

79

THE

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated
All General Laws of the State in Force December 31, 1894

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CHAPTER 10.

TOWNSHIP ORGANIZATION.

[TOWNS, CITIES, AND VILLAGES.]

1. Towns, §§ 914-1044.
2. Cities, §§ 1045-1195.
 - (2) Elections, §§ 1047-1060.
 - (3) Duties of Officers, §§ 1061-1082.
 - (4) Common Council—General Powers and Duties, §§ 1083-1097.
 - (5) Taxes, §§ 1098-1105.
 - (6) Opening and Vacating Streets, Alleys, etc., §§ 1106-1172.
 - (7) Fire Department, §§ 1173-1177.
 - (8) Street Grades and Sidewalks, §§ 1178-1183.
 - (9) Lighting of Streets—Supply of Water, §§ 1184-1186.
 - (10) Miscellaneous Provisions, §§ 1187-1195.
3. Certain Villages, §§ 1196-1275.
4. Villages of over Three Thousand Inhabitants, §§ 1276-1424.
 - (1) Formation, §§ 1276-1278.
 - (2) Officers and Elections, §§ 1279-1285.
 - (3) The Duties of Officers, §§ 1286-1294.
 - (4) The Village Council—Its General Powers and Duties, §§ 1295-1303.
 - (5) Of the Police, §§ 1309-1315.
 - (6) Fire Department, § 1316.
 - (7) Taxation and Bonds, §§ 1317-1321.
 - (8) Condemnation of Private Property for Public Use, §§ 1322-1336.
 - (9) Local Improvements and Special Assessments, §§ 1337-1353.
 - (10) Vacation of Streets, Avenues, and Alleys, §§ 1354-1356.
 - (11) Municipal Court, §§ 1357-1408.
 - (12) Miscellaneous Provisions, §§ 1409-1424.
5. Miscellaneous Provisions, §§ 1425-1507.
 - (1) Public Libraries and Reading-Rooms, §§ 1425-1434.
 - (2) Municipal Bonds for Public Buildings, §§ 1435-1440.
 - (3) Construction of Canals, etc., §§ 1441-1454.
 - (4) Employment Bureau, §§ 1455-1458.
 - (5) Board of Health, §§ 1459-1497.
 - (6) Process and Judgments, §§ 1498-1507.

[TITLE 1.]

[TOWNS.]¹

914 '05 . 143

914
99 - 46
99 - 197

914-1044
99 - 121
99 - 206
60-M - 206

914
01 - 152

915
95 . 9
95 . 227

§ 914. Town, how organized.

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

(G. S. 1866, c. 10, § 1; G. S. 1878, c. 10, § 1.)

§ 915. Fraction of township, how organized.

A fraction of a township may be attached by said commissioners to an adjoining town, or be divided between two or more towns, or organized separately, according to the wishes of a majority of the legal voters to be affected thereby; and when rivers or lakes or creeks so divide a township as to make it inconvenient to do town business, the said commissioners may dis-

¹By § 1029, post, nothing in this title shall apply in any way to any portion of the state embraced within the limits of any incorporated city, but such city shall have, in addition to its other powers, the powers conferred by this title upon towns.

pose of any fraction so formed by annexing the same to an adjoining township in the same county, if it shall seem to them proper, whenever petitioned to do so by not less than two-thirds of the legal voters residing in such fraction; and the fact that any such petition is so signed by two-thirds of such voters may be proved by the affidavit of any legal voter residing in such fraction, having knowledge of the fact; and any township having two or more villages or cities, each containing two hundred or more inhabitants, may petition the county commissioners for a division; and whenever the county commissioners are so petitioned, they may, if they think the interest of such town will be subserved thereby, proceed to divide such townships in such manner as will best suit the convenience of the state; provided, however, that at least twenty days' notice shall first be given by the county commissioners to the chairman of the board of supervisors of each township affected by the change, before action is taken thereon; provided, further, that nothing herein contained shall be construed to release any property in or belonging to that part of any township so detached, from any tax levied or assessed prior to such division being made; provided, that the part or portion of any town annexed to any other town, and any village or city separated from any town under the provisions of this act, shall not be released from, or in any way discharged from, the payment of any bonded or other indebtedness that may exist against the town from which separation has been made.

(G. S. 1866, c. 10, § 2, as amended 1875, c. 36, § 1; G. S. 1878, c. 10, § 2.)

See note to § 681, ante.

§ 916. Towns, how named.

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

(G. S. 1866, c. 10, § 3; G. S. 1878, c. 10, § 3.)

§ 917. County commissioners to give notice of first town meeting.

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

(G. S. 1866, c. 10, § 4; G. S. 1878, c. 10, § 4.)

§ 918. County auditor to send abstract of report to state auditor.

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

(G. S. 1866, c. 10, § 5; G. S. 1878, c. 10, § 5.)

§ 919. Proceedings when two towns have same name.

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

(G. S. 1866, c. 10, § 6; G. S. 1878, c. 10, § 6.)

§ 920. Boundaries of towns to remain as now.

The limits and boundary lines of every organized township shall remain as now established, until otherwise provided by the board of county commissioners under the authority of law.

(G. S. 1866, c. 10, § 7; G. S. 1878, c. 10, § 7.)

§ 921. Towns heretofore organized—Action legalized.

That all townships in this state heretofore organized or attempted to be organized, under the general laws of this state and now exercising the powers of bodies corporate, are hereby legalized as towns with all the powers, franchises and liabilities of such bodies corporate as provided by chapter ten of the general laws of one thousand eight hundred and seventy-eight and subsequent laws of this state, with their boundaries as now actually organized, whether the same comprise one or more congressional townships, or fractional part or parts thereof; and all the acts performed by any officer or officers of such town or towns within the scope of the laws of this state, are hereby legalized. Provided, that nothing herein contained shall in any way affect any action or proceeding now pending.

(1889, c. 176, § 1.7)

§ 922. Powers.

Each town is a body corporate, and has capacity—

First. To sue and be sued.

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

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

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

(G. S. 1866, c. 10, § 8; G. S. 1878, c. 10, § 8.)

§ 923. Relating to the title of burial lots.

The title to every lot or piece of land which shall have been used by the inhabitants of any town or village in this state as a cemetery or public burying-ground for the space of ten years, shall be deemed vested in such town or village, and shall be subject, in the same manner as other corporate property of towns or villages, to the government and direction of the same: provided, nothing herein contained be construed to apply to any lot or piece of ground used as a burying-ground, the title to which is vested, by deed or otherwise, in any cemetery association: provided also, that the provisions of this act shall not apply to or in any way affect the title to any tract or parcel of land now or hereafter [heretofore] occupied for a burying-ground, situated or lying within the corporate limits of the city of Stillwater.

(1872, c. 32, § 1; G. S. 1878, c. 10, § 9.)

§ 924. Limitation of powers.

No town shall possess or exercise any corporate powers except such as are enumerated in this chapter, or are especially given by law, or necessary to the exercise of the powers so enumerated or granted.

(G. S. 1866, c. 10, § 9; G. S. 1878, c. 10, § 10.)

§ 925. Proceedings to be in name of town.

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

(G. S. 1866, c. 10, § 10; G. S. 1878, c. 10, § 11.)

An action against P., I., and S., "supervisors of the town of Newport," is not an action against the town, but against them personally. The addition "supervisors," etc., is *descriptio personarum*. *Holton v. Parker*, 13 Minn. 383, (Gil. 355.)

§ 926. By-laws, when to take effect.

No by-law made by any town shall take effect before the same is published by posting up copies thereof in three of the most public places in the town; and such by-laws duly made and so published are binding upon all persons

*"An act to legalize the organization of certain townships." Approved April 17, 1889.

922
95 - 255
59-NW 1050

922
97 - 28
97 - 248
97 - 296

922
99 - 71
99 - 227
99 - 264

923
99 - 340

coming within the limits of the town, as well as upon the inhabitants thereof, and shall remain in force until altered or repealed at some subsequent town meeting.

(G. S. 1866, c. 10, § 11; G. S. 1878, c. 10, § 12.)

§ 927. When annual town meeting to be held.

The citizens of the several towns of this state, qualified to vote at general elections, shall annually assemble and hold town meetings in their respective towns on the second Tuesday of March, at such place in each town as the electors thereof, at their annual town meetings, from time to time appoint; and notice of the time and place of holding such meetings shall be given by the town clerk, by posting up written or printed notices in three of the most public places in said town, at least ten days prior to said meeting: *provided*, that before any change of place of holding town meetings is made, notice of such contemplated change may be given by any member of the town board to the town clerk, who shall, in his regularly printed or written notices, as provided hereinabove, incorporate the special notice of the contemplated change of place of holding said town meeting.

(G. S. 1866, c. 10, § 12, as amended 1870, c. 99, § 1; G. S. 1878, c. 10, § 13; 1879, c. 47, § 1.)

§ 928. Three supervisors to be elected in each town.

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

(G. S. 1866, c. 10, § 13; G. S. 1878, c. 10, § 14.)

As to election of street commissioner in towns incorporated under special act of the legislature, see post, § 1220.

See *State v. Gurley*, 37 Minn. 475, 35 N. W. Rep. 179.

§ 929. Supervisors to be fence viewers.

The supervisors elected in every town are, by virtue of their office, fence viewers of such town.

(G. S. 1866, c. 10, § 14; G. S. 1878, c. 10, § 15.)

§ 930. Powers of electors at town meetings.

The electors of each town have power, at their annual town meeting—

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

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

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

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

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

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

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

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

927
07 - 239
927
99 - 59
927 '05 - 149

928-930
07 - 172
928
99 - 140
928 '05 - 70
'05 - 151

930
97 - 199
930-933
97 - 205
930
99 - 227
99 - 264
99 - 315
930
01 - 202

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

(G. S. 1866, c. 10, § 15, as amended 1869, c. 23, § 1; G. S. 1878, c. 10, § 16; 1887, c. 20.)

Subd. 6. This is in affirmance of the common-law rule in force in this state, that every man is bound to keep his cattle on his own land, and in the absence of action by the town, under such statute, it is as unlawful for cattle to be abroad in summer as in winter. *Locke v. First Div. St. P. & P. R. Co.*, 15 Minn. 350. (Gil. 233.)

See *Johnson v. Minneapolis & St. L. Ry. Co.*, 43 Minn. 207, 45 N. W. Rep. 152. As to fees and duties of pound masters, see § 1004, and note, post.

Subd. 9. Towns cannot levy taxes or issue bonds to indemnify persons for money paid by them as bounties to volunteers. *Cover v. Town of Baytown*, 12 Minn. 124, (Gil. 71.)

The town meeting levies the tax upon the district by determining the purposes for which taxes shall be levied at a particular time, and the amount of money to be raised therefor. *Libby v. Town of West St. Paul*, 14 Minn. 248; (Gil. 181, 184.)

As to the effect of non-compliance with the second proviso, see *Town of Clayton v. Town of Bennington*, 24 Minn. 14.

See *Bradish v. Lucken*, 38 Minn. 186, 190, 36 N. W. Rep. 454.

§ 931. Special town meeting, when held.

Special town meetings may be held for the purpose of electing town officers to fill any vacancies that occur, also for the purpose of transacting any other lawful business, whenever the supervisors, town clerk, and justices of the peace, or any two of them, together with at least twelve other freeholders of the town, file in the office of the town clerk a written statement that a special meeting is necessary to the interests of the town.

(G. S. 1866, c. 10, § 16; G. S. 1878, c. 10, § 17.)

The question whether the persons subscribing a written statement for a special town meeting are legally freeholders, is one of fact for the town clerk to determine, before giving notice of the meeting, and his decision is conclusive upon any town officer upon whom is imposed any act or duty consequent upon the result of such meeting. *State v. Supervisors Town of Lime*, 23 Minn. 521.

§ 932. Town clerk to make record and post notices.

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

(G. S. 1866, c. 10, § 17; G. S. 1878, c. 10, § 18.)

After such special meeting has been held, pursuant to notice given by the town clerk the requisite length of time, it will be presumed that such notice was properly posted, and in the requisite number of places, in the absence of any clear proof to the contrary. *State v. Town of Lime*, 23 Minn. 521.

§ 933. Contents of notice.

Every notice given for a special town meeting shall specify the purpose for which it is to be held, and no other business shall be transacted at such meeting than such as is specified in such notice. If vacancies in office are to be filled at such meeting, the notices shall specify in what office vacancies exist,

how they occurred, who was the last incumbent, and when the legal term of each office expires.

(G. S. 1866, c. 10, § 18; G. S. 1878, c. 10, § 19.)

§ 934. Town meeting, how organized.

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

(G. S. 1866, c. 10, § 19; G. S. 1878, c. 10, § 20.)

§ 935. Business, how transacted.

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

(G. S. 1866, c. 10, § 20; G. S. 1878, c. 10, § 21.)

§ 936. Challenges, how regulated.

If any person offering to vote at any election, or upon any question arising at such town meeting, is challenged as unqualified, the judges of the town meeting shall proceed thereupon in like manner as the judges at the general election are required to proceed, adapting the oath to the circumstances of the town meeting.

(G. S. 1866, c. 10, § 21; G. S. 1878, c. 10, § 22.)

See ante, § 102.

§ 937. Qualifications of voters.

No person is a voter at any town meeting unless he is qualified to vote at general elections, and has been, for the last ten days, an actual resident of the town wherein he offers to vote.

(G. S. 1866, c. 10, § 22; G. S. 1878, c. 10, § 23.)

§ 938. Minutes of town meeting to be filed.

The minutes of the proceedings of every town meeting, subscribed by the clerk of said meeting, and by the judges, shall be filed in the office of the town clerk, within two days after such town meeting.

(G. S. 1866, c. 10, § 23; G. S. 1878, c. 10, § 24.)

§ 939. Proclamation of opening of polls, etc.

Before the electors proceed to elect any town officer, proclamation shall be made of the opening of the polls, by the moderator, and proclamation shall, in like manner, be made of the adjournment, and of the opening and closing of the polls, until the election is ended.

(G. S. 1866, c. 10, § 24; G. S. 1878, c. 10, § 25.)

§ 940. Officers, how elected.

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

(G. S. 1866, c. 10, § 25; G. S. 1878, c. 10, § 26.)

§ 941. Restraining cattle—Votes must be by ballot.

All votes regulating the time and manner of running at large of cattle, horses, mules, asses and sheep, within the several towns of the state of Minnesota, shall be by ballot, either printed or written, or partly printed and partly written, and shall be in these words: "In favor of restraining cattle," or "Against restraining cattle," and shall be placed in the same ballot box with the votes cast for town officers, and be canvassed and returned in the same manner in which other ballots are now required to be canvassed and returned.

(1877, c. 133, § 1; G. S. 1878, c. 10, § 27.)

§ 942. Names voted for to be on one ballot.

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

(G. S. 1866, c. 10, § 26; G. S. 1878, c. 10, § 28.)

§ 943. Poll-list to be kept.

When the election is by ballot, a poll-list shall be kept by the clerk of the meeting, on which shall be entered the name of each person whose vote is received.

(G. S. 1866, c. 10, § 27; G. S. 1878, c. 10, § 29.)

§ 944. Judge to deposit ballots in box.

When the election is by ballot, one of the judges shall deposit the ballots in a box provided for that purpose.

(G. S. 1866, c. 10, § 28; G. S. 1878, c. 10, § 30.)

§ 945. Canvass of votes to be public.

At the close of every election by ballot, the judges shall proceed publicly to canvass the votes, which canvass, when commenced, shall continue without adjournment or interruption, until the same is completed.

(G. S. 1866, c. 10, § 29; G. S. 1878, c. 10, § 31.)

§ 946. Manner of making canvass.

The canvass shall be conducted by taking a ballot at a time from the ballot-box, and counting until the number of ballots is equal to the number of names on the poll-list; and if there are any left in the box, they shall be immediately destroyed; and the person having the greatest number of votes for any office shall be declared duly elected: provided, that if two or more persons have an equal and the highest number of votes for any office, the judges of election shall at once publicly, by lot, determine who of such persons shall be declared elected. If, on opening the ballots, two or more ballots are found to be so folded that it is apparent that the same person voted them, the board shall destroy such votes immediately.

(G. S. 1866, c. 10, § 30, as amended 1876, c. 76, § 1; G. S. 1878, c. 10, § 32.)

§ 947. Result of canvass to be read to meeting.

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

(G. S. 1866, c. 10, § 31; G. S. 1878, c. 10, § 33.)

§ 948. Persons elected to be notified.

The clerk of every town meeting, within ten days thereafter, shall transmit to each person elected to any town office, whose name is not entered on the poll-list as a voter, notice of his election.

(G. S. 1866, c. 10, § 32; G. S. 1878, c. 10, § 34.)

§ 949. Who are eligible to town offices.

Every person qualified to vote at town meetings, is eligible to any town office.

(G. S. 1866, c. 10, § 33; G. S. 1878, c. 10, § 35.)

§ 950. Officers to take oath.

Every person elected or appointed to the office of supervisor, town clerk, assessor, treasurer, or constable, within ten days after he is notified of his election or appointment, shall take and subscribe, before the town clerk or justice of the peace, an oath to support the constitution of the United States, and of the state of Minnesota, and faithfully to discharge the duties of his office (naming the same), to the best of his ability. Such oath shall be administered without fee, and certified by the officer before whom it was taken, with the date of taking the same.

(G. S. 1866, c. 10, § 34; G. S. 1878, c. 10, § 36.)

§ 951. Certificate of oath to be filed.

The person taking such oath shall immediately, and before entering upon the duties of his office, file the certificate of such oath in the office of the town clerk.

(G. S. 1866, c. 10, § 35; G. S. 1878, c. 10, § 37.)

§ 952. Effect of not filing oath or bond.

If any person elected or appointed to any town office, of whom an oath or bond is required, neglects to file the same within the time prescribed by law, such neglect shall be deemed a refusal to serve in such office.

(G. S. 1866, c. 10, § 36; G. S. 1878, c. 10, § 38.)

§ 953. Overseers of highways and pound masters to file notice of acceptance of office.

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

(G. S. 1866, c. 10, § 37; G. S. 1878, c. 10, § 39.)

§ 954. Treasurer to give bond.

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

(G. S. 1866, c. 10, § 38; G. S. 1878, c. 10, § 40.)

§ 955. Bond to be approved and filed.

The said chairman shall within six days thereafter, file such bond, with said approval indorsed thereon, in the office of the register of deeds, who shall record the same in a book provided for that purpose.

(G. S. 1866, c. 10, § 39; G. S. 1878, c. 10, § 41.)

§§ 948, 954, 955, cited. *State v. Town of Lime*, 23 Minn. 521, 525.

§ 956. Constables to take oath and give bond.

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

(G. S. 1866, c. 10, § 40; G. S. 1878, c. 10, § 42.)

See *Litchfield v. McDonald*, 35 Minn. 167, 23 N. W. Rep. 191.

