in justice of the peace as substitute. Op. Atty. Gen. (437b-1), March 1, 1943.

Where member of town board is absent and will not be present when it meets as board of audit, and town has no justice of the peace, remaining two members constitute a quorum and may perform duties of the board. Op. Atty. Gen. (437b-1), March 1, 1943.

1056. Duties.

Services rendered by township supervisors as members of national draft registration board are voluntary and uncompensated unless federal government otherwise provides, and may not be made basis of claims against township. Op. Atty. Gen. (437a), Oct. 17, 1940.

(2).

By authorizing pooling of taxes by towns for joint fire protection legislature did not intend to depart from established method of expenditure upon verified and allowed claims. Op. Atty. Gen. (916B), Mar. 31, 1942.

1057. Report posted and read.

There is no authority for printing financial statement at township expense. Op. Atty. Gen. (442a-3), Mar. 24, 1941.

1060. Not to be issued until affidavit filed.

Where county auditor issued a county warrant to treasurer of school district and enclosed it in a letter, which treasurer did not receive, such treasurer cannot obtain a duplicate warrant without complying with this section. Op. Atty. Gen. (107A-8), Jan. 12, 1942; Jan. 15, 1942.

TOWN CLERK

1064. Duties.

There is no authority for printing financial statement at township expense. Op. Atty. Gen. (442a-3), Mar. 24, 1941.

1065. Office in certain villages.

Mere incorporation of an area within a township as a village does not automatically affect a separation of such area from town, but separation must be voted on, and until there is such a vote town clerk residing in village may continue to act as town clerk. Op. Atty. Gen. (440f), June 10, 1940.

TOWN TREASURER

1068. Duties.

Offices of village recorder and town clerk are not incompatible. Op. Atty. Gen. (358E-7), Mar. 6, 1941.

There is no authority for printing financial statement at township expense. Op. Atty. Gen. (442a-3), Mar. 24, 1941.

(1).

By authorizing pooling of taxes by towns for joint fire protection legislature did not intend to depart from established method of expenditure upon verified and allowed claims. Op. Atty. Gen. (916B), Mar. 31, 1942.

1070. To pay audited accounts.

Town board has no authority to take up a large number of outstanding warrants drawing interest at rate of 6% and issue in exchange therefor one warrant for sum total which will draw interest at rate of 4%. Op. Atty. Gen. (442B-8), March 1, 1940.

1071. Order of payment—Rate of interest.—Town orders shall bear interest at the rate of not to exceed five per cent from the date when presented to the treasurer for payment, and shall be paid in the order in which they are registered, out of the first money that comes into the treasurer's hands for that purpose. (As amended Apr. 1, 1943, c. 254, §1.)

Town board can enter into written agreement that town order will bear interest at rate of four per cent, and orders may carry notation to that effect. Op. Atty. Gen., (442B-6), Sept. 28, 1939.

Town board may not redeem part of an outstanding warrant. Op. Atty. Gen. (442B-2), Jan. 13, 1940.

Town orders bear interest from date when presented and 6% is the maximum rate which may be paid, and town board may enter into an agreement that orders shall bear a less rate of interest and orders may carry notation to that effect. Op. Atty. Gen. (442a-21), Apr. 1, 1941.

Orders which were issued and presented prior to April 2, 1943, will bear interest at the rate of 6%, and orders presented on or after such date will bear interest at not to exceed 5%, but county board should adopt a resolution declaring the rate of interest that its orders will bear after presentation. Op. Atty. Gen. (442b-5), June 2, 1943.

1073. Fees.

Treasurer of village organized under 1905 Act is to be paid same fees as a town treasurer, and is entitled to 2% of a loan received from the state to pay outstanding warrants, subject to maximum yearly compensation of \$100. Op. Atty. Gen. (456f), Aug. 23, 1940.

Compensation of officers in Minnetonka Township in Hennepin County. Op. Atty. Gen. (439b), June 17, 1941.

GENERAL PROVISIONS

1074-11. Vacancies.

A vacancy in office of town assessor should be filled by appointment by town board, appointee to hold office until next annual town meeting, whether falling in an even or odd numbered year, and at that meeting a successor should be chosen for balance of unexpired term, and at first town meeting held in an odd numbered year thereafter an assessor should be elected for a full two-year term. Op. Atty. Gen. (12C-4), Mar. 2, 1942.

1075. Town and village assessors. [Repealed.]

Repealed. Laws 1939, c. 345.

Notwithstanding this section, assessor in Mountain Iron, and other villages falling within the class described by Laws 1925, chapter 4, is to be elected every year. Op. Atty. Gen., (12B-2), Nov. 8, 1939.

1081-1. County boards may appoint justices and constables in certain unorganized territory.—In any county in this state, having no organized townships or 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 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. (As amended Act Apr. 15, 1941, c. 234, §1.)

1086. Vacancies.

Where one after election as town clerk fails to qualify within time required by law, a vacancy results to be filled by appointment until next annual town meeting, at which time a successor may be elected for balance of unexpired term. Op. Atty. Gen., (436p), April 30, 1940.

In case of vacancy in town office it is for town supervisors to say whether there shall be a special election or whether they shall fill vacancy by appointment. Op. Atty. Gen. (437-2-21), Jan. 10, 1941.

Failure of a town officer elect to file his oath and bond within ten days after notice of election is deemed a refusal to serve and a vacancy exists which may be filled by appointment until next annual town meeting. Op. Atty. Gen. (12c-4), Apr. 19, 1941.

Where there is vacancy in offices of two of three town supervisors, they may be filled by appointment by one remaining supervisor and town clerk or by a special town meeting. Op. Atty. Gen. (437A-21), Aug. 19, 1941.

Town assessor permanently moving from township creates a vacancy, which should be filled by appointment by town board until next annual town meeting at which time a successor should be elected for balance of unexpired term. Op. Atty. Gen. (12C-4), Feb. 26, 1942.

A vacancy in office of town assessor should be filled by appointment by town board, appointee to hold office until next annual town meeting, whether falling in an even or odd numbered year, and at that meeting a successor should be chosen for balance of unexpired term, and at first town meeting held in an odd numbered year thereafter an assessor should be elected for a full two-year term. Op. Atty. Gen. (12C-4), Mar. 2, 1942.

Where town assessor moved from township, and town board failed to elect a successor, it should appoint a resident of the town to fill the vacancy. Op. Atty. Gen. (12c-2), Apr. 29, 1943.

1089. Compensation; per diem, mileage; annual basis; certain towns; fees; etc.

Compensation of town clerk is \$3.00 per day and mileage, and clerk is not subject to \$90.00 limitation. Op. Atty. Gen., (436c), March 15, 1940.

Township supervisor cannot hire one of their own members to check gravel on roadwork and pay him a salary, even though voters at annual meeting voted to pay supervisor. Op. Atty. Gen. (437a-4), Mar. 27, 1941.

In absence of a special statute there is no authority for appointment of deputy assessors payable out of township funds. Op. Atty. Gen. (439b), June 17, 1941.

Compensation of officers in Minnetonka Township in Hennepin County. Id.

Compensation of a village assessor in a village organized under the 1905 act is governed by this section, and assessor may be paid on a per diem and mileage basis or on a salary basis without mileage, and when paid on a per diem basis compensation may not be more than \$4 a day regardless of number of hours devoted to official duty. Op. Atty. Gen. (12b-1), July 16, 1941.

Village council may fix one figure for assessor's salary in odd numbered years, and another figure for his salary in even numbered years, provided it does not exceed \$240.00 annually. Id.

A town supervisor who is a physician and who has been designated as local health officer can draw compensation as health officer in addition to maximum pro-

vided for a member of town board, but a town supervisor who is not local health officer is not entitled to additional compensation for health services performed by him, and compensation to supervisors for acting as members of local health board may be paid out of general township funds, while compensation to local health officers should be paid out of health fund if town has one. Op. Atty. Gen. (2251-4), Apr. 21, 1942.

Members of city board of equalization of Winona are not entitled to compensation over and above their yearly official salaries. Op. Atty. Gen. (406c), Aug. 24, 1942.

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

(2). Resolution that supervisors of town be allowed maximum allowed by law for coming year was sufficient to fix salaries of supervisors at \$35.00 a month, and of chairman at \$50.00 a month, without separately setting out each monthly salary of each member. Op. Atty. Gen. (437A-3), Mar. 14, 1942.

1089-4. Salaries of Clerk, Treasurer and Assessor in certain towns.—In all towns now or hereafter having an assessed valuation of over \$10,000,000, and a population according to the last Federal or State census of over 10,000 inhabitants, including the residents of any village that may be a part of said town for election purposes, the town board shall fix a monthly salary to be paid by the town to the clerk, treasurer and assessor, in lieu of the amounts otherwise provided by law to be paid by the town, but the compensation so fixed shall in the case of clerk, treasurer or assessor not exceed the salary now permitted by Laws 1919, Chapter 191 to the chairman of the town board of any such town. (As amended Mar. 26, 1943, c. 190, §1.)