957
66-NW 130

957
64-M - 52

§ 957. Justices to take oath and give bond.

Every person elected or appointed to the office of justice of the peace, shall, within ten days after receiving notice thereof, take and subscribe before any other officer duly authorized to administer oaths, an oath to support the constitution of the United States, and of the state of Minnesota, and faithfully and impartially to discharge the duties of his office, according to the best of his ability. He shall also execute a bond to the board of supervisors, with two or more sufficient sureties, to be approved by the chairman, in the penal sum of not less than five hundred dollars, nor more than one thousand dollars, conditioned for the faithful discharge of his official duties. Said chairman shall indorse thereon his approval of the sureties named in such bond, and such justice shall immediately file the same, together with his oath of office, duly certified, with the clerk of the district court of the proper county, for the benefit of any person aggrieved by the acts of said justice; and any person aggrieved may maintain an action on said bond in his own name against said justice and his sureties.

(G. S. 1866, c. 10, § 41; G. S. 1878, c. 10, § 43.)

§ 958. Effect of neglect to give bond.

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

(G. S. 1866, c. 10, § 42; G. S. 1878, c. 10, § 44.)

§ 959. Penalty for entering on duties before taking oath.

If any town officer who is required by law to take the oath of office, enters upon the duties of his office before taking such oath, he forfeits to such town the sum of fifty dollars.

(G. S. 1866, c. 10, § 43; G. S. 1878, c. 10, § 45.)

A justice elect who has not taken his oath of office has no authority to act as justice. He is liable to a penalty if he does so act. In re Arctander, 26 Minn. 25, 27, 1 N. W. Rep. 43.

§ 960. Town officers must not be interested in contracts.

No town officer shall become a party to or interested directly or indirectly, in any contract made by the board of which he may be a member; and every contract or payment voted for or made contrary to the provision of this section, is void, and any violation of this section, hereafter committed, shall be a malfeasance in office, which will subject the officer so offending to be removed from office.

(1877, c. 136, § 1; G. S. 1878, c. 10, § 46.)

§ 961. Term of office.

Town officers, except justices of the peace and constables, hold their offices for one year, and until others are elected or appointed in their places, and are qualified. The justices of the peace and constables shall hold their offices for two years, and until others are chosen and qualified.

(G. S. 1866, c. 10, § 44; G. S. 1878, c. 10, § 47.)

§ 962. Vacancies, how filled.

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

(G. S. 1866, c. 10, § 45; G. S. 1878, c. 10, § 48.)

§ 963. Vacancies in board of appointment, how filled.

Whenever a vacancy occurs, from any cause, in any of the offices enumerated in the foregoing section, composing the board of appointment for the appoint-

ment of town officers in case of vacancy, the remaining officers, of such appointing board, shall fill any vacancy thus occurring.

(G. S. 1866, c. 10, § 46; G. S. 1878, c. 10, § 49.)

The justices and supervisors can act under this section only when met together as a board. Every member has a right to notice of a meeting of the board; and if such notice be omitted, although a majority meet and concur in appointing to fill the vacancy, their action is illegal. *State v. Guiney*, 26 Minn. 313, 3 N. W. Rep. 377.

§ 964. County auditor to appoint assessors, when.

When any township assessor is elected, and fails or refuses to qualify to discharge the duties of his office, or if the electors of said township fail, from any reason whatever, to elect an assessor, and the town board of said township fails or refuses to appoint an assessor for said township on or before the first day of June of that year for which said assessor is to serve, then it shall be the duty of the county auditor to appoint an assessor for said township, who shall be a resident of said county.

(1872, c. 34, § 1; G. S. 1878, c. 10, § 50.)

§ 965. Proceedings when town fails to elect officers.

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

(G. S. 1866, c. 10, § 47; G. S. 1878, c. 10, § 51.)

§ 966. Disorganized township—Funds—Records—Acting town clerk.

When any town in this state has been heretofore organized, and town officers have been elected therein, who have exercised the functions and performed the duties of town officers, and there has been an attempt to disorganize the same, and there are no town officers therein, such town is hereby declared to be a disorganized congressional township for all purposes, and all funds and money belonging or due to such town, or held by any person for the use of the same, shall be at once turned over to the county treasurer of the county in which said town is situated, with all the books and records of the town showing the indebtedness of the same, and said county treasurer shall pay all such indebtedness, when satisfied of the correctness of the same, out of the fund so turned over to him, and, if there shall be a deficiency in said funds, he shall pay the deficiency out of the general fund of the county. The last acting town clerk of such town shall, at once, turn over to the register of deeds of said county all books, records and papers in his office, and said register of deeds shall be the acting town clerk for such disorganized town, and shall have full power and authority to do any and all acts that might be done by the town clerk thereof.

(1893, c. 162, § 1.3)

§ 967. Supervisors may accept resignations.

The board of supervisors of any town may, for sufficient cause shown to them, accept the resignation of any town officer in their town; and whenever

³An act to provide for the settlement of disorganized towns in this state. Approved March 31, 1893.

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they accept any such resignation, they shall forthwith give notice thereof to the town clerk.

(G. S. 1866, c. 10, § 48; G. S. 1878, c. 10, § 52.)

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§ 968. Powers and duties of supervisors.

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

(G. S. 1866, c. 10, § 49; G. S. 1878, c. 10, § 53.)

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§ 969. Supervisors to improve streets, when.

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

(G. S. 1866, c. 10, § 50; G. S. 1878, c. 10, § 54.)

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§ 970. To constitute board of health.

The town supervisors shall constitute a board of health, and within their respective towns shall have and exercise all the powers necessary for the preservation of the public health.

(G. S. 1866, c. 10, § 51; G. S. 1878, c. 10, § 55.)

01 - 106

See post, § 1459, as to town board of health.

§ 971. Board of health—Powers of.

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

(G. S. 1866, c. 10, § 52; G. S. 1878, c. 10, § 56.)

§ 972. Notice of regulations to be given.

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

(G. S. 1866, c. 10, § 53; G. S. 1878, c. 10, § 57.)

§ 973. Nuisances may be ordered to be removed.

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

(G. S. 1866, c. 10, § 54; G. S. 1878, c. 10, § 58.)

§ 974. Board may remove nuisance, when.

Whenever such owner or occupant shall not comply with such order of the board of health, said board may cause the said nuisance, source of filth, or cause of sickness, to be removed; and all expenses incurred thereby shall be paid by the said owner or occupant, or by such other person as has caused or permitted the same.

(G. S. 1866, c. 10, § 55; G. S. 1878, c. 10, § 59.)

§ 975. May examine buildings and vessels—Complaints.

Whenever the board of health thinks it necessary, for the preservation of the health of the inhabitants, to enter any building or vessel in their town,

for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint under oath to a justice of the peace of his town, stating the facts in the case so far as he has knowledge thereof.

(G. S. 1866, c. 10, § 56; G. S. 1878, c. 10, § 60.)

§ 976. Justice shall issue warrant on complaint.

Such justice shall thereupon issue a warrant, directed to the sheriff or any constable of the county, commanding him to take sufficient aid, and, being accompanied by two or more of the board of health, between the hours of sunrise and sunset, to repair to the place where such nuisance, source of filth, or cause of sickness complained of may be, and the same destroy, remove or prevent, under the direction of the members of such board of health.

(G. S. 1866, c. 10, § 57; G. S. 1878, c. 10, § 61.)

§ 977. Relating to contagious diseases.

When any person coming from abroad, or residing in any town or city within this state, is infected or lately has been infected with the smallpox or other contagious disease dangerous to the public health, the board of health of the town or city where such sick or infected person is, may immediately cause such person to be removed to a separate house, if it can be done without danger to his health, and shall provide for such person or persons, nurses, medical attendance, and other necessaries, which shall be a charge in favor of such town or city upon the person so provided for, his parents, guardian or master, if able, otherwise upon the county to which he belongs, or upon the state, if said person be a non-resident of the state.

(G. S. 1866, c. 10, § 58, as amended 1872, c. 60, § 1; G. S. 1878, c. 10, § 62.)

See, also, c. 101, tit. 3.

The liability of the county to which the sick person belongs for the expense of "nurses, medical attendance," etc., does not at all depend upon the fact that the town has paid or issued its orders for them. The fact that the town has *provided* them is all that is necessary to entitle it to present its claim to the county for allowance and payment. *Town of Montgomery v. County of Le Sueur*, 32 Minn. 532, 21 N. W. Rep. 718.

§ 978. Provision for infected person in case of danger by removal.

If such infected person cannot be removed without danger to his health, the board of health shall make provision, as directed in the preceding section, for such person, in the house where he may be; and, in such case, they may cause the persons in the neighborhood to be removed, and may take such other measures as they may deem necessary for the safety of the inhabitants.

(G. S. 1866, c. 10, § 59; G. S. 1878, c. 10, § 63.)

§ 979. Board shall provide hospital, when.

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

(G. S. 1866, c. 10, § 60; G. S. 1878, c. 10, § 64.)

§ 980. Supervisors shall bring action on official bonds.

The supervisors shall, by their name of office, prosecute, for the benefit of the town, all actions upon bonds given to them or their predecessors in office; and shall also sue for and collect all penalties and forfeitures, in respect to which no other provision is made, incurred by any officer or inhabitant of the town; and they shall have power, in like manner, to prosecute for any tres-

pass committed on any public inclosure or property belonging to the town, and shall pay all moneys collected under this section to the town treasurer.

(G. S. 1866, c. 10, § 61; G. S. 1878, c. 10, § 65.)

See *Holton v. Parker*, cited in note to § 925 of this chapter.

§ 981. Two supervisors a quorum.

Any two of the supervisors constitute a quorum for the performance of any duties required by law of the town supervisors, except when otherwise provided.

(G. S. 1866, c. 10, § 62; G. S. 1878, c. 10, § 66.)

Applied, *Grinager v. Town of Norway*, 33 Minn. 127, 130, 22 N. W. Rep. 174.

982 '05 98

§ 982. Town clerk to be custodian of books, etc.—May appoint deputy.

The town clerk shall have the custody of the record books and papers of the town, when no other provision is made by law, and he shall duly file and safely keep all certificates of oaths and other papers required by law to be filed in his office. He may at his discretion appoint a deputy town clerk, for whose acts he shall be responsible. Before any deputy town clerk shall enter upon the duties of his office, he shall take and subscribe the oath required by law, which oath shall be filed in the office of the clerk of the court.

(G. S. 1866, c. 10, § 63, as amended 1871, c. 73, § 1; G. S. 1878, c. 10, § 67.)

§ 983. Proceedings of town meeting to be recorded.

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

(G. S. 1866, c. 10, § 64; G. S. 1878, c. 10, § 68.)

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§ 984. Town clerk to take oath and give bond.

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

(G. S. 1866, c. 10, § 65; G. S. 1878, c. 10, § 69.)

§ 985. Name of constable to be sent to clerk of court.

Every town clerk, immediately after the qualification of any constable elected or appointed in his town, shall transmit to the clerk of the district court of the county the name of such constable.

(G. S. 1866, c. 10, § 66; G. S. 1878, c. 10, § 70.)

§ 986. Name of justice to be sent to clerk of court.

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

(G. S. 1866, c. 10, § 67; G. S. 1878, c. 10, § 71.)

§ 987. Penalty for neglect to make return.

If any town clerk willfully neglects to make such return, such omission is hereby declared a misdemeanor, and on conviction thereof, the person so offending shall be adjudged to pay a fine not exceeding ten dollars.

(G. S. 1866, c. 10, § 68; G. S. 1878, c. 10, § 72.)

MINNESOTA STATUTES 1894

Tit. 1.]

TOWNS.

§§ 988-994

§ 988. By-laws to be posted.

The town clerk shall post in three of the most public places in his town, copies of all by-laws made by such town, and shall make an entry in the town records of the time when, and the place where, such by-laws were posted.

(G. S. 1866, c. 10, § 69; G. S. 1878, c. 10, § 73.)

§ 989. Supervisors to audit accounts against town.

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

(G. S. 1866, c. 10, § 70; G. S. 1878, c. 10, § 74.)

See ante, § 687, providing that no account shall be audited, unless itemized.

§ 990. Town board to meet, when—Auditing accounts.

The town board shall meet annually on the Tuesday next preceding the annual town meeting to be held in said town, and at such other times as they deem necessary and expedient, for the purpose of auditing and settling all charges against said town, and they shall state on each account the amount allowed by them; but no allowance shall be made for any account which does not specifically state each item of the same and the nature thereof; and all unpaid accounts of town officers for services rendered since the last annual meeting of said board shall be presented to the town board at their annual meeting on the Tuesday next preceding the annual town meeting, to be audited as aforesaid.

(G. S. 1866, c. 10, § 71; G. S. 1878, c. 10, § 75; as amended 1891, c. 64, § 1.)

See *Tessier v. Town of Lake Pleasant* (Minn.) 58 N. W. Rep. 871.

§ 991. Shall audit accounts of town officers.

The said board shall, also, at their annual meeting in each year, examine and audit the accounts of the town treasurer for all moneys received and disbursed by him as such officer; and they shall audit the accounts of all other town officers who are authorized by law to receive or disburse any money of the town by virtue of their office.

(G. S. 1866, c. 10, § 72; G. S. 1878, c. 10, § 76.)

§ 992. Shall draw up fiscal report.

Such board shall draw up a report stating in detail the items of account audited and allowed since the last annual meeting, the nature of each account, and the name of the person to whom such account was allowed, the total amount audited and allowed to each township officer in payment for his services since their last annual meeting, including a statement of all the fiscal concerns of the town. As a part thereof said board shall make an estimate of the sum necessary for the current expenses thereof, the support of the poor, and other incidental expenses for the ensuing year.

(G. S. 1866, c. 10, § 73; G. S. 1878, c. 10, § 77; as amended 1891, c. 64, § 2.)

§ 993. Report shall be read.

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

(G. S. 1866, c. 10, § 74; G. S. 1878, c. 10, § 78.)

§ 994. Treasurer shall pay audited accounts.

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

(G. S. 1866, c. 10, § 75; G. S. 1878, c. 10, § 79.)

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§ 995. Record of unpaid town orders—Interest.

That each and every town treasurer in this state shall keep a suitable book, to be provided at the expense of the town, in which he shall enter the town orders that he cannot pay for want of funds when presented to him for payment, which orders, when presented, shall be indorsed by such treasurer by putting upon the back of the same [the] words: "Not paid for want of funds;" giving the date of such indorsement, signing the same as town treasurer; which orders, when so indorsed, shall bear interest from that date until paid.

(1881, c. 114, § 1; G. S. 1878, v. 2, c. 10, § 79a.)

§ 996. Order of payment.

That all town orders shall be paid in the order that they are registered, out of the first moneys that come into the town treasurer's hands for such purposes.

(1881, c. 114, § 2; G. S. 1878, v. 2, c. 10, § 79b.)

§ 997. Clerk of town board.

The town clerk shall be the clerk of the town board, and shall keep a true record of all their proceedings in his office.

(G. S. 1866, c. 10, § 76; G. S. 1878, c. 10, § 80.)

§ 998. Duties of treasurer.

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

(G. S. 1866, c. 10, § 77; G. S. 1878, c. 10, § 81.)

§ 999. Shall keep true account and deliver books to successor.

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

(G. S. 1866, c. 10, § 78; G. S. 1878, c. 10, § 82.)

§ 1000. Shall draw money from county treasurer—Fees.

The town treasurer shall from time to time draw from the county treasurer such moneys as have been received by the county treasurer for the use of his town, and, on receipt of such moneys, shall deliver proper vouchers therefor. Each town treasurer shall be allowed and entitled to retain two per centum of all moneys paid into the town treasury, for receiving, safe keeping, and paying over the same according to law; except such moneys as are appropriated for bounties to soldiers, of which he shall only be allowed to retain one per cent. Provided, however, that the compensation of said treasurer shall in no case exceed the sum of one hundred dollars in any one year.

(G. S. 1866, c. 10, § 79; G. S. 1878, c. 10, § 83; as amended 1889, c. 177, § 1.)

§ 1001. Shall make annual statement.

Each town treasurer, within five days preceding the annual town meeting, shall make out a statement in writing of the moneys by him received into the town treasury from the county treasurer, and from all other officers and persons, and also of all moneys paid out by him as such treasurer, in which statement he shall set forth particularly from whom and on what account such moneys were received by him, with the amount received from each offi-

cer or person, and the date of receiving the same, also to whom and for what purpose any moneys have been paid out by him, with the amount and date of each payment. He shall also state therein the amount of moneys remaining in his hands as treasurer. Such statement shall be filed by him in the office of the town clerk, and shall be by such clerk carefully preserved and recorded in the town book of records.

(G. S. 1866, c. 10, § 80; G. S. 1878, c. 10, § 84.)

§ 1002. Violation of four preceding sections—Penalty.

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

(G. S. 1866, c. 10, § 81; G. S. 1878, c. 10, § 85.)

§ 1003. Fees of town officers.

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

(G. S. 1866, c. 10, § 82; G. S. 1878, c. 10, § 86.)

§ 1004. Fees and duties of pound masters.

The pound master is allowed the following fees, to wit: For taking impound, and discharging therefrom, any horse, ass or mule, and all neat cattle, ten cents each. For every sheep or lamb, three cents each; and for every hog, large or small, five cents; and twenty cents for keeping each head twenty-four hours in pound. And the pound master has a lien on all such animals for the full amount of his legal charges and expenses, and shall be entitled to the possession of such animals until the same are paid; and if the same are not paid, and said animals removed, within four days after they are so impounded, the said pound master shall give notice, by posting the same in three of the most public places in said town, that said animals (describing them) are impounded, and that, unless the same are taken away and fees paid within fifteen days after the date of such notice, he will sell the same at public vendue, at the place where the town meetings of said town are usually held; and on the day designated in such notice the said pound master shall expose the said animals for sale, and sell the same to the highest bidder in cash, for which services he shall receive two per cent. of the purchase money for each animal. Out of the moneys realized from said sale, the said pound master shall deduct all his legal fees and charges, and pay the balance, if any, to the chairman of the town supervisors, at the same time giving to said supervisors an accurate description of the animal sold, and the amount received by him for each animal, and shall take a receipt and duplicate there-

for, and file one of them with the town clerk; provided, that the said supervisors shall at any time within six months, upon sufficient proof from the owner of any animal so sold, pay to said owner the balance due as received from the said pound master; but if said money is not claimed within that time, then the sum so received shall be retained for the use of said town.

(G. S. 1866, c. 10, § 83; G. S. 1878, c. 10, § 87.)

This section governs proceedings under § 930, *supra*, (subd. 6,) and is not inconsistent with the provisions of G. S. 1878, c. 19, § 1, et c^a (§ 2080), in reference to estrays, or with §§ 2113, 2117, 2118, respecting the impounding of animals found doing damage. *Johnston v. Kirchoff*, 31 Minn. 451, 18 N. W. Rep. 315.