1092. Pounds.

Where lands were annexed to city of Austin by resolution adopted by city council on July 21, and filed for records with register of deeds and county auditor on Sept. 9, county auditor should tax annexed lands in the township and not the city, except that special assessments should be listed in political subdivision of which land was a part at time of levy, notwithstanding that levy of taxes in the city is made during month of October. Op. Atty. Gen., (59a-1), Sept. 27, 1939.

1093. Town charges.

Special police officers appointed by judges of election are to receive \$.20 per hour service rendered by direction of judges, and regular peace officer who attends to keep quiet and order at a polling place during a general election should be paid such compensation as may be fixed by village council, and this applies to village constables as special services, including 1885 villages, and compensation of township constables attending at an election should be fixed by town board, and there is no requirement that compensation allowed peace officers at elections shall be uniform throughout county. Op. Atty. Gen. (185a-5), Dec. 14, 1942.

1096. Officers—Contracts.

Town clerk may not enter into a contract with town board to do road dragging, even though sealed bids are submitted and he is lowest bidder. Op. Atty. Gen., (90d), May 2, 1940.

Township supervisor cannot hire one of their own members to check gravel on roadwork and pay him a salary, even though voters at annual meeting voted to pay supervisor. Op. Atty. Gen. (437a-4), Mar. 27, 1941.

Member of town board cannot sell gravel to a contractor graveling a township road, though his gravel pit is the only suitable gravel for road purposes in the community. Op. Atty. Gen. (90D-4), Oct. 17, 1941.

Bookkeeper employed by a town is not within prohibition of this section, and it is doubtful that town would be entitled to a profit made by bookkeeper in purchasing town orders at a discount. Op. Atty. Gen. (90d-4), May 12, 1942.

Township supervisor should not serve as special peace officer at an election in the town, since this would place him in a position of having to audit and vote upon allowance of his own claim. Op. Atty. Gen. (185a-5), Sept. 24, 1942.

1098. Limit of debts, etc.

Town board has no authority to enter into a town contract obligating it to expend a greater sum of money than is in township treasury, plus taxes actually levied and in process of collection and taxes are not in process of collection until county treasurer has received tax list from county auditor. Op. Atty. Gen., (442a-21) Oct. 19, 1939.

1099. Separation from village.

Mere incorporation of an area within a township as a village does not automatically affect a separation of such area from town, but separation must be voted on,

and until there is such a vote town clerk residing in village may continue to act as town clerk. Op. Atty. Gen. (440f), June 10, 1940.

Provision in home rule charter retaining unseparated status of village from township for election and assessment purposes would be valid. Op. Atty. Gen. (580), Aug. 14, 1941.

1106. Filing claims—Demand.

Limitations does not begin to run on town orders until funds are available or should have been available in treasury for payment thereof. Op. Atty. Gen. (442b-9), Aug. 13, 1942.

1107. Judgments against towns.

Time for appeal having expired judgment for damages against town in favor of abutting owner on town road straightened out must be paid pursuant to this section. Op. Atty. Gen. (442a-15), May 19, 1941.

1108. Tax to pay judgment.

It is the duty of the town board, not the town meetings, to add to the tax levy the amount of a judgment against the town, and this may be enforced by mandamus. Op. Atty. Gen. (442a-15), Apr. 10, 1942.

1108-15a. Certain towns not to draw orders or warrants without money to pay same.—From and after January 1, 1942, no organized town 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 money and credits, of more than \$10,000,000, 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. 25, 1941, c. 447, §1.)

1108-15b. Determination of application of act.—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 1940 taxes of the town. (Act Apr. 25, 1941, c. 447, §2.)

1108-15c. Indebtedness in excess of limit to be personal claim against officials creating same.—Whenever, from and after January 1, 1942, 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 the 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. 25, 1941, c. 447, §3.)

1108-15d. May issue certificates of indebtedness.—At any time after January 1, following the making of an annual tax levy, the town board of such town may, for the purpose of meeting the obligations of the ensuing 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 the separate funds exceeding 60 per cent of the amount named in the tax levy as spread by the county auditor, to be collected for the use and benefit of the fund, and no certificate shall be issued to become due and payable later than December 31 of the year succeeding the year in which the tax levy certified to the county auditor as aforesaid, was made. (Act Apr. 25, 1941, c. 447, §4.)

1108-15e. Sale and requisites of certificates of indebtedness.—The certificates shall not be sold for less than par and accrued interest and shall not bear a greater rate of interest than six per cent annually. Each certificate shall state upon its face for which

fund proceeds of the certificate shall be used, the total amount of the certificates so issued, and the whole amount embraced in the tax levy for that particular purpose. They shall be numbered consecutively and be in the denominations of \$100.00 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. The certificates shall be paid from the money derived from the levy for the year against which the 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 the certificates shall be credited to the fund or funds for the calendar year immediately succeeding the making of the levy and shall not be used or spent until the 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. 25, 1941, c. 447, §5.)

1108-15f. Expenditures and contracts validated.—All expenditures made by any such town, all orders or warrants issued and payments made in payment of such expenditures and all contracts entered into prior to the date of this act are hereby legalized and made valid obligations of any such town. (Act Apr. 25, 1941, c. 447, §6.)

1108-15g. Transfer of surplus funds.—The board of supervisors of any such town, by the unanimous vote thereof, may transfer any surplus beyond the needs of the current year in any town fund to any other town fund to supply a deficiency therein. (Act Apr. 25, 1941, c. 447, §7.)

1108-15h. To be on cash basis after January 1, 1942.—From and after January 1, 1942, 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 1941 shall be considered as the tax revenues for the year 1942 and thereafter in any such town taxes shall be levied as now provided by law, but for the succeeding year. (Act Apr. 25, 1941, c. 447, §8.)

1108-15i. Bond issue to retire existing indebtedness.—If any such town, prior to January 1, 1941, had incurred by proper authority an indebtedness, excluding bonds, in excess of its cash on hand not specifically set aside for the retirement of bonds and interest thereon, the town may, for the purpose only of paying and discharging such indebtedness and interest thereon, issue its bonds in the manner now provided by law, except that the bonds may be issued on a vote of the town board thereof without a vote of the electors of the town; provided, that bonds issued for that purpose shall be payable in annual installments as nearly equal in amount as conveniently may be, the first of which installment shall be due in not more than three years from the date of the issue and the last of which installment shall be due in not more than 18 years from the date of issue, and provided, further, that if the town board wishes to dispose of its bonds to private purchasers, the sale shall be conducted pursuant to the provisions of Mason's Minnesota Statutes of 1927, Chapter 1943. (Act Apr. 25, 1941, c. 447, §9.)

1108-15j. Bond issue to reimburse certain funds.—If any money received from taxes levied in 1940 and payable in 1941, or income from local sources received since January 1, 1941, has been used prior to the passage of this act for the retirement of indebtedness existing January 1, 1941, such bond issue may in-

clude the amount of the payments for the purpose of reimbursing the funds from which such money was so paid. (Act Apr. 25, 1941, c. 447, §10.)

1108-15k. Tax levy to retire bonds.—The town board of any 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 the bonds are paid in full, of a direct annual tax in an amount sufficient to pay the principal and interest thereof when and as such principal and interest become due. The tax levy shall be irrevocable until all of the bonds are paid. The annual tax for the payment of the bonds shall be derived from two sources: (a) 22 per cent of the amount necessary to pay said funding bonds and interest and no more shall be levied as a special tax in addition to the annual tax levy now permitted in said town, under the provisions of Laws 1935, Chapter 133, and other laws, and: (b) 78 per cent of the amount necessary to pay said funding bonds and interest shall be raised by annual tax levies which shall be within the limitations provided by Laws 1935, Chapter 133, and other laws, upon the tax levies of said town. (Act Apr. 25, 1941, c. 447, §11.)

1108-15l. Violation of act 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 \$100.00, 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 the town; nor shall the board of the 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. 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, unless he shall have caused his dissent therefrom to be entered upon the minutes of the meeting. (Act Apr. 25, 1941, c. 447, §12.)

1108-15m. Contracts—manner of letting.—All contracts involving an expenditure of \$500.00 or more, if not to be paid from the road or poll tax, shall be let to the lowest responsible bidder, after public notice of ten days, posted in the three most public places in the town, or published for two weeks in a newspaper generally circulated in the town, of the time and place of receiving bids. Provided, in case of special emergency, amounts in excess of \$500.00 may be expended without such notice being given. (Act Apr. 25, 1941, c. 447, §13.)

1108-15n. 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. 25, 1941, c. 447, §14.)

1108-15o. Separability clause.—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. 25, 1941, c. 447, §15.)