It is incumbent upon a party, claiming title to an animal under a pound-master's sale to show that it was liable to be impounded, and that the proceedings are authorized by law, in order to divest the owner's title. *Id.*

§ 1005. Actions between towns, how regulated.

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

(G. S. 1866, c. 10, § 84; G. S. 1878, c. 10, § 88.)

When an individual creditor may sue a town for his debt instead of being limited to the remedy by *mandamus*, see *Guilder v. Town of Otsego*, 20 Minn. 74, (Gil. 59.)

§ 1006. Actions—In what name brought.

In all such actions and proceedings the town shall sue and be sued by its name, except where town officers are authorized by law to sue in their name of office for the benefit of the town.

(G. S. 1866, c. 10, § 85; G. S. 1878, c. 10, § 89.)

See *Holton v. Parker*, cited in note to § 925.

§ 1007. Town shall plead, when.

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

(G. S. 1866, c. 10, § 86; G. S. 1878, c. 10, § 90.)

§ 1008. Papers in action, how served.

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

(G. S. 1866, c. 10, § 87; G. S. 1878, c. 10, § 91.)

§ 1009. Action before justice of peace.

No action in favor of any town shall be brought before any justice of the peace residing in such town.

(G. S. 1866, c. 10, § 88; G. S. 1878, c. 10, § 92.)

§ 1010. Action to recover penalty for trespass.

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

(G. S. 1866, c. 10, § 89; G. S. 1878, c. 10, § 93.)

1005
97 - 248

1005
75-NW 745
76-NW1029

§ 1011. Other actions, how regulated.

Whenever, by decree or decision in any action or proceeding brought to settle any controversy in relation to town commons or other lands, the common property of a town, or for the partition thereof, the rights of any town are settled and confirmed, the court in which such proceedings are had may partition such lands according to the right of parties.

(G. S. 1866, c. 10, § 90; G. S. 1878, c. 10, § 94.)

§ 1012. Judgment against town, how collected.

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

(G. S. 1866, c. 10, § 91; G. S. 1878, c. 10, § 95.)

§ 1013. Tax to be levied to pay judgment, when.

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

(G. S. 1866, c. 10, § 92; G. S. 1878, c. 10, § 96.)

§ 1014. Town to maintain guide posts.

Every township shall, in the manner provided herein, erect and maintain guide posts on the highways and other ways within the township, at such places as are necessary or convenient for the direction of travellers.

(G. S. 1866, c. 10, § 93; G. S. 1878, c. 10, § 97.)

§ 1015. Supervisors to make report of guide posts.

The supervisors shall submit to the electors, at every annual meeting, a report of all the places at which guide posts are erected and maintained within the town, and of all places at which, in their opinion, they ought to be erected and maintained. For each neglect or refusal to make such report, they shall severally forfeit the sum of ten dollars.

(G. S. 1866, c. 10, § 94; G. S. 1878, c. 10, § 98.)

§ 1016. Town to determine places where guide posts shall be erected.

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

(G. S. 1866, c. 10, § 95; G. S. 1878, c. 10, § 99.)

§ 1017. Guide posts, how erected and marked.

At each of the places determined by the town, there shall be a substantial post of not less than eight feet in height, near the upper end of which shall

MINNESOTA STATUTES 1894

§§ 1017-1024

TOWNSHIP ORGANIZATION.

[Ch. 10

be placed a board, and upon such board shall be plainly and legibly painted, or otherwise marked, the name of the next town or place, and such other town or place of note as the supervisors think proper, to which each of such roads lead, together with the distance or number of miles to the same; and also the figure of a hand with the forefinger thereof pointed towards the towns or places to which said roads lead: provided, that the inhabitants of any town, may, at their annual meeting, agree upon some suitable substitute for such guide posts.

(G. S. 1866, c. 10, § 96; G. S. 1878, c. 10, § 100.)

§ 1018. Penalty for neglect to maintain guide posts.

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

(G. S. 1866, c. 10, § 97; G. S. 1878, c. 10, § 101.)

§ 1019. Pounds to be under care of poundmasters.

Whenever the electors of any town determine at their annual meeting to erect one or more pounds therein, the same shall be under the care and direction of such poundmasters as are chosen or appointed for that purpose.

(G. S. 1866, c. 10, § 98; G. S. 1878, c. 10, § 102.)

See *Bradish v. Lucken*, 38 Minn. 186, 191, 36 N. W. Rep. 454.

§ 1020. Pounds may be discontinued.

The electors of any town may, at any annual town meeting, discontinue any pounds therein.

(G. S. 1866, c. 10, § 99; G. S. 1878, c. 10, § 103.)

§ 1021. What are town charges.

The following shall be deemed town charges:

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

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

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

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

(G. S. 1866, c. 10, § 100; G. S. 1878, c. 10, § 104.)

Cited, *Libby v. Town of West St. Paul*, 14 Minn. 248, 251, (Gil. 181, 184); *Bradish v. Lucken*, 38 Minn. 186, 190, 36 N. W. Rep. 454.

§ 1022. Money, how levied.

The moneys necessary to defray the town charges of each town shall be levied on the taxable property in such town, in the manner prescribed in the chapter for raising revenue and other money for state and county purposes and expenses.

(G. S. 1866, c. 10, § 101; G. S. 1878, c. 10, § 105.)

§ 1023. Successor to town officer to demand books, etc.

Whenever the term of any supervisor, town clerk or assessor expires, and another person is appointed or elected to such office, such successor, immediately after he enters upon the duties of his office, shall demand of his predecessor all books and papers under his control belonging to such office.

(G. S. 1866, c. 10, § 102; G. S. 1878, c. 10, § 106.)

§ 1024. Same—In case of vacancy.

Whenever either of the officers above named resigns, or the office becomes vacant in any way, and another person is elected or appointed in his stead, the

MINNESOTA STATUTES 1894

Tit. 1]

TOWNS.

§§ 1024-1030

person so elected shall make such demand of his predecessors or of any person having charge of such books and papers.

(G. S. 1866, c. 10, § 103; G. S. 1878, c. 10, § 107.)

§ 1025. Records, etc., to be delivered to successor.

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

(G. S. 1866, c. 10, § 104; G. S. 1878, c. 10, § 108.)

§ 1026. Same—In case of death of incumbent.

Upon the death of any of the officers enumerated, the successor of such officer shall make such demand as above provided, of the executors or administrators of such deceased officer, and such executors or administrators shall deliver, upon like oath, all records, books, papers, or moneys in their possession or under their control, belonging to the office held by their testator or intestate.

(G. S. 1866, c. 10, § 105; G. S. 1878, c. 10, § 109.)

§ 1027. Each town an election district.

Each town organized under this chapter, or any law heretofore in force, constitutes an election district.

(G. S. 1866, c. 10, § 106; G. S. 1878, c. 10, § 110.)

§ 1028. Limit of debts and outlays.

No town has power to contract debts or make expenditures for any one year in a larger sum than the amount of taxes assessed for such year, without having been authorized by a majority of the voters of such township; and no town shall assess for township purposes more than ten mills on the dollar of taxable property for any one year.

(G. S. 1866, c. 10, § 107, as amended 1869, c. 22, § 1; G. S. 1878, c. 10, § 111.)

No town can contract a debt for any one year, for a specified purpose, in any larger sum than the amount of taxes assessed for such year for such purpose. The assessment for township purposes is based upon the vote at the town meeting. *Evans v. Town of Stanton*, 23 Minn. 368, 370.

1028

95 254

§ 1029. Chapter not to apply to cities.

Nothing in this chapter contained shall in any way apply to any portion of the state which is embraced within the limits of any incorporated city; but each incorporated city shall have and exercise within its limits, in addition to its other powers, the same powers conferred by this chapter upon towns, in the manner prescribed by law.

(G. S. 1866, c. 10, § 108; G. S. 1878, c. 10, § 112.)

Word "town," when means "city," see *Odegaard v. City of Albert Lea*, 33 Minn. 351, 23 N. W. Rep. 526.

See *State v. Gurley*, 37 Minn. 475, 35 N. W. Rep. 179; *Bradish v. Lucken*, 38 Minn. 186, 189, 36 N. W. Rep. 454; *Wellcome v. Town of Monticello*, 41 Minn. 136, 138, 42 N. W. Rep. 930.

§ 1030. Public places to be designated—Posts.

At the annual town meeting in each year, the legal voters present at each meeting shall determine and designate three places in the town as public, or the most public places of such town, and that all legal notices required to be posted in three public, or the most public places of a town, shall be posted up at such places at least, and they shall make provision for the erection and maintenance of suitable posts, on which to post up notices [as] aforesaid, in all places so designated in which there is no sufficient natural convenience for that purpose.

(1873, c. 100, § 1; G. S. 1878, c. 10, § 113.)

This section does not apply to notice of a meeting of electors to decide upon the question of organizing a school-district. *State v. Sharp*, 27 Minn. 38, 43, 6 N. W. Rep. 408.

(271)

MINNESOTA STATUTES 1894

§§ 1031-1035

TOWNSHIP ORGANIZATION.

[Ch. 10

1031 '05 . 11

§ 1031. Authorized to issue bonds.

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

(1867, c. 31, § 1, as amended 1868, c. 50, § 1; G. S. 1878, c. 10, § 114.)

1031/1039 '05 . 64

§ 1032. Conditions as to bonds and their proceeds.

No bonds or orders issued under authority of this act shall be so issued or negotiated for less than par value, nor shall said bonds or orders, or the proceeds thereof, be used or appropriated for any purpose whatever other than that specified in this act.

(1867, c. 31, § 2; G. S. 1878, c. 10, § 115.)

§ 1033. Taxes for interest and sinking-fund.

Said board of supervisors, and their successors, are hereby authorized, and it is hereby made their duty, on or before the first day of September next after the date of said bonds or orders, and in each and every year thereafter, on or before the first day of September, until the payment of said bonds or orders and interest is fully provided for, to levy, and in due form to certify to the auditor of the county in which such town is situated, a tax upon the taxable property of said town, equal to the amount of principal and interest maturing next after such levy, and, in the discretion of said board of supervisors, such further sum as it shall deem expedient, not exceeding twenty per cent. of such maturing bonds or orders and interest, which taxes shall be payable in money, and shall constitute a fund for the payment of said bonds or orders and the interest thereon.

(1867, c. 31, § 3; G. S. 1878, c. 10, § 116.)

1034
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§ 1034. Authorized to issue refunding bonds or orders.

The board of supervisors of any organized township of this state, or township that may be hereafter organized, is hereby authorized and empowered to issue the bonds or orders of such town, with interest coupons attached, whenever authorized by a majority of the legal voters of said town, as hereinafter provided, for the purpose of refunding, or raising money with which to pay any outstanding bonds of such town, which shall have become due or payable, or are about to become due and payable before the moneys necessary for the payment of the same have been raised by taxation.

(1893, c. 163, § 1.4)

§ 1035. Conditions precedent to issue.

No bonds or orders shall be issued by virtue of this act, unless the proposition to issue the same shall be first submitted to a vote of the electors of said town, at an annual or duly called special town meeting, in the notice of which meeting notice shall have been given that the proposition to issue such bonds or orders, stating the amount and purpose for which the same are to be is-

⁴An act to authorize town supervisors to issue the bonds or orders of their respective towns, for the purpose of refunding or paying outstanding bonds of said towns, and regulating the issue and providing for the payment thereof. Approved March 14, 1893.

sued, and when to be made payable, will be submitted to a vote at such meeting; nor, unless a majority of the qualified electors of said town, voting upon such proposition, shall, by ballot, vote in favor of issuing the same.

(Id. § 2.)

§ 1036. Limit of issue and of use.

No more of said bonds or orders shall be issued by the board of supervisors than are necessary for the purpose for which they were authorized, nor shall any of said bonds or orders be appropriated to or used for any purpose whatever other than that for which they were authorized.

(Id. § 3.)

§ 1037. Other limitations.

No bonds or orders, issued by authority of this act, shall be issued or negotiated for less than their par value, nor bear interest at a rate exceeding seven per centum per annum, nor be made payable more than fifteen years after the date of their issue.

(Id. § 4.)

§ 1038. Register of bonds and orders to be kept.

Upon the issuing of any such bonds or orders, the town clerk of the town issuing the same shall immediately register the same in a book to be kept for that purpose, showing the date, amount, number, date of maturity and rate of interest of each of said bonds and orders, and to whom issued, and shall immediately thereafter transmit a certified copy of such registration to the county auditor of the county in which such town is situate, and the county auditor shall receive and file said copy in his office.

(Id. § 5.)

§ 1039. Duty of supervisors and of county auditor.

The board of supervisors of any town which shall issue its bonds or orders pursuant to the provisions of this act shall make provision for the payment of the principal and interest to become due thereupon, from year to year, in the manner provided by section one hundred and sixteen of chapter ten of the general statutes 1878, and all the provisions of said section one hundred and sixteen are hereby adopted and made applicable to the bonds and orders to be issued under and by authority of this act; and in case the said supervisors shall, in any year next preceding that in which any principal or interest is to become due on said bonds or orders, neglect to levy and certify the tax necessary to be levied for the payment of such principal and interest, or either of them, to become due during the next succeeding year, it shall be the duty of the county auditor of the proper county to levy such tax and extend the same upon the tax duplicate of said town for said preceding year.

(Id. § 6.)

§ 1040. Legalizing certain bonds.

That any orders or bonds, together with the coupons attached, issued within one year prior to the passage of this act by the board of supervisors of any organized town within this state, for the purpose of building and furnishing a town hall in their said town, in accordance with the authority conferred upon them by a vote by ballot of at least two-thirds of all of the legal voters of said town present and voting at any special town meeting of said town called for that purpose, due notice of said meeting having been duly given by posting copies of the notice of said meeting particularly specifying the objects for which the same was called, in three of the most public places in said town for at least ten days prior to the day of said meeting, be and the same are hereby fully legalized and validated, and all proceedings in reference to the issuance thereof had been had in conformity to law.

(1893, c. 164, § 1.5)

By § 2, this act shall not be held to apply to any pending action or proceeding.

⁵An act to legalize the town bonds or orders of any organized town within this state, issued for the purpose of building and furnishing a town hall for said town by the supervisors thereof, in accordance with the vote of at least two thirds of the legal voters of said town present and voting at any special town meeting of said town called for that purpose within one year prior to the passage of this act. Approved March 3, 1893.

MINNESOTA STATUTES 1894

§§ 1041-1045

TOWNSHIP ORGANIZATION.

[Ch. 10

§ 1041. Money collected on illegal bonds to form special fund.

In each and all cases where, prior to the passage of this act, any organized town of this state shall have recovered and collected by judicial proceedings any moneys from the present or former holders of instruments purporting to be the bonds of any such towns, upon the ground that such bonds were improperly or illegally issued by the officers of said towns, the money so collected shall in each case constitute a fund for the purposes of, and to be disposed of as specified in this act.

(1893, c. 165, § 1.6)

§ 1042. Same—Supervisors to refund taxes, when.

The board of supervisors of any such town is hereby authorized to repay out of such fund all taxes which have been levied and collected to satisfy any judgments for principal or interest which may have been rendered against such town prior to the collection of the money under the judicial proceedings mentioned in section one of this act, the amount of such fund to be ascertained and such repayment to be made as directed in this act.

(Id. § 2.)

§ 1043. Same—Fund to be set apart.

All moneys arising from the judicial proceedings specified in section one of this act and remaining in the treasuries of said towns after the costs and expenses of such judicial proceedings and all expenses incurred by various individual taxpayers in said towns in any legal proceeding to test the validity of said bonds shall have been paid, shall be set apart by said boards of supervisors, each for its respective town, as a separate fund for repayment of said taxes.

(Id. § 3.)

§ 1044. Same—Supervisors to ascertain the share of each taxpayer.

The boards of supervisors of said towns, after deducting from such fund an amount sufficient to defray all costs of distribution and repayment, shall immediately ascertain, each for its respective town, the share of such fund to which each taxpayer mentioned in this act is entitled. And when the share of each such taxpayer shall have been ascertained the boards of supervisors aforesaid shall draw orders on their respective town treasurers in favor of all the several such persons for the amounts to which each shall be entitled. Provided that such amount so allowed shall be considered as being payment in full of the amount to which each taxpayer is entitled, and no claim for a repayment of taxes mentioned in this act greater in amount than such as shall be allowed by said boards of supervisors shall be held or considered to be a valid claim against either of said towns. And provided further, that if any of said taxpayers shall fail or neglect to present claims for the amount to which he or they shall be entitled, within two years from the passage of this act, the said amount or amounts shall revert to the general fund of the town.

(Id. § 4.)

[TITLE 2.]

[CITIES.]¹

§ 1045. Cities, how organized—Notice of first election—Powers.

That cities may be organized within the limits of this state as herein provided. Whenever two-thirds of the legal voters residing within the limits of

¹An act authorizing towns to refund and repay money to tax-payers in certain cases. Approved February 17, 1893.

²An act to authorize the incorporation of cities. Approved March 5, 1870 (Laws 1870, c. 31).

(274)

1045	
01	- 50
01	- 61
01	- 75
01	- 79
01	- 93
01	- 120
01	- 134
01	- 139
01	- 141
01	- 151
01	- 154
01	- 175
01	- 176
01	- 188
01	- 191
01	- 195
01	- 199
01	- 226
01	- 308
01	- 379
81-NW	521
1045-1507	
95	8
1045-1195	
95	- 228
95	- 229
95	- 247
1045	
97	- 61
97	- 248
1045-1195	
69-NW	27
69-NW1094	
1045-1507	

1045	'05	. 58
	'05	. 100
	'05	. 103
	'05	. 105
	'05	. 121

MINNESOTA STATUTES 1894

Tit. 2]

CITIES.

§§. 1045-1046

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

(1870, c. 31, subc. 1, § 2, as amended 1871, c. 38, § 1; G. S. 1878, c. 10, § 124.)

The duty and power imposed and conferred on judges of probate by this section are not judicial, and the statute is not unconstitutional as conferring on probate courts, or the judges thereof, judicial power beyond that authorized by the constitution. *State v. Ueland*, 30 Minn. 29, 14 N. W. Rep. 58.

§ 1046. First city elections.

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

(1872, c. 91, § 1; G. S. 1878, c. 10, § 125.)

See ante, § 203, as to construction of general election law in city election.

1045.

99 - 52
99 - 127
99 - 310
99 - 356
96-M - 315
97-M - 379
99-M - 419
99-M - 499

1045-1194
99 - 275

1045-1195
99 - 271

1045-1507
72-NW 837
75-NW 224
78-NW 106

MINNESOTA STATUTES 1894

§§ 1047-1052

TOWNSHIP ORGANIZATION.

[Ch. 10

(2) ELECTIONS.

§ 1047. Annual election, when held—Manner of holding it.

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

(1870, c. 31, subc. 2, § 1; G. S. 1878, c. 10, § 126.)