1108-15p. Definitions.—The term "township" as used herein shall mean an area whether larger or smaller than a congressional township which has been heretofore organized as a corporate town. (Act Apr. 24, 1943, c. 598, §1.)

[368.59]

1108-15q. What are distressed townships.—Subdivision 1. Any township which has outstanding a total bonded, warrant, judgment, and floating indebtedness exceeding 40 per cent of the assessed value of the real property upon which taxes for the year 1941 were paid during 1942 shall be deemed to be a distressed township under the provisions of this act.

Subd. 2. The term "private debt" as used herein shall mean all outstanding indebtedness, including interest, of every kind and nature of a distressed township, except such indebtedness evidenced by bonds or otherwise as may be now or hereafter due to the State of Minnesota, or any governmental subdivision or agency thereof. (Act Apr. 24, 1943, c. 598, §2.)
[368.59]

1108-15r. Appropriation for distressed townships.—The sum of \$60,000, or so much thereof as may be necessary, is hereby appropriated out of the general revenue fund in the state treasury to the Executive Council for the purposes of this act to be available for the biennium ending on June 30, 1945. (Act Apr. 24, 1943, c. 598, §3.)
[368.59]

1108-15s. Town board to make applications.—The town board of any distressed township may make application for the payment of its private debt out of the moneys herein appropriated, provided, that the persons to whom at least 90 per cent of the private debt of the township is due and payable shall first agree in writing to accept as payment in full of all private debt due and payable to them 25 per cent of the total amount of such indebtedness. Such application shall be made by resolution containing an itemized statement of all of the indebtedness of the distressed township showing the date and amount of each item thereof, for what purpose it was incurred, and the rate of interest thereof, the payee, if known, the place of payment, and such other data or information as to the financial affairs of the township as the Executive Council may require, and shall be accompanied by a certificate of the county auditor showing the assessed valuation of all the real property in the township, the bonded indebtedness and such other information as the Executive Council may deem necessary, and by agreements, in form approved by the attorney general, executed by the several creditors to whom is due and payable at least 90 per cent of the private debt of the township as provided above, releasing the distressed township from all claim for the indebtedness due them respectively upon payment of 25 per cent of the amount thereof. (Act Apr. 24, 1943, c. 598, §4.)
[368.59]

1108-15t. Dissolved townships.—In event the town organization of any distressed township shall have been dissolved then the county board of the county in which such township is located shall make application in the same manner as herein provided for the town board. (Act Apr. 24, 1943, c. 598, §5.)
[368.59]

1108-15u. Executive council to make payments.—Upon the filing of said application and the determination by the Executive Council that the township is qualified for relief hereunder, the Executive Council is authorized to make payment of so much of the private debt of the township as may be paid in full by the payment of 25 per cent of the amount thereof, provided that the town board shall have filed with the Executive Council executed agreements as provided in Section 4 hereof. (Act Apr. 24, 1943, c. 598, §6.)

1108-31. Certain towns may establish sewage system, sewer districts, etc.

A village within a town and assessed by town may not be considered a part of the town under this section. Op. Atty. Gen., (387G), Oct. 12, 1939.

1108-36. Same—District sewer; special assessments.

Although school district is not liable for a special assessment, and an assessment would not be a lien upon the property, it may pay part of cost of construction of a new sewer and sewage disposal plant to extent that it is benefited thereby. Op. Atty. Gen. (387f-1), Jan. 31, 1941.

1108-56. Same—Town may bear part of cost of sewer system.

Act Apr. 10, 1941, c. 186, §1, amends Laws 1939, c. 187, §1, by authorizing the board of supervisors in any town of this state bordering on any city of the first, second, or third class to regulate construction of buildings and make zoning regulations.

Act Apr. 22, 1941, c. 362, applicable to counties having populations of over 450,000, authorizes the electors of any town within such county to zone the town or parts thereof and make general building regulations for such town or district.

Laws 1943, c. 494, §1, 2, amends Laws 1939, c. 187, §33, 4.

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 system of waterworks and 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. Such board of supervisors may enter into any contract with any city or village located therein or adjacent thereto for the care, maintenance, and operation of such waterworks, sewage disposal plant, and sewers on such terms and conditions as mutually may be agreed upon. (As amended Act Apr. 14, 1941, c. 225, §1.)

Act Apr. 14, 1941, c. 225, §4, amends the title to Laws 1939, Chapter 287 to read as follows:

An act to authorize the board of supervisors of certain towns to construct waterworks, sewers and sewage disposal plants; to pay therefor from the general revenue funds of such towns or in case such funds are insufficient, to issue and sell bonds not to exceed \$131,000 for that purpose and to validated contracts and bonds heretofore executed.