See ante, § 203, as to construction of general election law in city elections.

1048
78-NW1029

§ 1048. To be divided into wards—Limitation.

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

(1870, c. 31, subc. 2, § 2; G. S. 1878, c. 10, § 127.)

§ 1049. Corporate name—Service of process.

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

(1870, c. 31, subc. 2, § 3; G. S. 1878, c. 10, § 128.)

§ 1050. Elective officers—Term of office.

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

(1870, c. 31, subc. 2, § 4; G. S. 1878, c. 10, § 129.)

§ 1051. Removal of officers—Declaring office vacant.

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

(1870, c. 31, subc. 2, § 5; G. S. 1878, c. 10, § 130.)

§ 1052. Vacancies, how filled.

Whenever a vacancy shall occur in the office of mayor or alderman, by death, removal, resignation, or otherwise, the common council shall have power, and it shall be their duty, to declare the office vacant, by resolution

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entered upon their minutes. Such vacancy shall be filled by a new election, which shall be ordered by the common council within ten days after said vacancy is declared, and held within twenty days after such declaration, and reasonable notice of such election shall be given. Any vacancy happening in any other office shall be filled by the common council, unless otherwise provided for. The person elected or appointed to fill a vacancy shall hold his office, and discharge the duties thereof, for the unexpired term, and with the same rights, and subject to the same liabilities, as the person whose office he may be elected or appointed to fill.

(1870, c. 31, subc. 2, § 6; G. S. 1878, c. 10, § 131.)

§ 1053. Elections shall be by ballot.

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

(1870, c. 31, subc. 2, § 7; G. S. 1878, c. 10, § 132.)

§ 1054. Who entitled to vote—Election districts—Returns.

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

(1870, c. 31, subc. 2, § 8; G. S. 1878, c. 10, § 133.)

That part of the section between parentheses () appears to be superseded by the general election law. See ante, §§ 8, 204, 205.

§ 1055. How elections to be conducted.

The elections in said city shall be held and conducted by the aldermen of each ward, and one other elector of each ward, to be appointed by the common council, who shall be inspectors of election, and shall take the usual oath or affirmation as prescribed by the general laws of the state to be taken by the judges and inspectors of elections, and shall have power to appoint clerks of such elections, and to administer the necessary oaths. Said elections shall be held and conducted in the same manner and under the same penalties, and vacancies in the board of inspectors thereof filled, as required by the laws of this state regarding elections: provided, that no candidate for office shall act as inspector or clerk at such election.

(1870, c. 31, subc. 2, § 9; G. S. 1878, c. 10, § 134.)

§ 1056. Inspectors—Canvass of votes—Notice of election.

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

(1870, c. 31, subc. 2, § 10; G. S. 1878, c. 10, § 135.)

MINNESOTA STATUTES 1894

§§ 1057-1062

TOWNSHIP ORGANIZATION.

[Ch. 10

§ 1057. Special elections.

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

(1870, c. 31, subc. 2, § 11; G. S. 1878, c. 10, § 136.)

§ 1058. When office deemed vacant.

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

(1870, c. 31, subc. 2, § 12; G. S. 1878, c. 10, § 137.)

§ 1059. When term of office to begin.

The term of every officer elected under this law shall commence on the second Tuesday of April for the year for which he was elected, and shall, unless otherwise provided, continue for one year and until his successor is elected and qualified.

(1870, c. 31, subc. 2, § 13; G. S. 1878, c. 10, § 138.)

§ 1060. When new election may be ordered.

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

(1870, c. 31, subc. 2, § 14; G. S. 1878, c. 10, § 139.)

(3) DUTIES OF OFFICERS.

§ 1061. Officers to give bonds—Penalty for refusal to give additional bonds.

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

(1870, c. 31, subc. 3, § 1; G. S. 1878, c. 10, § 140.)

§ 1062. Duties of mayor—To be the chief executive officer and head of the police.

The mayor shall take care that the laws of the state and the ordinances of the city are duly observed and enforced, and that all other executive officers of the city discharge their respective duties. He shall from time to time give the common council such information and recommend such measures as he may deem advantageous to the city. The mayor shall be the chief executive officer and head of the police of the city, and shall appoint such police officers and watchmen, except when otherwise provided for; and in case of a riot or other disturbances, he may appoint as many special or temporary constables as he may deem necessary; and any police officer or watchman, appointed by the mayor as aforesaid, may be discharged from office by him whenever in his opinion the welfare of the city may demand it, or a reduction of their number renders it necessary.

(1870, c. 31, subc. 3, § 2; G. S. 1878, c. 10, § 141.)

§ 1063. Mayor to sign all laws, etc.—Vetoos.

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

(1870, c. 31, subc. 3, § 3; G. S. 1878, c. 10, § 142.)

§ 1064. Officers of council.

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

(1870, c. 31, subc. 3, § 4; G. S. 1878, c. 10, § 143.)

§ 1065. Duties of recorder.

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

(1870, c. 31, subc. 3, § 5; G. S. 1878, c. 10, § 144.)

§ 1066. Reports of recorder.

It shall be the duty of the city recorder to report to the common council the financial condition of the city, whenever the common council shall require. He shall make and keep a list of outstanding city bonds, to whom issued, for what purpose, when and where payable, and the rate of interest they respectively bear, and recommend such action to the common council as will secure the punctual payment of the principal and interest of such bonds. He shall report annually, on or about the first day of April, to the common council, an estimate of the expenses of the city, and likewise the revenue necessary to be raised for the current year; and the fiscal year shall commence on the first day of April.

(1870, c. 31, subc. 3, § 6; G. S. 1878, c. 10, § 145.)

§ 1067. Further duties of recorder.

He shall make or cause to be made estimates of the expenses of any work to be done by the city, and countersign all contracts made in behalf of the

MINNESOTA STATUTES 1894

§§ 1067-1069

TOWNSHIP ORGANIZATION.

[Ch. 10

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

(1870, c. 31, subc. 3, § 7; G. S. 1878, c. 10, § 146.)

§ 1068. City attorney.

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

(1870, c. 31, subc. 3, § 8; G. S. 1878, c. 10, § 147.)

§ 1069. Duties of treasurer.

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

report to the common council at such times and in such manner as they may require.

(1870, c. 31, subc. 3, § 9; G. S. 1878, c. 10, § 148.)

§ 1070. Chief of police—Powers of police and watchmen.

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

(1870, c. 31, subc. 3, § 10; G. S. 1878, c. 10, § 149.)

A policeman appointed by the board of police commissioners of Minneapolis, "with police powers to preserve the peace and protect property within the limits known as 'justice court,' serving writs," had all the powers of a constable. *Oswald v. O'Brien*, 48 Minn. 333, 51 N. W. Rep. 220.

§ 1071. Process in criminal cases.

All warrants issued by city justices for the violation of any general laws of this state shall run to the sheriff or any constable of the county, or to the chief of police or any policeman of the city; but no chief of police or policeman or marshal, where he goes outside of the county to make an arrest, shall receive any fees therefor, unless the commissioners of the county are satisfied that a delay in obtaining the sheriff or his deputy, or a constable, to make the arrest, might endanger an escape. This act shall take effect and be in force from and after its passage; anything in the charter of the city of St. Paul or other city to the contrary notwithstanding.

(1872, c. 69, §§ 1, 2; G. S. 1878, c. 10, § 150.)

§ 1072. Street commissioner—Term of office—Duties—Bond.

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

(1870, c. 31, subc. 3, § 11; G. S. 1878, c. 10, § 151.)

§ 1073. Assessor—Duties—Term of office.

The common council shall, in the month of April in each year, elect an assessor, who shall be styled the city assessor, who shall perform all duties in relation to the assessing of property for the purpose of levying of all city, county and state taxes. And upon the completion of the assessment roll, he shall return the same to the common council, who may alter, revise and equalize the same, as they may deem it just and proper. Said city assessor shall hold his office for one year, and until his successor is elected and qualified.

(1870, c. 31, subc. 3, § 12; G. S. 1878, c. 10, § 152.)

1074

99 - 102

§ 1074. Jurisdiction of justices of the peace.

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

(1870, c. 31, subc. 3, § 13; G. S. 1878, c. 10, § 153.)

§ 1075. Justices' report to council—Fees.

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

(1870, c. 31, subc. 3, § 14; G. S. 1878, c. 10, § 154.)

§ 1076. Attendance of justices at their offices.

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

(1870, c. 31, subc. 3, § 15; G. S. 1878, c. 10, § 155.)

§ 1077. Taxation of costs by justices.

In all suits brought on behalf of said city for the recovery of any forfeiture, fine or penalty, in all cases arising on complaints for the violation of any ordinance, by-law or regulation of said city, and on complaints for assault, battery or affray, or other misdemeanor, or criminal offence not indictable, committed within said city, the said justices shall be authorized to tax, with the other legal costs, one dollar for each trial, for the benefit of said city; and their residence in said city shall not deprive them of jurisdiction of actions brought in favor of or against said city, when said actions are otherwise within the jurisdiction of a justice of the peace.

(1870, c. 31, subc. 3, § 16; G. S. 1878, c. 10, § 156.)

Tit. 2]

CITIES—DUTIES OF OFFICERS.

§§ 1078-1081

§ 1078. City surveyor—Duties—Plans, etc., to belong to the city.

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

(1870, c. 31, subc. 3, § 17; G. S. 1878, c. 10, § 157.)

§ 1079. City printing—Publication of ordinances, etc.—Evidence.

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

(1870, c. 31, subc. 3, § 18; G. S. 1878, c. 10, § 158.)

§ 1080. Delivery of books, etc., to successor in office.

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

(1870, c. 31, subc. 3, § 19; G. S. 1878, c. 10, § 159.)

§ 1081. Other duties of officers—Compensation—Contracts.

The common council shall have power at any time to require other and further duties to be performed by any officer whose duties are herein prescribed, not inconsistent with this act, and to appoint such other officers as may be necessary to carry into effect the provisions of this act, and to prescribe their duties, unless otherwise provided for; but no officer elected or appointed by the common council, or appointed by the mayor, as hereinbefore provided,

(283)

MINNESOTA STATUTES 1894

§§ 1081-1085

TOWNSHIP ORGANIZATION.

[Ch. 10

shall be appointed for a longer term than one year, and until his successor is elected or appointed and duly qualified. The common council shall have the power, unless herein otherwise provided, to fix the compensation of all officers elected or appointed under this act, and such compensation shall be fixed by resolution; and in regard to all offices created by this charter, the compensation shall be fixed within three months from the first organization and meeting of the common council; after the first year, the compensation of officers shall be fixed for the fiscal year in the month of April of each year, except for such offices as may hereafter be created, in regard to which the compensation shall be fixed at the time of the creation of such office; nor shall the compensation of any officer, after having been fixed, be increased or diminished during the term for which such officer was elected or appointed. No officer elected or appointed to office under the provisions of this charter shall be a party to or interested in any contract in which the city is interested, made while such officer is holding office: provided, that the mayor and aldermen shall receive no compensation for their services as such officers: (1870, c. 31, subc. 3, § 20; G. S. 1878, c. 10, § 160.)

§ 1082. Preserving the peace.

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

(1870, c. 31, subc. 3, § 21; G. S. 1878, c. 10, § 161.)

(4) COMMON COUNCIL—GENERAL POWERS AND DUTIES.

§ 1083. Style of ordinances—Meetings of council—Quorum.

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

(1870, c. 31, subc. 4, § 1; G. S. 1878, c. 10, § 162.)

This and the following sections in this group are substantially a transcript from the charter of St. Paul. State v. Lee, 29 Minn. 445, 457, 13 N. W. Rep. 913.

§ 1084. Meetings of council—Powers over members.

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

(1870, c. 31, subc. 4, § 2; G. S. 1878, c. 10, § 163.)

A meeting held at any other time than that fixed for a regular meeting under a resolution of the council, or for a special meeting under the call of the mayor, is a legal meeting, if all its members actually attend and participate in its proceedings, and it is otherwise regular. State v. Smith, 22 Minn. 218.

§ 1085. Powers of council—Finances—Licenses—Police regulations.

The common council shall have the management and control of the finances and all the property of the city, and shall likewise, in addition to the power herein vested in them, have full power and authority to make, enact, ordain, establish, publish, enforce, alter, modify, amend and repeal all such ordinan-

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MINNESOTA STATUTES 1894

Tit. 2] CITIES—COMMON COUNCIL, GENERAL POWERS. § 1085

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

First. To license amusements.

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

Second. To prohibit gaming, etc.

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

Third. To preserve the peace, etc.

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

Fourth. To abate nuisances.

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

Fifth. To regulate slaughter-houses, etc.

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

Sixth. To keep streets, etc., clear.

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

Seventh. To regulate driving, etc.

To prevent and punish immoderate driving or riding in the streets, to regulate [the speed of] cars and locomotives in said city, and to prevent their obstructing the streets of said city; to compel persons to fasten their horses or other animals attached to vehicles or otherwise, while standing

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97	68	99	1
97	108	99	1
97	181	99	2
97	182	99	24
97	187	99	2
97	218	99	2
97	227	99	2
97	246	99	2
97	255	99	2
97	275	99	3
97	296	99	3
97	301	99	3
97	335	99	3
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in the streets; and to regulate places of bathing and swimming in the waters within the limits of the city.

Eighth. To restrain cattle, etc.

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

Ninth. To tax dogs at large.

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

Tenth. Unsound meats, etc.

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

Eleventh. Pounds, waterworks, etc.

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

Twelfth. Boards of health, etc.

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

Thirteenth. Assize of bread.

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

Fourteenth. Sidewalks.

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

Fifteenth. Fire arms and fireworks.

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

Sixteenth. Drunkenness and obscenity.

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

Seventeenth. Runners.

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

Eighteenth. Public markets.

To establish public markets and other public buildings, and make rules and regulations for the government of the same: to appoint suitable officers for

overseeing and regulating such markets, and to restrain all persons from interrupting or interfering with the due observance of such rules and regulations.

Nineteenth. Butcher shops.

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

Twentieth. Hay, wood, lime, etc.

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

Twenty-first. Snow or rubbish on sidewalks, etc.

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

Twenty-second. Quarantine.

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

Twenty-third. Auctions.

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

Twenty-fourth. Watchmen and police.

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

Twenty-fifth. Weights and measures.

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

Twenty-sixth. Inspection of provisions.

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

Twenty-seventh. Shade trees.

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

Twenty-eighth. Nuisances injurious to health.

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

Twenty-ninth. Other nuisances.

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

Thirtieth. Public health—Quarantine.

To do all acts, and make all regulations, which may be necessary and expedient for the preservation of health, or the suppression of disease; and to

make regulations to prevent the introduction of contagious diseases into the city, and to make quarantine laws and enforce the same within the city.

Thirty-first. Vagrants and beggars.

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

Thirty-second. Punishment for violation of ordinances.

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

(1870, c. 31, subc. 4, § 3; G. S. 1878, c. 10, § 164.)

Subd. 2. As to control over liquor traffic, see State v. Deusting, 33 Minn. 103, 22 N. W. Rep. 442.

Subd. 6. That "encumbering" is used in the sense of "obstructing," see Fox v. City of Winona, 23 Minn. 10.

Subd. 19. This provision is within the power of the legislature to delegate to the municipality, and the amount of the license fee to be exacted by the city is within the discretion of the legislature. City of St. Paul v. Colter, 12 Minn. 41, (Gil. 16.)

§ 1086. Repayment of advances for improvements.

That the city council or common council, as the case may be, of any and all cities in the state of Minnesota is hereby authorized and empowered to reimburse and recompense any person or persons who have, prior to the passage of this act, advanced any money or moneys to any such city to pay for and be used in the construction of bridges, the grading or paving of streets or for the making of any other public improvement therein, under an agreement by the city to refund such money or moneys so advanced upon obtaining authority therefor from the legislature.

(1893, c. 203, § 1.⁵.)

§ 1087. Ordinances, how passed — Evidence — Appropriations.

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

(1870, c. 31; subc. 4, § 4; G. S. 1878, c. 10, § 165.)

§ 1088. Prosecution of nuisances.

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

⁵An act to authorize cities in the state of Minnesota to reimburse any person or persons who have advanced moneys to such cities to pay for and be used in making public improvements therein.

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MINNESOTA STATUTES 1894

Tit. 2] CITIES—COMMON COUNCIL, GENERAL POWERS. §§ 1088-1091

the limits of said city, are hereby declared and shall be deemed public or common nuisances.

(1870, c. 31, subc. 4, § 5; G. S. 1878, c. 10, § 166.)

§ 1089. Accounts to be audited—Books to be exhibited—Penalty for refusal.

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

(1870, c. 31, subc. 4, § 6; G. S. 1878, c. 10, § 167.)

§ 1090. Issue of bonds—Rate of interest—Amount—Payment.

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

(1870, c. 31, subc. 4, § 7; G. S. 1878, c. 10, § 168.)

§ 1091. Same—Water and light bonds.

That in addition to the rights and powers heretofore granted by law to the several cities of the state of Minnesota, which rights and powers shall not be abridged or affected by this act, there is hereby granted to all cities that now are or may be hereafter organized within the state of Minnesota the right and power to issue bonds for municipal purposes, to-wit: Water and light bonds, which may be issued for the purpose of constructing, erecting, improving or purchasing waterworks, gas works, electric light plants or other light plants for the use and benefits of the inhabitants of any city of this state.

(1893, c. 208, § 1, 2)

²An act to grant additional powers to the cities of the state of Minnesota, and to empower such cities to issue their bonds for certain purposes therein mentioned. Approved March 29, 1893.

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MINNESOTA STATUTES 1894

§§ 1092-1094

TOWNSHIP ORGANIZATION.

[Ch. 10

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**§ 1092. When bonds may be issued without popular vote
—Limited to five per cent. of assessed valuation.**

The common council of any city in this state, the citizens of which have heretofore at a duly called election voted in favor of putting in or establishing any or all of the public improvements hereinbefore mentioned may, either by resolution or ordinance, passed by a three-fourths vote of all the members elect at any general or special meeting called for that purpose, authorize the issue of the coupon bonds of such city to an amount not exceeding five per cent of the aforesaid assessed valuation, without submitting the question of such issuance to a further vote of the people; provided, that three-fourths of all the members elect of such common council do not vote in favor of the issuance of such bonds, then the same shall not be issued except on a majority vote of the legal voters participating in the election of the city proposing the issue of such bonds, which vote shall be taken at a general or special election called and conducted in the manner prescribed for holding municipal elections; provided further, that nothing in this act prescribed shall authorize the increase of the total bonded indebtedness of any such city beyond a limit of five per cent of the assessed valuation of such city.

(Id. § 2.)

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§ 1093. Limitations as to time of maturity, interest, and sale.

All bonds authorized by this act shall run not more than thirty years from the date of their issuance, bearing interest at not more than five per cent per annum, principal and interest payable at such time and place as may be fixed by the common council of any city; said bonds to be sealed with the seal of the city issuing them, and signed by the mayor and attested by the clerk or recorder, and countersigned by the comptroller, if such officer exists in any city, and shall be sold at not less than par value, and accrued interest, to the highest responsible bidder after notice published once in each week for three successive weeks in a daily paper, if one there be, if not, then in a weekly paper in the city where such bonds are to be issued, and also in a daily paper published in St. Paul.

(Id. § 3.)

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§ 1094. Bonds for municipal purposes.

That in addition to the rights and powers heretofore granted by law to the several cities of the state of Minnesota, which rights and powers shall not be abridged or affected by this act, there is hereby granted to all cities that now are or may be hereafter organized within the state of Minnesota, the right and power to issue bonds for municipal purposes, to-wit:

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First. Permanent improvement bonds.

Permanent improvement fund bonds, which may be issued to defray the expenses of improving any street, avenue, alley, park or other public ground within the corporate limits of any city within this state, or any part of such expense, and which shall include the construction of sewers, sidewalks, bridges, culverts, changing water-courses and all improvements of a permanent nature.

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Second. Bridge bonds.

Bridge bonds, which may be issued by any city within this state, for the purpose of bridging any natural or artificial stream, river, lake, canal, bay, harbor or other water within the corporate limits of any city within the state of Minnesota, or for the purpose of bridging any such water, or part thereof, bordering upon or forming the boundary line of any such city within the state, and the use of the proceeds of such bonds for the construction of any bridge, so as to accommodate or facilitate the passage of any steam locomotives or cars, or horse railway, cable or electric cars in connection with teams, vehicles and foot passengers, shall not invalidate, impair or affect the legality of any bridge bonds issued for the aforesaid purposes; provided, that nothing herein shall be construed to prevent any city within this state from charging any railroad company using any such bridge a reasonable price for such use, such charge to be fixed by the common council of such city, and the making

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MINNESOTA STATUTES 1894

Tit. 2] CITIES—COMMON COUNCIL, GENERAL POWERS. §§ 1094–1096

of such charge shall not be held to impair, affect or invalidate such bonds; provided, further, that nothing herein shall be construed to give authority to any city to issue bonds for the making of any improvements to be used exclusively for railroad purposes.

Third. Water and light bonds.

Water and light bonds, which may be issued for the purpose of constructing, erecting, improving or purchasing waterworks, gas works, electric light plants, or other light plants for the use and benefit of the inhabitants of any city in this state; city hospital bonds, which may be issued for the purpose of erecting city hospitals.

Fourth. General fund bonds.

General fund bonds, which may be issued for the purpose of providing a general fund with which to meet and defray all contingent expenses, of whatever character, properly arising out of municipal matters and not otherwise, and which shall also include the payment of all outstanding debts and bonds which are due or to become due, or are redeemable, together with the interest thereon.

(1893, c. 204, § 1.¹⁰)

§ 1095. Issue limited to five per cent. of assessed valuation—Application of proceeds.

No city in this state shall at any time be authorized to issue bonds or to incur any debt or liability of any kind for any purpose in excess of five per cent. of the assessed valuation of the taxable property of such city according to the last preceding assessment, except as hereinafter provided, and should any bonds be so issued in excess of said five per cent., except as herein provided, the same shall be invalid; provided, that when bonds are issued for the purchase, refunding, or payment of other bonds of such city the bonds to be so purchased or paid shall not be considered a part of the bonds on which any city may be liable, for the purpose of determining whether the bonds so issued will increase the bonded indebtedness of any city above the limit prescribed in this act. All sums of money realized from the sale of city bonds shall be applied to the purpose for which they are issued, and no other, and such purpose shall be distinctly stated in the resolution or ordinance authorizing their issue. The common council of any city in this state may, either by resolution or ordinance, passed by a three-fourths vote of all the members elect, at any general or special meeting called for that purpose, authorize the issue of the coupon bonds of such city to an amount not exceeding five per cent. of the aforesaid assessed valuation, without submitting the question of such issuance to a vote of the people; provided, that three-fourths of all the members elect of such common council do not vote in favor of the issuance of such bonds, then the same shall not be issued, except upon a two-thirds vote of the legal voters participating in the election of the city proposing the issue of such bonds, which vote shall be taken at a general or special election called and conducted in the manner prescribed for holding municipal elections; provided, that when any city has reserved the right to purchase the water works heretofore constructed by any person, company or corporation in such city, and such city, in pursuance of such right reserved, shall issue its bonds for the purchase of said water works, then the limitation of five per cent., hereinbefore specified, shall not apply to such bonds. Provided, further, that the water works so to be purchased shall at the time of such purchase yield a revenue sufficient to pay the interest on the total amount of the bonds to be issued therefor.

(Id. § 2.)

§ 1096. When additional bonds may be issued.

In addition to the bonds hereinbefore authorized to be issued by the common council of any city, a further and additional amount of bonds, not ex-

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¹⁰An act to grant additional powers to cities of the state of Minnesota, and to empower such cities to issue their bonds for certain purposes therein mentioned. Approved April 12, 1893.

ceeding an additional five per cent on the aforesaid assessed valuation, may be issued by any city in this state for any and all of the aforesaid purposes, and the proceeds thereof to be used and disposed of as hereinbefore provided, and any issuance, or attempted issuance, of bonds by any city in excess of ten per cent of the aforesaid assessed valuation shall be void. Provided, that no bonds authorized by this section shall be issued by any city until the issuance thereof shall have first been authorized by a two-thirds vote of all the legal voters of such city present and voting, and the question of the issuance of said bonds shall be submitted to the electors of the city proposing to issue the same, at a general or special municipal election, called and conducted in the manner prescribed for municipal elections in such city, and the notices of such election shall contain a statement of the amounts and purposes for which such bonds are proposed to be issued, with the date of their maturity and the rate of interest they shall bear. All elections provided for in this act may be called by resolution, in writing, of the common council, passed by a majority vote, which resolution shall distinctly state the purpose of the election and the question to be submitted to the vote of the people. The ballot to be voted at all elections under this act may read as follows: "In favor of the proposition of issuing bonds to the extent of _____ dollars, for _____." "Against the proposition of issuing bonds to the extent of _____ dollars, for _____." If two-thirds of the votes cast at such election shall be in favor of issuing the kind and amount of bonds designated in said ballot, the city voting in favor thereof shall, through its proper officers, without further act, be authorized to issue said bonds to the amount voted, and to sell and negotiate the same. The votes cast at such election shall be counted, returned and canvassed the same as other municipal elections, and the result certified to the city clerk or recorder by the canvassing board. It shall be the duty of the common council to expend the moneys derived from the sale of said bonds in accordance with the directions of the voters, as shown by said election. All bonds issued pursuant to the provisions of this chapter, whether upon the order of the common council of any city, by a vote of three-fourths of the members elect thereof, or by authority of a two-thirds vote of the legal voters voting at any election for such purpose, shall be alike valid and binding, and be and remain the obligation of such city issuing such bonds.

(Id. § 3.)

§ 4 of this act is the same as § 1093, ante.

§ 1097. Acceptance of this act by ordinance—Judicial notice by courts—Effect of acceptance.

Any city in the state of Minnesota, heretofore incorporated, may become subject to the provisions of this act, and the city council of such city may effect the same by an ordinance thereof, duly passed by three-fourths of all the members of such council elect in favor of the same, and approved as provided by the charter of such city; and a certified copy of such ordinance, so approved, and duly certified, accompanied by a statement of the vote thereon, with the names of the members voting for and against said ordinance, shall be forwarded to and filed in the office of the secretary of state, and such city shall thenceforth be deemed to be subject to the provisions of this act, and shall be governed, controlled and regulated by and under the provisions of this act, and the city officers of said city shall thereupon exercise the powers conferred herein, and all courts in this state shall take judicial notice of the fact of such city becoming subject to the provisions of this act. After the passage and adoption of the ordinance mentioned in the last section, and the filing of the same with the secretary of state, all laws in such city in conflict with this act shall no longer be applicable, but all laws, or parts of laws, not inconsistent with the provisions of this act, shall continue in force, and be applicable to such city, the same as if such city had not become subject to the provisions of this act.

(Id. § 5.)

MINNESOTA STATUTES 1894

Tit. 2]

CITIES—TAXES.

§§ 1098-1101

(5) TAXES.

§ 1098. Tax for current expenses.

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

(1870, c. 31, subc. 5, § 1; G. S. 1878, c. 10, § 169.)

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§ 1099. Ward tax—Disposition of proceeds—Debts—Orders.

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

(1870, c. 31, subc. 5, § 2; G. S. 1878, c. 10, § 170.)

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§ 1100. Taxes to pay debts, etc.

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

(1870, c. 31, subc. 5, § 3; G. S. 1878, c. 10, § 171.)

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§ 1101. Manner of levying taxes.

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

(1870, c. 31, subc. 5, § 4; G. S. 1878, c. 10, § 172.)

See Minnesota Linseed Oil Co. v. Palmer, cited in note to Const. art. 9, § 1, *supra*.

§ 1102. **Manner of collecting taxes.**

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

(1870, c. 31, subc. 5, § 5; G. S. 1878, c. 10, § 173.)

§ 1103. **Appropriations—Orders on treasury.**

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

(1870, c. 31, subc. 5, § 6; G. S. 1878, c. 10, § 174.)

§ 1104. **Orders to be cancelled.**

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

(1870, c. 31, subc. 5, § 7; G. S. 1878, c. 10, § 175.)

§ 1105. **Levy of poll-tax.**

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

(1870, c. 31, subc. 5, § 8; G. S. 1878, c. 10, § 176.)

(6) OPENING AND VACATING STREETS, ALLEYS, ETC.

§ 1106. **Council to control highways.**

The common council shall have the care, supervision and control of all public highways, bridges, streets, alleys, public squares and grounds within the limits of said city, and shall cause all streets which may have been opened and graded, to be kept open and in repair, and free from nuisances.

(1870, c. 31, subc. 6, § 1; G. S. 1878, c. 10, § 177.)

This duty extends to sidewalks. *Furnell v. City of St. Paul*, 20 Minn. 117, (Gil. 101;) *Erd v. City of St. Paul*, 22 Minn. 443.

A city is liable for neglect to keep streets in safe condition if the means for doing so are provided or placed at its disposal, as where it has power to levy taxes for the purpose. *Shartle v. City of Minneapolis*, 17 Minn. 308, (Gil. 234.) And it will be presumed, until proven to be otherwise, that the city has sufficient means for this purpose. *Id.*

As to liability of city for excavations or obstructions in streets, notice to city, etc., see *Cleveland v. City of St. Paul*, 18 Minn. 279, (Gil. 255;) *Lindholm v. City of St. Paul*, 19 Minn. 245, (Gil. 204;) *Moore v. City of Minneapolis*, 19 Minn. 300, (Gil. 258;) *O'Leary v. City of Mankato*, 21 Minn. 65.

§ 1107. **May open, lay out, and vacate streets, etc.—Eminent domain.**

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

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First. Appointment of commissioners.

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

Second. Oath and return.

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

Third. Survey and plat—Notice of meeting.

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

Fourth. Proceedings at meeting—View—Assessment of damages.

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

Fifth. Damages when building is taken or removed.

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

Sixth. Same—In case of divided ownership.

If the lands and buildings belong to different persons, or if the land be subject to lease, mortgage or judgment, or if there be any estate in it less than an estate in fee, [the] injury or damage done to such persons or interests

respectively may be awarded to them by the commissioners, less the benefit resulting to them from the improvement.

Seventh. Report to council.

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

Eighth. Notice of confirmation—Election to remove buildings.

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

Ninth. Payment of damages awarded.

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

Tenth. Removal of buildings by owners.

In case any owner or owners of buildings as aforesaid shall have elected in manner aforesaid to remove his or their buildings, he or they shall so remove them within thirty days from the confirmation of said report, or within such further time as the common council may allow for the purpose, and shall thereupon be entitled to payment from said city of the amount of damages awarded in such case, in case of removal. When such person or persons shall not have elected to remove such buildings, or shall have neglected (after having elected to remove) to remove the same, within the time prescribed, such buildings, or so much thereof as may be necessary, upon payment or depositing the damages awarded for such taking, in manner aforesaid, may be then taken and appropriated, sold or disposed of, as the common council shall direct, and the same or the proceeds thereof shall belong to said city.

Eleventh. Appointment of guardians.

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

MINNESOTA STATUTES 1894

Tit. 2] CITIES—OPENING AND VACATING STREETS, ETC. §§ 1107—1110

Twelfth. Appeals.

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

(1870, c. 31, subc. 6, § 2; G. S. 1878, c. 10, § 178.)

Under a general power to lay out and open streets, the city council has no authority to lay out and open a street through the depot grounds of a railroad company, in such manner as to destroy, or essentially impair, the value of the company's easement therein, theretofore acquired under and in pursuance of an express legislative grant for that purpose. *Milwaukee & St. Paul Ry. Co. v. City of Faribault*, 23 Minn. 167.

No appeal to supreme court from the judgment of the district court upon an appeal to it under the charter of Minneapolis from an assessment of damages for taking land for streets. *Jones v. City of Minneapolis*, 20 Minn. 491, (Gil. 444.)

§ 1108. Survey and profile to be filed.

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

(1870, c. 31, subc. 6, § 3; G. S. 1878, c. 10, § 179.)

§ 1109. Vacation of streets, public grounds, etc.

No public grounds, streets, alleys or highways within said city shall be vacated or discontinued by the common council, except upon the petition of a majority of the owners of property on the line of such public grounds, streets, alleys or highways, resident within the said city; such petition shall set forth the facts and reasons for such vacation, accompanied by a plat of such public grounds, streets, alleys or highways proposed to be vacated, and shall be verified by the oath of at least two of the petitioners. The common council shall thereupon, if they deem it expedient that the matter should be proceeded with, order the petition to be filed of record with the city clerk, who shall give notice by publication in the official paper of said city, for four weeks, at least once a week, to the effect that such petition has been filed as aforesaid, and stating in brief its object, and that said petition will be heard and considered by the common council, or a committee appointed by them, on a certain day and place therein specified, not less than ten days from the expiration of such publication. The common council, or such committee as may be appointed by them for the purpose, at the time and place appointed, shall investigate and consider the said matter, and shall hear the testimony and evidence on the part of parties interested. The common council thereupon, after hearing the same, or upon the report of such committee in favor of granting such petition, may, by resolution passed by a two-thirds vote of all the members elect, declare such public grounds, streets, alleys or highways, vacated; which said resolution, after the same shall go into effect, shall be published as in the case of ordinances, and thereupon a transcript of such resolution, duly certified by the city clerk, shall be filed for record and duly recorded in the office of the register of deeds of the county.

(1870, c. 31, subc. 6, § 4; G. S. 1878, c. 10, § 180.)

§ 1110. Same—Appeal.

Any person aggrieved thereby may, within twenty days after the publication thereof, appeal to the district court of the county, under the same regula-

§§ 1110-1114

TOWNSHIP ORGANIZATION.

[Ch. 10

lations as in the case of opening streets and alleys, and the judgment of the court thereon shall be final.

(1870, c. 31, subc. 6, § 5; G. S. 1878, c. 10, § 181.)

§ 1111. Vacation of street or alley not to be called in question after five years.

That no attempted vacation of any street or alley in any city in this state heretofore ordered by the common council of such city shall be adjudged invalid by reason of any defect in the notice or other proceedings relating to and culminating in such order of vacation, unless the action in which the validity of such proceedings shall be called in question be commenced, or the defense alleging their invalidity, be interposed within five years after the adoption of the resolution of vacation.

(1893, c. 207, § 1.11)

§ 2 provides that this act shall not apply to actions pending in any court.

§ 3 repeals all inconsistent acts, whether general or special.

§ 1112. Attempted vacation of streets, etc., may be completed, when.

That the common council of any city in this state which by law is authorized to vacate streets and alleys upon payment of the proportionate value of the land to be vacated, and which has heretofore, pursuant to proper petition, actually been paid such amount, together with the expense of advertising the proceedings for vacating any street or alley, and has caused proper notice of the hearing on such petition to be given, but has failed to pass an order of vacation, through inadvertence, be and the same is hereby authorized to act upon any such petition or any new petition for vacation of the same premises, and to give new notice and proceed thereunder as by law provided in all respects, save that no new payment shall be required.

(1893, c. 212, § 1.12)

§ 1113. Vacation of street within boulevard, when.

That in all cases where any boulevard shall have been laid out by the board of park commissioners of any city in this state, around the shores of any lake wholly or partly embraced within the limits of any public park, the common council of such city shall have power and authority, upon the petition of any person interested in the reversion of the streets, roads and alleys to be vacated, or any portion thereof, and upon the recommendation of the board of park commissioners of such city (to be evidenced by a resolution of such board to that effect, a certified copy whereof shall accompany such petition), to vacate any street, road or alley lying within the limits of such boulevard, or within a distance of one hundred and fifty feet therefrom, without any compensation being paid into the city treasury therefor or any other land dedicated in lieu thereof; Provided, That nothing herein contained shall be held to affect individual rights to compensation.

(1891, c. 22, § 1.13)

For vacation of such part of state and territorial roads as are within the limits of any public park in any city, see post, § 1845.

§ 1114. Petition, how made.

Save as herein provided, such petition shall be made under and in accordance with existing laws governing vacations of streets, roads and public grounds so far as applicable.

(1891, c. 22, § 2.)

¹¹An act to limit the time within which vacations of streets and alleys in cities may be called in question. Approved March 16, 1893.

¹²An act to authorize cities to complete or effectuate vacation proceedings in certain cases. Approved March 14, 1893.

¹³An act to authorize the common councils of cities to vacate roads, streets and alleys in certain cases. Approved March 31, 1891. By § 3 of this act all inconsistent acts are repealed.

Tit. 2] CITIES—OPENING AND VACATING STREETS, ETC. §§ 1115–1120.

§ 1115. Record of proceedings—Duty of clerk.

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

(1870, c. 31, subc. G, § 6; G. S. 1878, c. 10, § 182.)

§ 1116. Power to levy assessments for local improvements.

All cities in the state of Minnesota are hereby authorized to levy assessments for local improvements upon the property fronting upon such improvements without regard to cash valuation.

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(1893, c. 211, § 1.14.)

§ 1117. For what improvements assessment may be made.

Such assessment may be made by any city in the state for paving, curbing, graveling, macadamizing and planking any street, lane, alley or highway, and the expense of such improvement may be defrayed by an assessment upon the real estate fronting thereon, to be levied in the manner hereinafter prescribed.

(Id. § 2.)

§ 1118. More than one improvement may be included in one order.

Two or more improvements upon one or more streets, either of paving, curbing, graveling, macadamizing or planking, or either or any of them, may be done at the same time under one order, and may be included in one contract. And the city council may, when any contract is let for paving, include in such contract the laying of sewer pipes to the curb, and the cost of the same may be assessed against the lot for which such sewer pipes are laid as a part of or in connection with the assessment for such paving.