Act authorizes towns to make necessary repairs and replacements in water works system if necessary to efficient operation of sewage disposal plant. Op. Atty. Gen., (387g-9), Oct. 26, 1939.

1108-58. Payment of cost—Bonds—Interest.

See §§1108-60 and 1108-61.

A bond election is not necessary and it is not necessary to advertise for bids when bonds are to be sold to the state, and town funds may be legally used to construct a sewer which will benefit only a portion of population. Op. Atty. Gen., (43B-7), May 16, 1940.

1108-59. Tax levy to retire bonds.

See §§1108-60 and 1108-61.

1108-60. Form of bonds.—All bonds issued under the authority of Mason's Supplement 1940, Sections 1108-57 to 1108-62, inclusive, as amended, 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 Mason's Supplement 1940, Sections 1108-57 to 1108-62, inclusive, as amended, and at such times as may be determined by said board of supervisors of such town, provided that such bonds shall be payable not more than 25 years after the date of their issue; provided further, the total principal amount of bonds issued hereunder shall not exceed \$131,000. (As amended Act Apr. 14, 1941, c. 225, §2.)

1108-61. Proceedings to be used for purposes enumerated.—The proceeds of any and all bonds issued and sold under the authority of Mason's Supplement 1940, Sections 1108-57 to 1108-62, inclusive, as amended, shall be used for the purposes hereinbefore enumerated. All contracts heretofore entered into by any such town board, all expenditures made, and

all bonds issued under the provisions of Mason's Supplement 1940, Sections 1108-57 to 1108-62, inclusive, are hereby legalized and made valid obligations of such towns. (As amended Act Apr. 14, 1941, c. 225, §3.)

1108-62. Powers additional.
See §§1108-60 and 1108-61.

1108-63. Certain town boards may adopt zoning regulations.—Question of zoning may be submitted to vote.—The board of supervisors of any town in this state located within a county having a population of more than 450,000 inhabitants and an assessed valuation in 1935, exclusive of money and credits, of over \$280,000,000, and the board of supervisors in any town of this state bordering on any city of the first, second or third class, is hereby authorized and empowered to submit to the legal voters of such town for their approval or rejection at any annual town meeting or at any special town meeting called for that purpose, the question as to whether or not such board shall adopt building and zoning regulations and restrictions in such township. (Act Apr. 10, 1939, c. 187, §1, as amended Apr. 10, 1941, c. 186, §1.) [366.10]

1108-64. Same—Ballots.—There shall be printed on the ballots for said election the following: "Shall the board of supervisors adopt building and zoning regulations and restrictions?"

Yes	
No	

The voters shall place a cross mark in one of the above squares to express their choice. The ballot shall be cast and counted during the same hours and in the same manner as ballots for the election of town officers of such township, and except as herein expressly provided, such meeting and said election shall be subject to all the laws of this state regulating town meetings and elections of town officers in such town. Act Apr. 10, 1939, c. 187, §2.) [366.11]

1108-65. Same—Regulations.—If 70 per cent or more of the voters voting on such question vote "Yes", said board shall be authorized and empowered to regulate the location, height, bulk, number of stories, size of buildings and other structures, the location of roads and schools, the percentage of lot which may be occupied, the sizes of yards and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residences, recreation, public activities or other purposes, and the uses of lands for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, or other purposes, and to carry out the provisions of this grant shall issue building permits, and it shall be unlawful to erect, establish, alter, enlarge, use, occupy or maintain any building, structure, improvement or premises without first having obtained such permit. This section is subject to the provisions and limitations of Section 4 of this act. (Act Apr. 10, 1939, c. 187, §3, as amended Apr. 19, 1943, c. 494, §3.) [366.12]