(Id. § 3.)

§ 1119. Expense of improvement, how assessed.

The expense of any such improvement shall be chargeable to and assessed upon the lots and parcels of land abutting upon the street, lane, alley or highway in which such improvement is contracted to be done, upon the basis of an equal sum per front foot of each lot or parcel, measuring along the line of such improvement; Provided, if two or more improvements are included in one contract, the expense of each improvement shall be separately apportioned and assessed upon the lots and parcels of land abutting upon such improvement, but two or more improvements may be included in one assessment proceeding.

(Id. § 4.)

§ 1120. Procedure—Plans—Notice of hearing—What to contain—Powers of city council.

Prior to the passage of any resolution for the doing of any work, the expense of which is to be assessed upon abutting lots or parcels of land, as provided in this act, the city council of such city shall cause plans and specifications of such proposed work, with an estimate of the probable expense thereof, to be made by the city engineer of such city and presented to the council for its approval, and the same shall immediately, upon the approval thereof by the council, be filed with the city clerk or recorder of such city for the inspection of all parties interested. The city council shall then designate a time, not less than twenty days distant, and a place at which it will meet and act in relation to the doing of the proposed work, and direct that notice be given by the

¹An act to authorize cities to make certain local improvements and assess the cost thereof on abutting property. Approved February 18, 1893.

MINNESOTA STATUTES 1894

§§ 1120-1122

TOWNSHIP ORGANIZATION.

[Ch. 10]

clerk or recorder of such meeting, and the time and place thereof, and that in the meantime sealed proposals for the doing of such work and the furnishing of all material therefor will be received by the city clerk or recorder. In such notice shall be stated the location of the proposed work, and reference shall be made therein to the said plans, specifications and estimate so filed with the clerk or recorder, and the said notice shall be given by publication thereof in the official paper of such city at least once in each week for two successive weeks prior to the time designated as aforesaid by the council. At the time and place designated in such notice an opportunity shall be given to any and all interested parties to be heard for or against such proposed work, and the recorder or clerk shall, in presence of the city council, open and read all sealed proposals which may have been received for the doing of such work, and the furnishing of all material therefor, and the city council may then, by a majority vote of all its members, accept the most favorable proposal (such proposal to be that of the lowest responsible bidder) and by resolution authorize the doing of the proposed work, or any part thereof, by the person or persons whose proposal shall have been accepted, and direct that written contract be made with him or them therefor; or may reject any or all proposals offered, and refuse to authorize the doing of such work or of any particular part thereof; or if it is deemed by said council to be to the best interests of the city, and the city engineer's estimate is less than the lowest bid for said work and material, may reject all proposals offered, and authorize the doing of such work under the direction of the city engineer without contract, or may, in its discretion from lack of a quorum, or other reason, postpone the consideration and decision of the whole matter, or any branch thereof, to a future definite time, of which postponement all parties interested shall be required and deemed to take notice. Such resolution, after the same has been passed by the council, shall be signed by the president of the council and attested by the recorder or clerk, and on the next day after the passage thereof the same shall be transmitted by such recorder to the mayor for his approval. If the mayor approve the same he shall append his signature with the date of his approval thereto, and return the same to said recorder within five days (Sundays excepted) from the date of its transmission to him; and if he declines to approve the same he shall within said period of five days return the same to the clerk or recorder with a statement of his objections thereto, to be presented to the council at its next meeting thereafter. Upon the return of said resolution to the council, without the mayor's approval, the question shall again be put upon the passage of the same, notwithstanding the objections of the mayor, and if upon such vote, which shall be taken by a call of the ayes and noes, two-thirds of all the members of the council shall vote in favor of such resolution, the same shall be declared enacted, and shall have the same force and effect as if approved by the mayor. If such resolution, so submitted to the mayor, shall not be returned by him to the recorder within said five days, Sundays excepted, after presentation thereof to him, the same shall be deemed to be approved by him; and he shall deliver the same to the clerk or recorder on demand.

(Id. § 5.)

§ 1121. Execution of contracts.

All contracts authorized by this act shall be executed on behalf of the city by the mayor, and attested by the clerk or recorder.

(Id. § 6.)

§ 1122. City engineer to assess cost of work.

After the resolution mentioned in section five hereof has been duly passed by the city council, the city engineer shall assess the cost of such work (the amount of the bid accepted by the council to be taken as such cost) upon the several lots or parcels of land abutting upon the street, lane, alley or highway in which such improvement is contracted to be done, as designated in section four of this act, and shall make an assessment thereof in writing, in which shall be given a description of each lot or parcel so assessed, the name of the owner thereof, if known, and the exact amount assessed thereon, and shall, at its next regular meeting after the completion of such assessment, submit the same to the city council; provided, if said council has rejected all proposals offered, and has authorized the doing of such work under the direc-

MINNESOTA STATUTES 1894

Tit. 2] CITIES—OPENING AND VACATING STREETS, ETC. §§ 1122—1127

tion of the city engineer, without contract, the city engineer's estimate shall be taken as the cost of such work, for the purpose of such assessment.

(Id. § 7.)

§ 1123. Notice of hearing to confirm assessment—What to contain—How given.

On receipt of said assessment the council shall direct that the same be placed on file with the clerk or recorder, and shall appoint a time, not less than ten days distant, and a place, when and where it will meet to consider and act upon such assessment, and the clerk or recorder shall thereupon cause notice of such meeting, and the time, place and purpose thereof, to be given by one publication of such notice in the official newspaper of such city at least five days prior to the time so appointed for said meeting, and in said notice shall be given a brief description of the lots and parcels mentioned in the assessment so filed, the amount assessed to each, and the names so far as known of the owners of such lots and parcels.

(Id. § 8.)

§ 1124. Hearing to confirm assessment—Second assessment, when.

At the time and place so appointed, as provided in the last preceding section, the council shall proceed to consider said assessment and hear all objections which parties interested may desire to make thereto, and may adjourn, if necessary, from time to time, and shall, after due consideration, make such corrections or changes in said assessment as they may deem necessary to perfect and equalize the same on the basis prescribed in this act, and shall confirm and establish the assessment as so corrected and equalized; and the said assessment, as so confirmed and established, shall be final, conclusive and binding upon all parties interested, and no appeal shall lie in any case from such confirmation; and the several amounts charged in such assessment, as so confirmed and established, against the several lots and parcels of land therein mentioned, shall be collected as hereinafter provided. If any assessments be annulled or set aside, the said city engineer shall proceed de novo to make another or new assessment in like manner, and like notice shall be given as herein required in relation to the first.

(Id. § 9.)

§ 1125. Assessment upon railway company, how collected.

When in any case any portion of the cost and expense of making any improvement mentioned in this act shall, by virtue of any valid law or ordinance, or by virtue of any valid contract, be chargeable upon any railway company, the amount so chargeable may be assessed upon such railway company, and the balance only upon real estate abutting upon the street in which such improvement is to be made, and the city may collect the amount so assessed upon said railway company by distress and sale of personal property, in the manner provided for by the general laws of this state in the case of taxes levied upon personal property, or by suit brought for that purpose; provided, however, that any real estate belonging to such railway company shall be assessed as in other cases.

(Id. § 10.)

§ 1126. Warrant for collection of assessment.

When any special assessment shall have been confirmed, it shall be the duty of the clerk or recorder to issue a warrant for the collection thereof, which shall be under the seal of said city, and signed by the mayor and such clerk or recorder of said city, and shall contain a printed or written copy of the assessment roll as confirmed, as aforesaid, or so much thereof as describes the real estate and the amount of the assessment in each case.

(Id. § 11.)

§ 1127. To be delivered to city treasurer.

All warrants issued for the collection of special assessments shall be delivered by the clerk or recorder to the city treasurer within five days thereafter, taking his receipt therefor.

(Id. § 12.)

(301)

MINNESOTA STATUTES 1894

§§ 1128-1133

TOWNSHIP ORGANIZATION.

[Ch. 10

§ 1128. Notice to be given by treasurer.

Upon the receipt of any warrant for the collection of any special assessment, the city treasurer shall forthwith give notice by one publication in the official newspaper of the city that such warrant is in his hands for collection, briefly describing its nature, and requesting all persons interested to make immediate payment at his office; that in default thereof the same will be collected at the cost and expense of the persons liable for the payment of such assessments.

(Id. § 13.)

1129 '05 . 200

§ 1129. Assessment to be a paramount lien.

All assessments levied under the provisions of this act shall be a paramount lien on the real estate on which the same may be imposed from the date of the warrant issued for the collection thereof.

(Id. § 14.)

1130 '05 . 205

§ 1130. Interest to be collected, when.

If the assessments charged in any special assessment warrant made for any improvements whatsoever, under the provisions of this act, shall not be paid within thirty days after the publication of notice by the city treasurer that he has received such warrant for collection, except in case it is on a collection warrant issued on or by reason of a reassessment or a new assessment, in which latter case the notice that such warrant is in the treasurer's hands shall require payments to be made within ten days after the publication, the assessment then remaining unpaid shall be collected with interest at the rate of ten per cent per annum thereafter until the same shall be paid.

(Id. § 15.)

§ 1131. Treasurer to ask for judgment, when—Notice of such application.

It shall be the duty of the city treasurer, immediately after the expiration of thirty days, or after ten days on a reassessment or a new assessment warrant mentioned in the preceding section, to report to the district court of the county in which said city is located, at any general or special term thereof, all assessment warrants remaining unpaid for the collection of any assessments, under the provisions of this act, which have been delivered to him, and then and there ask for judgment against the several lots and parcels of land described in such warrants for the amounts of assessment, interest, and costs respectively due thereon. The city treasurer shall previously give at least ten days' notice by one publication in the official paper of said city of his intended application for judgment, which notice shall briefly specify the respective warrants upon which such application is to be made, and a description of the property against which judgment is desired, and require all persons interested to attend at said term. The advertisement so published shall be deemed and taken to be sufficient and legal notice of the aforesaid and intended applications by the city treasurer to such court for judgment, and shall be held a sufficient demand and refusal to pay said assessment.

(Id. § 16.)

§ 1132. What papers to be filed in court.

The city treasurer shall obtain a copy of the advertisement or advertisements referred to in the preceding section, together with an affidavit of the due publication thereof, from the printer or publisher of the newspaper in which the same was published, and shall file the same with the clerk of such court at the said term with said reports.

(Id. § 17.)

§ 1133. Duty of clerk of district court.

The clerk of said court, upon the filing of such reports of the city treasurer, shall receive and preserve the same, and shall annex thereto, or file therewith, all judgments, orders and other proceedings of said court in relation thereto. Each of said reports shall constitute a separate proceeding or suit, and shall be docketed by the clerk of said court in a suitable record book, to be kept by him for that purpose, in such manner as will sufficiently indicate the nature of the improvement for which the assessment is made, in which said record book the judgment, when rendered, shall also be docketed; provided, how-

MINNESOTA STATUTES 1894

Tit. 2] CITIES—OPENING AND VACATING STREETS, ETC. §§ 1133-1135

ever, that the court may, by rule, or otherwise, direct how and in what form such proceedings and judgments may be entered or docketed, and what further record, if any, shall be made thereof, and what papers shall be filed, and how kept and preserved.

(Id. § 18.)

§ 1134. Hearing by court—Objections—What may be interposed.

It shall be the duty of the court, upon the filing of said reports, to proceed immediately to the hearing of the same, and they shall have priority over all other causes pending in said court. The said court shall pronounce judgment against the several lots and parcels of land described in said reports, for which no objection shall be filed, for the amount of the assessment, interest, damages and costs due severally thereon. The owner of any property described in said reports, or any person beneficially interested therein, who shall feel aggrieved by such assessment, shall file in said court his objections, in writing, to the recovery of judgment against such property, and shall serve a copy thereof upon the city attorney, at least five days prior to the time designated in the city treasurer's notice, that he will apply for judgment as provided for in section sixteen of this act. No objection will be interposed or sustained in relation to any of the proceedings prior to the confirmation of the assessment, except that the city council had no authority to order the said improvement, or to have the said work performed; and no objections as to any other of the proceedings shall be sustained on any mere formal irregularity or defect, and the city treasurer may amend by leave of the court in its discretion in any matter in furtherance of justice. The court shall hear and determine all objections in a summary manner without pleadings, and shall dispose of the same with as little delay as possible, consistent with the demands of public justice; but should justice require that for any cause the suit as to one or more owners should be delayed, judgment shall then be rendered as to the other property and lands, and process shall issue for the sale thereof, the same as in other cases.

(Id. § 19.)

§ 1135. Order of sale.

In all cases where a judgment shall be rendered in default against the property described in said reports, the court shall thereupon direct the clerk of said court to make out and enter an order for the sale of the same, which said order shall be substantially in the following form:

"Whereas, due notice has been given of the intended application for a judgment against the said lands, and no owner hath appeared to make defense or show cause why judgment should not be entered against the said lands and other property for the assessment, damages, interest and costs due and unpaid thereon; therefore, it is considered by the court that judgment be and is hereby entered against the aforesaid lots and parcels of land in favor of the city of ———, for the sum annexed to each lot or parcel of land, being the amount of assessment, interest, damages and costs due severally thereon, and it is ordered by the court that the several lots and parcels of land, or so much thereof as shall be sufficient of each of them to satisfy the amount of assessment, interest, damages and costs annexed to them severally, be sold as the law directs."

In all cases where a defense shall be interposed and judgment shall be rendered against the property, a similar order, adapted to the circumstances of the case, shall be made and entered of record. Thirty-five cents costs shall be laid to each lot or parcel against which judgment is rendered, and the further sum of one dollar to each lot or parcel for advertising the notice of sale; provided, that in all cases where a defense is interposed and not sustained, the court may direct by special order, or by rule, such additional costs to be included in the judgment as may be deemed proper.

(Id. § 20.)

§ 1136. Duty of clerk of court—Treasurer to make sale, when.

It shall be the duty of the clerk of such court, within twenty days after such order is granted as aforesaid, to make out, under the seal of said court, a copy of so much of said city treasurer's report in such case as gives a description of the land against which judgment shall have been rendered, and the amount of such judgment, together with the order of the court thereon, which shall constitute the process on which all lands, lots, pieces and parcels of land shall be sold for the amount of any assessments, interest, damages and costs so levied, assessed or charged upon them; and the said city treasurer is hereby expressly authorized and empowered to make sale of such lands, lots, pieces or parcels of land or other property, upon ten days' notice, by one publication in the official paper of said city.

(Id. § 21.)

§ 1137. Notice of sale—What to contain.

The said advertisement, so to be published in each case of a judgment upon any collection warrant and report as aforesaid, shall contain a list of the delinquent lots and parcels of land to be sold, the names of the owners, if known, the amount of judgment rendered thereon, respectively, and the warrant upon which the same was rendered, the court which pronounced the judgment, and a notice that the same will be exposed to public sale at a time and place to be named in said advertisement by said city treasurer. The omission of the name of any owner, or any mistake respecting the same, shall not invalidate the sale if the property be otherwise described with sufficient certainty.

(Id. § 22.)

§ 1138. Use of letters and figures.

In all proceedings and advertisements for the collection of such assessments, and the sale of lands therefor, letters and figures may be used to denote lots, parts of lots, lands and blocks, sections, townships, ranges and parts thereof, the year and the amounts.

(Id. § 23.)

§ 1139. Certificates of sale—What to contain—Redemption by guardian.

Certificates of sale shall be made and subscribed by the city treasurer, under the seal of such city, which shall be delivered to the purchaser, and which certificates of sale shall contain the name of the purchaser, a description of the premises sold, the amount of the judgment for which the same was sold, adding interest at the rate of ten per cent per annum from the day when judgment was rendered to the day of sale, and fifty cents cost on each description, for such other expenses as may be incurred by the city in selling the property; which judgment, interest and costs shall constitute the total amount for which the property shall be sold, which amount shall also appear in the certificate, and the time when the right to redeem shall expire. Said certificates shall bear interest at the rate of ten per cent per annum until paid.

Redemption in five years.

Said certificates shall state upon their face, in addition to what is now required by law, that, "This certificate may be redeemed in five annual installments, which shall become due and payable as follows: One-fifth of said certificate at the end of each one of the successive five years next ensuing the date of this certificate, together with the interest due on the whole amount thereof, unpaid at the maturity of each of said installments; provided, that said certificate may be redeemed at any time before maturity upon the payment of thirty days' interest, in addition to the interest which has already accrued." Provided, however, that property belonging to minors, or to a lunatic, upon which city deeds have been or may be issued can be redeemed while such disability continues by the guardian of such persons filing with the city treasurer a certified copy of his appointment by the probate court as guardian of such person, together with an affidavit, showing the facts of said inability, whereupon the treasurer shall deliver to him a

Tit. 2] CITIES—OPENING AND VACATING STREETS, ETC. §§ 1139—1142

certificate of redemption upon the payment of the proper sum; which certificate of redemption, together with a copy of the appointment as guardian and affidavit, aforesaid, shall be recorded in the office of register of deeds, and shall be deemed sufficient to remove the cloud from such title by reason of such city deed.

(Id. § 24.)

§ 1140. **Payment by purchaser—Sale to city, when.**

The person purchasing any lot or parcel of land shall forthwith pay to the treasurer the amount of the judgment due thereon, and on failure so to do, the said property shall be again offered for sale in the same manner as if no such sale had been made, and in no case shall the sale be closed until payment shall have been made. If no bid shall be made for any lot or parcel of land the same shall be struck off to the city; and thereupon the city shall receive, in the corporate name, a certificate of the sale thereof, and shall be vested with the same rights as other purchasers at such sales.

(Id. § 25.)

§ 1141. **Record of sale, how kept.**

The city treasurer shall enter and extend upon the certified copy of judgment and order of sale, issued to him by the clerk of the district court, the interest, cost and expenses to be charged against each lot or description, as provided by law, the amount of sale, to whom sold, or if struck off to the city, to whom transferred afterwards, with the amount of transfer, and attach thereto a copy of the advertisement pertaining to the sale. The city treasurer shall keep this record on file in his office. Certified copies thereof may be furnished when desired.

(Id. § 26.)

§ 1142. **Redemption from sale—Rate of interest—Deed—Notice of expiration of redemption—Lien of the state for taxes.**

If at the sale any piece or parcel of land shall be sold to a purchaser, or the piece or parcel be struck off to the city, the same may be redeemed at any time within five years from the date of the sale by any person having any interest therein, upon the payment of ten per cent per annum in lawful money of the United States of the amount for which the same was sold, with interest from the time of such sale at the rate of ten per cent per annum, in accordance with the provisions of this act, and upon the terms and conditions as to installments therein provided, and any other assessments which may be made under or by virtue of this act, or the charter of such city, subsequent to the sale, with the interest accruing thereon at the rate and payable in accordance with the provisions of this act. If the real estate of any lunatic or infant be sold under this act, the same may be redeemed at any time within one year after such disability shall be removed. Redemption shall be made by the payment of the redemption money to the city treasurer, and upon such payment the city treasurer shall execute to said redemptioner a certificate of satisfaction of said assessment, judgment and lien, upon the return of the certificate of sale, or upon proof of its loss, and the filing with the treasurer, clerk or recorder an affidavit to that effect. If the property shall not have been redeemed according to law, a deed shall be executed to the purchaser or his assigns, under the corporate seal of said city, signed by the mayor and clerk or recorder of said city, conveying to such purchaser or assignee the premises so sold and unredeemed, as aforesaid.