1108-66. May establish zoning district.—For any or all of said purposes the board of supervisors of any such towns where a majority of the legal voters voting thereon have voted "Yes" at such an election, may divide the portions of any towns into districts or zones of such number, shape and area as may be deemed best suited to carry out the purpose of this act, and within such districts or zones it may regulate and restrict the location, height, bulk, number of stories, size of buildings and other structures, the location of roads and schools, the percentage of lot which may be occupied, the sizes of yards and other open spaces, the density and distribution of population, the uses of

buildings and structures for trade, industry, residences, recreation, public activities or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation or other purposes. All such regulations shall be uniform for each class and kind of buildings and for the use of land throughout each district, but the regulations in one district may differ from those in other districts. Provided, however, no such board of supervisors may make any regulation prohibiting the erection, establishment, alteration, enlargement, use, occupancy or maintenance of any landing area or airport as defined by the act of Congress known as the Civil Aeronautics Act of 1938, owned by any municipality, political subdivision, or public corporation created in and for any two or more municipalities, the operation and use of which has been approved by the Minnesota Aeronautics Commission or by the Civil Aeronautics Authority of the United States, nor shall any permit under the provisions of this act be required for any such erection, establishment, alteration, enlargement, use, occupancy or maintenance. Any regulations heretofore made by any board of supervisors prohibiting such erection, establishment, alteration, enlargement, use, occupancy or maintenance of airports are hereby abrogated and annulled. (Act Apr. 10, 1939, c. 187, §4; amended Apr. 19, 1943, c. 186, §4.) [366.13]

1108-67. Purpose of regulations.—Such regulations shall be made in accordance with the comprehensive plan, designed and enacted for the purpose of promoting the health, morals, convenience, order, prosperity or welfare of the present and future inhabitants of any such towns, including among other things lessening congestion in streets or roads or reducing the wastes of excessive amounts of roads; securing safety from fire and other dangers; providing adequate light and air; preventing, on the one hand, excessive concentration of population and on the other hand, excessive and wasteful scattering of population or settlement; promoting such distribution of population and such classification of land uses and distribution of land development and utilization as will tend to facilitate and conserve provisions for transportation, water flowage, water supply, drainage, sanitation, educational opportunities, recreation, soil fertility, food supplies and protection of both urban and non-urban development. (Act Apr. 10, 1939, c. 187, §5.) [366.14]

1108-68. May amend districts or zones.—The board of supervisors of any such town where 70 per cent or more of the legal voters voting thereon have voted "Yes" at such election, may from time to time amend the number, shape, boundary or area of any district or zone, or any regulation of area within such zone, or any provision of the zoning resolution. Before finally adopting any such amendment, the board of supervisors shall hold a public hearing thereon after giving at least 30 days' notice of the time and place of said hearing, which notice shall be given by at least one publication in a newspaper of general circulation in the county in which such town is located; provided that no such change shall be made in the boundary line of zones or districts unless at least 50 per cent of the owners of the lands proposed to be changed shall file a petition for such change. (Act Apr. 10, 1939, c. 187, §6.) [366.15]

1108-69. May appoint town building commissioner.—The board of supervisors of any such town where the majority of legal voters voting thereon have voted "Yes" at such an election, may enforce these regulations by withholding building permits and for such purposes may establish and fill the position of town building commissioner, and may fix the compensation attached to such position. In case any building

or structure is or is proposed to be erected, constructed, reconstructed, altered or used or any land is or is proposed to be used in violation of this act or of any regulation or provision enacted or adopted by the board of supervisors of any town under the authority granted by this act and such election, such board, the attorney of the county wherein such town is situated, the town attorney, the town building commissioner or any adjacent or neighboring property owner may institute an injunction, mandamus, abatement or any appropriate actions to prevent or enjoin, abate or remove such unlawful erection, constructions, reconstruction, alteration, maintenance or use. (Act Apr. 10, 1939, c. 187, §7.) [366.16]

1108-70. May establish planning and zoning commission.—For the purpose of carrying out the provisions of this act, the board of supervisors of any such town where the majority of legal voters voting thereon have voted "Yes" at such election, may appoint a planning and zoning commission, all of whom shall be

freeholders; the number of such commissioners to be determined by the board. Such planning and zoning commission shall act as an adviser to such town board, and such commission may be empowered to employ a civil engineer or city planner as may be required for establishing the districts or zones of any parts of such towns. (Act Apr. 10, 1939, c. 187, §8.) [366.17]

1108-71. May not change existing buildings.—The zoning resolution as adopted by the board of supervisors of any such town or as subsequently amended shall not prohibit the continuance of the use of a building for any trade or industry for which such building was used at the time such resolution took effect or the alteration of or addition to any existing building or structure for the purpose of carrying on any prohibited trade or industry within the zone where such structures are located. (Act Apr. 10, 1939, c. 187, §9.) [366.18]

CHAPTER 9

Villages and Cities

1109. Villages and boroughs. [Repealed.]

Op. Atty. Gen. (396g-16), Apr. 1, 1942; note under §1201. Laws 1885, c. 145, has been repealed, but is still applicable to all villages which continue to operate under it. Op. Atty. Gen. (234b), May 27, 1941.