The city treasurer shall, at least three months before the expiration of the time for redeeming any lot or parcel of land aforesaid, cause to be published in the official paper of said city once a week for six successive weeks, a list of all unredeemed lots or parcels of land, specifying each tract or parcel, the name of the person to whom assessed, if to any, and the amount of the assessment, charges and interest, calculated to the last day of redemption, due on each lot or parcel, together with notice that unless such lots or parcels of land be redeemed on or before the day limited therefor, specifying the same, they will be conveyed to the purchaser; provided, however, that before the holder of such certificate shall be entitled to a deed for said property he shall

pay into the city treasury the cost of such notice of the expiration of the time of redemption. A memorandum of all deeds made and delivered shall be entered by the city treasurer in the book wherein such sales are recorded. Provided, that nothing in this act contained shall be construed to affect or prejudice the lien of the state for all taxes which have been or may be levied upon such property under the general laws of the state. In cases of redemption the city treasurer shall notify the person holding the certificate of sale that the amount of such certificate, with the interest thereon so paid, is in the city treasury, subject to his disposal.

(Id. § 27.)

§ 1143. Certificates assignable.

Such certificate of purchase shall be assignable by indorsement, and an assignment thereof shall vest in the assignee or his legal representatives all the right and title of the original purchaser.

(Id. § 28.)

§ 1144. Duty of officials when sale was made by mistake.

Whenever it shall appear to the satisfaction of the clerk or recorder before the execution of a deed for any property sold for assessments, that such property was not subject to assessment, or that the assessment had been paid previous to the sale, he shall, with the approval of the city council of said city, make an entry opposite to such property on his record of sales that the same was sold in error, and such entry shall be prima facie evidence of the fact therein stated. Provided, that where the sale shall have been made to any purchaser other than the city, the city council of said city, before approving of such entry, shall first cause notice to be given by mail, or in such manner as said council may direct, to the purchaser, his heirs, assigns or legal representatives, of the said proceeding; and provided, further, that in case such entry is approved the purchase money shall be refunded to the parties entitled thereto, with interest.

(Id. § 29.)

§ 1145. Deed, prima facie evidence of what—Grounds for holding sale invalid—What amount can be recovered from the city—Record of assessment deeds.

All deeds made to purchasers of lots and parcels of land sold for assessments, or the record thereof, shall in all cases be prima facie evidence that all requirements of the law with respect to the sale have been duly complied with, and of title in the grantee therein, after the time for the redemption has expired, and no sale shall be set aside or held invalid unless the party objecting to the same shall either prove that the court rendering the judgment, pursuant to which the sale was made, had not jurisdiction to render the judgment or that after the judgment and before the sale such judgment had been satisfied, or that notice of sale as required by this act was not given, or that the piece or parcel of land was not offered at sale to the bidder who would pay the amount for which the piece or parcel was to be sold, nor unless the action in which the validity of the sale shall be called in question, be brought, or the defense alleging its invalidity be interposed within three years after the date of the sale, and if any sale shall be set aside by reason of the entry of the judgment, the court so setting aside the sale shall have power in such case to order a new sale to be made as near as may be in accordance with the provisions of this act. That in any action in which the validity of a deed or certificate of sale issued under this act is brought into question, and on account of any irregularities the same shall be set aside, the party holding such deed or certificate of sale shall recover from such city the amount paid by the purchaser at the sale or by the assignee of the city on taking an assignment certificate, with interest at the rate of seven per cent per annum from the date of such payment. Such amount shall be paid out of the city treasury upon the order of the city council of said city. Such proceedings shall not operate as a payment or cancellation of any assessment included in the judgment, but the same shall stand as originally assessed against the

MINNESOTA STATUTES 1894

Tit. 2] CITIES—OPENING AND VACATING STREETS, ETC. §§ 1145-1150

property, and with all accruing interests, penalties and costs. All deeds referred to in this act shall be admitted to record without payment of taxes, and without the county auditor's certificate that changes have been made.

(Id. § 30.)

§ 1146. Effect of change or vacancy in office of treasurer.

Any change in the incumbent of the office of the city treasurer during the pendency of any such proceedings shall not operate to affect or delay the same, but the successors in office of such city treasurer shall be authorized to do all acts necessary to complete such proceedings, the same as if his predecessor had continued in office. In case of a vacancy occurring in any such office the proceedings shall be prosecuted by the clerk or recorder of such city until such vacancy is filled by election or otherwise.

(Id. § 31.)

§ 1147. Time and manner of sales.

All sales of property for the non-payment of assessments, provided for in this act, shall be made in the day time at public vendue in such city, at the time and place stated in the notice of sale prescribed in this act, and may be adjourned from day to day (Sundays excepted) until the whole is completed.

(Id. § 32.)

§ 1148. Penalty for neglect of duty.

Any city treasurer or other officer who shall in any case refuse or knowingly neglect to perform any duty enjoined upon him by this act, or who shall consent to or connive at any evasion of its provisions, whereby any proceedings required by this act shall be prevented or hindered, shall, for every such neglect or refusal, be liable to said city individually and upon his official bond for double the amount of loss or damage caused by such neglect or refusal, to be recovered in an action in any court having jurisdiction of the amount thereof.

(Id. § 33.)

§ 1149. Error or omission not causing substantial injury shall not affect assessment—What to be prima facie evidence.

No error or omission which may be made in the order or in the proceedings of the city council or of any of the officers of said city in referring, reporting upon, ordering or otherwise acting, concerning any local improvement provided for in this act, or in making any assessment therefor, or in levying or collecting such assessment, shall vitiate or in any way affect such assessment unless it shall appear that by reason of such error or omission substantial injury has been done to the party or parties claiming to be aggrieved. The reports of the city treasurer and assessment warrants held by him referred to in this act shall be prima facie evidence that the proceedings up to the date of such warrants were valid and regular, and the certificates of sale issued as provided for in this act shall be prima facie evidence of the validity and regularity of all proceedings up to the date of such certificate.

(Id. § 34.)

§ 1150. Prior and subsequent assessments to be paid before deed shall issue—Purchaser to have lien for what.

No purchaser of lands or lots or other property sold for assessments, or his heirs or assigns, shall be entitled to a deed until he or they shall have paid all assessments made thereon prior or subsequent to the assessments under which such purchase was made. The amount of all such prior or subsequent assessments so paid by any such purchaser, his heirs or assigns, and all moneys paid by such purchaser, his heirs or assigns, to redeem the premises from any sale for any such assessment, shall be a lien on the premises in his favor, and the amount thereof, with interest at ten per cent per annum from the time of such payment or redemption, shall be refunded to such purchaser or be paid to the treasurer of said city, for the use of such pur-

chaser, his heirs or assigns, by the owner or person entitled to redeem, before any redemption shall be made, except as provided in the section next following.

(Id. § 35.)

**§ 1151. Powers of city after property is struck off to it—
Amount to be paid by any other purchaser of
same property.**

After any real estate shall have been bid in or struck off to the city, said city may enter upon such real estate and take possession thereof and by its treasurer sell the same for the amount of such special assessment, interest, penalty and costs, and a deed of the property so sold shall be executed in the same manner and by the same officers as provided in this act. Provided, however, that if any lot or parcel of land so struck off to said city shall be again sold for like assessments, while the said city holds its title as purchaser aforesaid, the same shall not be sold to any purchaser except said city for less than the amount actually remaining unpaid on the preceding assessment as well as such subsequent assessment, with interest aforesaid at the rate of ten per cent per annum.

(Id. § 36.)

§ 1152. Judgments to bear interest at ten per cent.

All judgments rendered under this act upon said assessments shall bear interest at the rate of ten per cent per annum from the date thereof until paid.

(Id. § 37.)

§ 1153. Certificate of sale may be assigned by city, when.

The city treasurer of said city may, at any time before or after the time of redemption has expired, assign any certificate of sale of property so bid in by the city as aforesaid to any person, by indorsement thereon, after payment by such person into the city treasury of the amount at which the same was so bid in, together with the amount of any prior assessment, with interest thereon at the rate of ten per cent per annum and costs, and such assignee shall have the same right and title thereunder as if he had purchased the same originally at the sale, and shall be entitled to a deed as in other cases; provided, that after the expiration of the time of redemption of any certificate of sale of property, if the same shall remain unredeemed, the city council may authorize the city treasurer to sell, assign and transfer the interest of the city in and to any such certificate for such sum or price as to them may appear for the best interest of the city.

(Id. § 38.)

§ 1154. When assessment has been set aside new assessment to be made.

In all cases where application shall hereafter be made for judgment or judgments under this act and judgment shall be refused or denied by the court or the assessment or any part thereof as to any lot, lots or parcels of land assessed under any of the provisions of this act, for any cause whatever, be set aside or declared void by any court, the city council shall, without unnecessary delay, instruct the city engineer to make a reassessment or new assessment to defray the expense of such improvement, and such reassessment or new assessment shall be made as near as may be in accordance with the law in force at the time such reassessment is made; and when the same shall have been made and confirmed by the city council, 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 judgment shall hereafter be refused or denied by any court, or where any court hereafter shall set aside or declare void any assessment upon any lot or parcel of land for any cause, the said lots or parcels of land may be reassessed or newly assessed from time to time, until each separate lot, piece or parcel of land has paid its proportionate part of the costs and expenses of said improvements as near as may be.

(Id. § 39.)

MINNESOTA STATUTES 1894

Tit. 2] CITIES—OPENING AND VACATING STREETS, ETC. §§ 1155-1159

§ 1155. New warrant for collection of assessment, when.

In all cases where the treasurer shall be unable to enforce the collection of any special assessment by reason of irregularity or omission in any proceeding subsequent to the confirmation of such assessment, the clerk or recorder and mayor of such city are hereby authorized and empowered to issue a new warrant to the treasurer for the collection of any assessment which by reason of such irregularity or omission remains unpaid or not collected. The treasurer shall proceed under such new warrants to enforce and collect the assessments therein specified in the same manner, as near as may be, as is prescribed by the provisions of this act for the enforcement and collection of special assessments after the same shall have been confirmed as in this act provided; and as often as any failure shall occur by reason of such irregularities or omissions a new warrant may issue and new proceedings be had in like manner, until such special assessments shall be fully collected as to each and every tract and parcel of land charged therewith.

(Id. § 40.)

§ 1156. Unfinished portion of improvement to be re-let, when.

In all cases where the work for any improvement contemplated by the provisions of this act shall be suspended before final completion by failure of the contractor to perform the same, or for any other cause, the city council may re-let the unfinished portion of such work in the same manner, as near as may be, as provided in this act for the letting of contracts for public improvements, and in every case of such new contract the work shall be paid for in the same manner as contracts for other like improvements.

(Id. § 41.)

§ 1157. Evidence of publication of notices.

When any notice is required to be published in any newspaper under this act, an affidavit of the publisher or printer of such newspaper or of the foreman or clerk of such publisher or printer, annexed to a printed copy of such notice taken from the paper in which it was published, and specifying the time when and the paper in which such notice was published, shall be evidence in all cases and in every court of judicial proceedings of the facts contained in such affidavit.

(Id. § 42.)

§ 1158. New assessment to be ordered, when.

If for any cause the proceedings of the city council or any officer may be found irregular or defective, whether jurisdictional or otherwise, the city council may order a new assessment from time to time and as often as need be until a sufficient sum is realized from the real estate abutting on the street in which such improvement has been or is to be made to pay the costs, damages and expenses incurred thereby, it being the true intent and meaning of this act to make the cost and expenses of all public improvements provided for in this act local to such city and payable by such abutting real estate.

(Id. § 43.)

§ 1159. Certificate of payment of assessments to entitle deed to record—Penalty—Duty of treasurer.

The register of deeds shall not record any deed of any property located in cities which have become subject to the provisions of this act from a private person or private corporation unless there is indorsed on such deed a certificate of the city treasurer that all assessments for local improvements have been paid, and any violation of this provision by the register of deeds shall be a misdemeanor, and be punished by a fine not exceeding double the amount of the unpaid assessment. It shall be the duty of the city treasurer upon the application of any person interested in such deed, where the assessment has been paid, and not otherwise, to make such certificate free of charge, but the said city treasurer shall not certify that said assessment has been paid in any case where the property has been purchased by the said city at the sale provided for in this act, and the time for redemption has not expired, and the city still holds the certificates of sale.

(Id. § 44.)

(309)

1155
97 - 50

1159
97 - 344

**§ 1160. Acceptance of act by ordinance of city council—
Judicial notice of acceptance.**

Any city in the state of Minnesota heretofore or hereafter incorporated may become subject to the provisions of this act, and the city council of such city may effect the same by an ordinance thereof, duly passed by three-fourths of all the members of such council voting in favor of the same, and approved as provided by the charter of such city; and a certified copy of such ordinance so approved and duly certified, accompanied by a statement of the vote thereon, with the names of the members voting for and against said ordinance, shall be forwarded to and filed in the office of the secretary of state, and such city shall thenceforth be deemed to be subject to the provisions of this act, and shall be governed, controlled and regulated by and under the provisions of this act, and the city officers of said city shall thereupon exercise the powers conferred herein, and all courts in this state shall take judicial notice of the fact of such city becoming subject to the provisions of this act; and none of the provisions of this act shall have any force or effect in any city of this state unless accepted as in this section provided. And provided, further, that nothing in this act shall be construed to prevent any city in this state heretofore organized under any special law from continuing to conduct its municipal affairs under the provisions of such special laws until they shall elect to become subject to the provisions of this act as heretofore provided in this act.

(Id. § 45.)

§ 1161. Repeal of inconsistent laws upon acceptance of this act.

After the passage and adoption of the ordinance mentioned in the last section and the filing of the same with the secretary of state all laws of such city in conflict with this act shall no longer be applicable, and shall be repealed from and after that date, but all laws or parts of laws not inconsistent with the provisions of this act shall continue in force and be applicable to such city the same as if such city had not become subject to the provisions of this act.

(Id. § 46.)

§ 1162. Acceptance of act not to affect improvements already under contract.

All suits, debts, taxes and claims whatever belonging to the said city shall be and remain in full force, and shall be sued for, recovered or collected under the provisions of law governing the said city prior to the acceptance of this act, and all proceedings for the collection of any special assessment for local improvement contracted for before such city became subject to the provisions of this act, shall be proceeded in as though no change had been made in the laws regulating and governing such city.

(Id. § 47.)

§ 1163. Improvement of street prior to establishing grade.

In case any city in this state has made or undertaken any improvement of a street, avenue or alley prior to the establishment of a permanent grade for the same, the assessments therefor, except such as are now in litigation, are hereby declared, and shall be, as valid as though said improvement had been made conformably to a permanent grade previously established.

(1893, c. 206, § 1. 15)

§ 1164. Reassessment to be made, when.

Whenever any assessment heretofore made, or hereafter to be made for any improvement already undertaken by any municipal corporation of this state, to defray the expense of any local improvement, shall be set aside or pronounced invalid, in whole or in part, from any cause whatever, jurisdictional or otherwise, the cost of said improvement, or the portion thereof which shall have been pronounced invalid, may be reassessed, to the extent of the

¹⁵An act to authorize reassessments for local improvements by cities, and to legalize certain of such assessments. Approved March 29, 1893.

1163-1171
61-NW - 457
1163-1171
59-M - 528
1163-1171
64-M - 333

1164
95 - 127-1

MINNESOTA STATUTES 1894

Tit. 2]. CITIES—OPENING AND VACATING STREETS, ETC. §§ 1164-1169

benefits actually accruing, against the property benefited thereby, in the manner hereinafter set forth.

(Id. § 2.)

§ 1165. Statement to be filed in district court.

In order to secure such reassessment, the municipal corporation desiring it shall cause to be made a statement, setting forth a description and nature of the improvement made and the assessment which has been set aside, in whole or in part, or which is invalid, in whole or in part, together with the cost of the improvement and the amount proposed to be reassessed, and shall cause the same to be filed in the office of the clerk of the district court held in and for the county in which said municipal corporation is situated.

(Id. § 3.)

§ 1166. Notice of application for appointment of appraisers.

Said municipal corporation shall then cause notice to be given in the official paper of said municipal corporation, by publication for the space of one week, that said statement has been so filed, and that at a time and place named in said notice said municipal corporation will ask said court or a judge thereof to appoint three disinterested parties, residents of said municipal corporation, as appraisers, to determine and assess the benefits accruing to local property, by reason of said improvement, or the portion thereof which shall have been so set aside or be invalid.

(Id. § 4.)

§ 1167. Appointment of appraisers—Oath.

At said time and place said municipal corporation, and any private person interested, may appear before said judge and suggest names of persons suitable for such appointment, and thereupon said judge shall appoint three disinterested persons, residents of said municipal corporation, as said appraisers. Before proceeding to make said assessment said appraisers shall take an oath that they will carefully examine the premises affected by said improvement, and make a true and just assessment of the benefits accruing from said improvement to property locally affected, according to their best understanding and ability, and shall file said oath in the office of the clerk of said court.

(Id. § 5.)

§ 1168. Duty of appraisers.

Said appraisers shall, as soon thereafter as may be, examine the improvement made and the property deemed benefited thereby. They shall give public notice, by publication thereof, for the space of one week, in the official paper of said municipal corporation, of the time and place when and where they will meet to make said assessment. At said time and place any person interested may appear and be heard. Having fully considered said matters, said appraisers shall make their assessment against each piece and parcel of land deemed by them to be benefited by reason of said improvement, or the portion thereof set aside, or invalid, and shall make an assessment roll, containing a description of each piece of property assessed, and the amount assessed against the same, and shall annex to said assessment roll a report of all their doings in the premises, and having made and signed said assessment roll, they shall file the same in the office of the clerk of said court. If said original assessment, for which a reassessment is being made, shall have been pronounced invalid, by reason of the fact that any piece or parcel of land was not benefited thereby, then said assessors shall not assess any sum against said piece or parcel of land so adjudged not to be benefited, nor shall the amount assessed against any lot exceed the benefits actually accruing to said lot.

(Id. § 6.)

§ 1169. Notice of application for confirmation of assessment—What to contain.

Upon said report being filed in said clerk's office, said municipal corporation shall cause a notice to be published in the official newspaper of said

MINNESOTA STATUTES 1894

§§ 1169-1172

TOWNSHIP ORGANIZATION.