1110. Relinquishment of charter—Procedure—Reincorporation.—Any borough organized under special charter may relinquish the same, and thenceforth be governed as herein provided. The council or other governing body may propose such relinquishment by a resolution ordering a special election thereon, or ordering such proposition to be submitted at the annual borough election. Notice of such special election, and the conduct thereof, shall be as prescribed by law for other special borough elections. If submitted at the annual borough election, the notice of such election shall contain a notice of the submission of such proposition. The ballots used shall bear the printed words, "For reincorporation—Yes—No" with a square after each of the last two words, in one of which the voter may insert a cross to express his choice. If a majority of the votes cast upon such proposition be in the affirmative, said governing body shall declare the result by resolution, a certified copy of which shall be filed with the county auditor, and another with the secretary of state. Thereupon the former charter shall cease, and the applicable provisions of this chapter be substituted therefor. But until after the election next ensuing, as herein provided, the officers of such former organization shall continue in the discharge of their official duties, being governed therein, so far as practicable, by this chapter. (As amended Mar. 15, 1943, c. 117, §2.)

Laws 1943, c. 117, §4, provides that any proceedings or action in any village affected by this section shall be completed under the laws begun.

Laws 1943, c. 117, §5, repealing certain special laws, does not operate as dissolution of any village incorporated under such special laws.

Village of Madelia first incorporated under Special Laws 1873, c. 3 and reincorporated under Laws 1883, c. 73, which was held unconstitutional, and validated by Laws 1885, c. 231, and therefor then being governed by Laws 1885, c. 145, is now governed by provisions applicable to villages incorporated under revised Laws of 1905, in view of Laws 1943, c. 117. Op. Atty. Gen. (471I), June 1, 1943.

Villages may not hold primary elections. Op. Atty. Gen. (472t), Oct. 21, 1943.

VILLAGES

1111. What territory may be incorporated.—Any district, section or parts of section not in any incorporated village, and in the state of Minnesota, which has been platted into lots and blocks, also the lands

adjacent thereto, when said plat has been duly and legally certified according to the laws of this state, and filed in the office of the register of deeds for the county in which said lands or the larger portion thereof lie, said territory containing a resident population of not more than 10,000 nor less than 100, may become incorporated as a village in the manner hereinafter prescribed. But the unplatted part of such territory must adjoin the platted portions and be so conditioned as properly to be subjected to village government. Provided, that any village, whose incorporation shall hereafter be declared void by judgment of court, may re-incorporate under this act, notwithstanding the fact that such village does not contain 100 inhabitants, and in such re-incorporation may include all or part of the territory embraced in the original incorporation; provided, however, that any district, section or parts of sections which has been platted into lots and blocks, as herein provided, and which is contiguous to the state line and having a population of not less than 50 inhabitants, may upon a petition of not less than ten voters, residents therein, become incorporated as a village in the manner hereinafter prescribed. (As amended Act Feb. 28, 1941, c. 39, §1.)

Where 396 inhabitants of a 40 acre platted townsite, in expectation of future return of mining industry to locality, have incorporated into village 14 other forties containing deserted mineral lands unlikely to be developed for many years, and it is a certainty that unbenefited mineral lands will stand substantially all costs of municipal improvement, village has not complied with requirement that includable unplatted areas be "so conditioned as properly to be subjected to village government". State v. Village of Leetonla, 210M404, 298NW717. See Dun. Dig. 6527.

Basically, whether particular village incorporation measures up to statutory test is one of fact for people concerned and their judgment is not likely to be ignored, but when facts clearly demonstrate that civic pride of incorporators has exceeded all bounds of practicable reason, it is duty of court to interfere. Id.

It is a fundamental requirement that the territory incorporated into a village be so conditioned as to be subjected properly to municipal government, and when this question is presented it is for the court to speak, and the facts appearing, no presumptions are to be indulged in favor of propriety of incorporation. State v. Village of North Pole, 213M297, 6NW(2d)458, following State ex rel. Hilton v. So-called "Village of Minnewashta," 165 M369, 373, 206NW455. See Dun. Dig. 6526, 8072.

In quo warranto instituted by attorney general evidence held to sustain finding that purported organization and incorporation of a village was null and void because territory incorporated was not so conditioned as to be subjected properly to municipal government, a matter which court may determine in quo warranto. Id. See Dun. Dig. 6526.

In quo warranto instituted by attorney general to test corporate existence of a newly organized village, pro-