[Ch. 10

municipal corporation, if a daily paper, for a space of ten days, if a weekly paper, for the space of two weeks, stating that said report has been filed in said clerk's office, and that at a time and place mentioned in said notice said municipal corporation will apply to the district court, in county aforesaid, for an order of said court confirming the assessment so made by said appraisers. Said notice shall state when and where said report has been filed, the improvement for which said reassessment has been made, and shall describe with common certainty the pieces and parcels of land affected by said assessment.

(Id. § 7.)

§ 1170. Objections to confirmation—Procedure—Assessment confirmed shall constitute a lien.

At the time set for said application for confirmation, any person interested in any of the land affected by said reassessment may appear before said judge or court and may state his objections to the confirmation of said assessment. All objections shall be made in writing, and shall state briefly the objections raised, and all objections not so stated at said time shall be deemed to be waived. If the objections raised do not require the taking of evidence, the court shall proceed at once to consider and dispose of the same. If the objections raised require the taking of evidence, the court shall fix a time and place when and where such evidence may be taken. The decision of said appraisers shall not be, to any extent, binding upon the court, but the court shall hear all legal evidence offered, and shall make such decision in the matter as justice may require. The decision of said court may be a confirmation of said assessment, as reported, or a confirmation thereof with such changes or modifications as in the judgment of said court justice may require, or said court may send said matter back to the same or other appraisers, to make a new appraisal of benefits, in accordance with such directions as the court may give, the same to be confirmed or modified, as hereinbefore set forth. When said matter shall have been finally disposed of by the court, and the order of confirmation duly filed with the clerk of said court, said assessment shall thereupon be and constitute a lien in favor of said municipal corporation, and against each of the parcels of land mentioned in said assessment roll, for the several sums stated therein. Said assessment shall be further enforced and collected in the same manner as other assessments made by said municipal corporation are enforced and collected.

(Id. § 8.)

§ 1171. Right of appeal to supreme court.

Any person aggrieved by the final action of said judge or court confirming said assessment may appeal from the order of confirmation to the supreme court of this state, in the same manner that an appeal may be taken in any action at law in this state.

(Id. § 9.)

§ 1172. Money advanced to pay cost of improvements may be repaid, when.

That the city council or common council, as the case may be, of any and all cities in the state of Minnesota is hereby authorized and empowered to reimburse and recompense any person or persons who have, prior to the passage of this act, advanced any money or moneys to any such city to pay for and be used in the construction of bridges, the grading or paving of streets or for the making of any other public improvement therein, under an agreement by the city to refund such money or moneys so advanced upon obtaining authority therefor from the legislature.

(1893, c. 203, § 1.10)

¹⁰An act to authorize cities in the state of Minnesota to reimburse any person or persons who have advanced moneys to such cities to pay for and be used in making public improvements therein. Approved April 11, 1893.

1170
95 . 127-2

1171
95 . 127-3

1172 87-M . 153

(7) FIRE DEPARTMENT.

§ 1173. Fire limits—Protection against fire.

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

(1870, c. 31, subc. 7, § 1; G. S. 1878, c. 10, § 183.)

§ 1174. Precautions against fire.

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

(1870, c. 31, subc. 7, § 2; G. S. 1878, c. 10, § 184.)

§ 1175. Fire engines—Fire department—Exemptions.

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

(1870, c. 31, subc. 7, § 3; G. S. 1878, c. 10, § 185.)

§ 1176. Officers of fire department.

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

(1870, c. 31, subc. 7, § 4; G. S. 1878, c. 10, § 186.)

§ 1177. Summary arrests at fires.

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

(1870, c. 31, subc. 7, § 5; G. S. 1878, c. 10, § 187.)

(8) STREET GRADES AND SIDEWALKS.

§ 1178. Grade of streets—Profiles.

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

(1870, c. 31, subc. 8, § 1; G. S. 1878, c. 10, § 188.)

Unless expressly so declared by charter or statute, a municipal corporation, clothed with full power to grade and improve its streets, is not liable to property owners for consequential damages necessarily resulting from the action of its governing body in establishing the grade of a street, and causing it to be improved in conformity therewith. *Lee v. City of Minneapolis*, 22 Minn. 13.

§ 1179. Construction and repair of sidewalks—Notice to owners, etc.

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

(1870, c. 31, subc. 8, § 2; G. S. 1878, c. 10, § 189.)

§ 1180. Same—Assessments for cost.

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

(1870, c. 31, subc. 8, § 3; G. S. 1878, c. 10, § 190.)

§ 1181. Authorized to repair sidewalks without petition of owners.

That each city of the state of Minnesota be and is hereby authorized and empowered to repair or reconstruct with material of the same or different kind

MINNESOTA STATUTES 1894

Tit. 2]

CITIES—LIGHTING OF STREETS.

§§ 1181—1186

sidewalks upon and along any of the public streets, avenues, lanes and alleys within the city limits, without any petition therefor from any of the owners of real estate fronting on any such street, avenue, lane or alley, such sidewalk to be constructed in all respects as is provided by the laws of such city, except that no petition therefor shall be necessary.

(1893, c. 214, § 1.17)

By § 2, all laws and parts of laws inconsistent with the provisions of this act are repealed.

§ 1182. Collection of assessments.

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

(1870, c. 31, subc. 8, § 4; G. S. 1878, c. 10, § 191.)

§ 1183. Width and material of sidewalks.

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

(1870, c. 31, subc. 8, § 5; G. S. 1878, c. 10, § 192.)

(9) LIGHTING OF STREETS—SUPPLY OF WATER.

§ 1184. Contract for lighting streets.

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

(1870, c. 31, subc. 9, § 1; G. S. 1878, c. 10, § 193.)

§ 1185. Laying of gas-pipes.

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

(1870, c. 31, subc. 9, § 2; G. S. 1878, c. 10, § 194.)

§ 1186. Laying of water pipes.

The common council may permit any party or corporation to lay water-mains and pipes in any and all streets, alleys, highways and public grounds of the city, and shall regulate the position of the same, so that [they] shall not obstruct or interfere with common sewers, or with the proper drainage of the city.

(1870, c. 31, subc. 9, § 3; G. S. 1878, c. 10, § 195.)

¹⁷An act in relation to the construction of sidewalks. Approved February 13, 1893.

MINNESOTA STATUTES 1894

§§ 1187-1193

TOWNSHIP ORGANIZATION.

[Ch. 10

(10) MISCELLANEOUS PROVISIONS.

§ 1187. Rescinding of votes by council.

No vote of the common council shall be reconsidered or rescinded at a subsequent meeting, unless at such subsequent meeting there be present as large a number of aldermen as were present when the vote was taken.

(1870, c. 31, subc. 10, § 1; G. S. 1878, c. 10, § 196.)

§ 1188. Remission of penalties.

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

(1870, c. 31, subc. 10, § 2; G. S. 1878, c. 10, § 197.)

§ 1189. Procedure for violation of ordinances, etc.

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

(1870, c. 31, subc. 10, § 3; G. S. 1878, c. 10, § 198.)

§ 1190. Enforcing payments of fines.

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

(1870, c. 31, subc. 10, § 4; G. S. 1878, c. 10, § 199.)

§ 1191. Citizens as jurors, etc., where city is party.

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

(1870, c. 31, subc. 10, § 5; G. S. 1878, c. 10, § 200.)

Tax-payers are competent jurors. McClure v. City of Red Wing, 28 Minn. 186, 196, 9 N. W. Rep. 767.

§ 1192. Real estate held by city.

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

(1870, c. 31, subc. 10, § 6; G. S. 1878, c. 10, § 201.)

§ 1193. Cities may sell real estate used for market purposes.

That each and every city in this state be and is authorized and empowered by a resolution passed by a two-thirds vote of all members-elect of the city or common council of said city, and approved as is provided in the charter of said city, to sell and convey any real estate that is owned and has been used by said city for market purposes. Said sale and conveyance shall be

1187-1195
95 . 238
95 . 241

1191
97 - 352

MINNESOTA STATUTES 1894

Tit. 3]

CERTAIN VILLAGES.

§§ 1193-1198

made in such manner and upon such terms and conditions as may be authorized by the city or common council of such city.

(1893, c. 215, § 1.¹⁰)

§ 1194. Repeal or amendment of this act.

No law of the state concerning the provisions of this act shall be considered as repealing, amendatory or modifying the same, unless said purpose be expressly set forth in such law.

(1870, c. 31, subc. 10, § 7; G. S. 1878, c. 10, § 202.)

§ 1195. Street commissioner.

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

(1870, c. 31, subc. 10, § 8; G. S. 1878, c. 10, § 203.)

1195
99 - 107

[TITLE 3.]

1196
1198) '05 . 12

[CERTAIN VILLAGES.]

The village act of 1883 (Laws 1883, c. 73) was amended by Laws 1885, cc. 65, 109, and was held unconstitutional in *State v. Simons*, 32 Minn. 540, 21 N. W. Rep. 750. Laws 1885, c. 231, legalizing the incorporation of villages under Laws 1883, c. 73, was held valid in *State v. Spaude*, 37 Minn. 322, 34 N. W. Rep. 164.

1196-1275
01 - 119
01 - 131
78-NW 106

§ 1196. Incorporation under Laws 1883, c. 73, legalized.

That all villages heretofore incorporated under and by virtue of any act of the legislature, either general or special, that may have become re-incorporated or attempted to become incorporated under, or may have adopted or attempted to adopt any of the provisions of, chapter seventy-three of the general laws of A. D. one thousand eight hundred and eighty-three, be and the same hereby are duly incorporated, and all such villages shall possess and are hereby endowed with all the franchises, rights, powers and privileges and subject to all the duties in said act enumerated and contemplated. And all officers of any such village, and all persons acting as officers of any such village, shall continue to occupy their respective offices, in like manner as if said act had been constitutional and valid. And all votes taken by the electors of such villages, and all official acts of all persons heretofore acting as officers of any such village, are hereby legalized and declared to be of the same force and validity as if said act had been constitutional and valid.

(1885, c. 236, § 1.¹⁰)

1196-1200
95 - 261

1196-1275
95 - 257

1196-1208
97 - 72

1196-1206
95 - 256
99 - 289

1196-1275
99 - 241
78-NW 106
1196-1208
01 - 373

§ 1197. Legalizing incorporation of certain villages.

That all villages heretofore incorporated, or whose incorporation has been attempted under and by virtue of the provisions of any act of the legislature of this state, and which are now exercising or attempting to exercise corporate powers are hereby declared bodies corporate, and all such villages shall possess and are hereby endowed with all the franchises, rights, powers and privileges and are subject to all the duties conferred or attempted to be conferred on such corporations under the provisions of chapter one hundred and forty-five of the general laws of A. D., one thousand eight hundred and eighty-five, any defect or irregularity in the proceedings relating to such incorporation to the contrary notwithstanding.

(1889, c. 66, § 1.¹⁰)

1197
95 - 268
95 - 266

§ 1198. Villages incorporated under special acts—Reincorporation.

Every village which has heretofore been incorporated under a special act of the legislature therefor, shall continue to exist under such act and amend-

1198-1275
78-M - 231

¹⁰An act to authorize cities to sell any property owned and used by the city for market purposes. Approved April 17, 1893.

¹¹An act to legalize the incorporation of certain villages.

¹²An act to legalize the incorporation of certain villages. Approved April 22, 1889.

ments thereto; and the provisions of this chapter shall in no manner affect or apply to the same, except as hereinafter in this chapter specially provided, unless adopted as provided in this section. The trustees thereof may, by resolution, submit at a special village election the question whether such village will so continue, or will become reincorporated under the General Statutes. They shall give notice thereof in the manner required in this chapter for notifying special elections. Ballots shall be written or printed "For reincorporation," and "Against reincorporation," and the election shall be conducted and result canvassed as provided for an annual village election by such village. If a majority vote for reincorporation, the trustees shall make a certificate setting forth the fact of such submission, and the vote thereon in detail, and the result thereof, and cause the same to be recorded in the office of the register of deeds, and thereupon the special act of incorporation shall be deemed surrendered, and such village become incorporated under the General Statutes, but shall, until the next annual village election herein provided to be held in January following, be governed by the officers then in office.

(1885, c. 145, § 1; ²¹ G. S. 1878, v. 2, c. 10, § 204; as amended 1893, c. 187, § 1.)

By Laws 1889, c. 134, this act is amended so that the provisions thereof relating to election districts shall not apply to the village of Brown's Valley, Traverse county, which is constituted a separate election district from the town in which it is located.

By Laws 1891, c. 101, the village of Harris, Chisago county, is constituted a separate election district from the towns in which it is located.

The provisions of c. 145, Laws 1885, apply to villages mentioned in c. 231, Laws 1885, (note to title 3, ante), and supersede the provisions of G. S. 1878, c. 10, relating to the incorporation, government, and status of villages. *State v. Spaude*, 37 Minn. 322, 34 N. W. Rep. 164, 166.

As to a village reincorporated under this act, which, as previously constituted, remained for certain purposes a part of the town in which it was situated, see *Bradish v. Lucken*, 38 Minn. 186, 36 N. W. Rep. 454.

Villages, under this act, do not constitute election districts for state and county elections separate from the townships in which they are situated. *Stemper v. Higgins*, 38 Minn. 222, 37 N. W. Rep. 95.

See *State v. Gurley*, 37 Minn. 475, 35 N. W. Rep. 179; *Baldwin v. Robinson*, 39 Minn. 244, 246, 39 N. W. Rep. 321.

§ 1199. Uniformity of village government.

Every village which has been or shall be organized or incorporated under the General Statutes shall be hereafter governed according to the provisions of this chapter, to the end that uniformity of village government and equal privileges to all may be secured.

(1885, c. 145, § 2; G. S. 1878, v. 2, c. 10, § 205.)

See *State v. Cornwall*, 35 Minn. 176, 28 N. W. Rep. 144.

§ 1200. What territory may be incorporated.

Any district, sections, or parts of sections, not in any incorporation 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 less than one hundred and seventy-five, may become incorporated as a village under this act in the following manner:

(1885, c. 145, § 3, as amended 1887, c. 62, § 1; G. S. 1878, v. 2, c. 10, § 206.)

§ 1201. Petition for election.

Thirty or more of the electors then residents upon the lands so to be incorporated, may petition the county commissioners of the county in which the

²¹An act to provide for the incorporation of villages, and to define their duties and powers, and to repeal certain laws in relation thereto. By § 58, "all acts or parts of acts inconsistent with this act are hereby repealed."

1200 87-M . 196
 1200
 59-NW . 973
 1200
 57-M - 531
 1200-1208
 97 - 170
 1200
 99 - 66
 99 - 220
 1201
 97 - 135

MINNESOTA STATUTES 1894

Tit. 3]

CERTAIN VILLAGES.

§§ 1201-1206

whole or larger part of said lands are situated, to appoint a time and place when and where the electors actually residing upon said lands may vote for or against such incorporation, and such petition shall set forth the boundaries of such territory, with their courses and distances, the quantity of land therein embraced, the name of such proposed village, and the number of persons actually residing in said territory, which shall have been duly ascertained by said petitioners, or under their direction, by a census taken of the resident population as it may be on some day not more than eight weeks previous to the time when said petition is presented to said commissioners, and said petition shall be verified by at least three of said petitioners, to the effect that such census has been accurately taken, and that all the facts in said petition contained are true.

(1885, c. 145, § 4; G. S. 1878, v. 2, c. 10, § 207.)

§ 1202. Posting petition and notices—Inspectors of election.

On delivery of said petition to the county commissioners, or to any one of them, it shall be their duty, within ten days therefrom, to post, or cause to be posted, in five of the most public places within said territory, three copies of such petition, together with notices attached thereto, stating the time and place within the limits of said proposed village when and where the electors thereof will vote for or against such incorporation; which time shall be at least thirty days from the posting of said notices; and said commissioners shall appoint, by resolution, three inspectors, residents of said proposed village, who shall preside and act as inspectors at such meetings, and all the laws of this state relating to the election of town officers shall apply to said meeting, so far as the same are applicable and not inconsistent with this act.

(1885, c. 145, § 5; G. S. 1878, v. 2, c. 10, § 208.)

§ 1203. Publishing petition and notice.

If there be a newspaper printed within said territory, the said petition, verification thereof, and the notice, as hereinbefore provided, shall be printed in full therein for three successive weeks previous to the day specified in said notice for voting upon the proposed incorporation.

(1885, c. 145, § 6; G. S. 1878, v. 2, c. 10, § 209.)

§ 1204. Who may vote—Ballot.

Every elector residing in such territory, and qualified to vote for town officers in the town in which such lands or some part thereof lie, may vote at such meeting, by a ballot having thereon the words, "For incorporation, yes;" or "For incorporation, no."

(1885, c. 145, § 7; G. S. 1878, v. 2, c. 10, § 210.)

§ 1205. Certificate of inspectors—What to contain.

Within three days after such meeting the inspectors presiding thereat shall file with the said county commissioners, or some one of them, a certificate showing that the said meeting was held at the time and place specified in said notice; that they have canvassed the ballots cast thereat, giving the whole number of votes cast, the number of those having thereon the word "yes," and the number having thereon the word "no;" which said certificate shall be signed by said inspectors, and by them duly verified to the effect that the statements therein contained are true.

(1885, c. 145, § 8; G. S. 1878, v. 2, c. 10, § 211.)

§ 1206. Effect of filing certificate, etc.—Powers and duties of village.

Within five days after receiving said certificate, as in the previous section provided, if the same shows a majority vote for incorporation, it shall be the duty of the said commissioners to file the same, together with the original

(319)

petition and a true copy of the notice of election, as provided in section five of this act, in the office of the register of deeds in and for the county wherein lie the whole or the greater part of said lands, and thereupon the said territory mentioned in said petition shall be an incorporated village within the intent of this act from the date of filing said papers in the office of the said register of deeds; and shall, under the name set forth in said petition, be endowed with all the rights, powers, and duties incident to municipal corporations at common law, with perpetual succession; and shall, by said corporate name, be capable of contracting and being contracted with, of suing and being sued, and of pleading and being impleaded in all courts of law and equity, and have a common seal which may be altered at the pleasure of the village council; and shall have power to take, hold, purchase, lease, and convey real estate, or personal property, or mixed estate, as the purposes of the corporation may require, either within or without the limits of said corporation.

(1885, c. 145, § 9; G. S. 1878, v. 2, c. 10, § 212.)

1207 '05 95

§ 1207. Recording papers—Evidence.

It shall be the duty of said register of deeds to record said papers in full, and the papers so filed, or the record thereof, shall be *prima facie* evidence in all courts of law and equity that said village is a duly-incorporated village under the provisions of this act.

(1885, c. 145, § 10; G. S. 1878, v. 2, c. 10, § 213.)

§ 1208. Organization—Election of officers.

Within three days of the filing said papers with said register the said commissioner shall post notices in three of the most public places in the village, giving at least ten days' notice to the legal voters residing in said incorporated village, to meet to organize under the provisions of this act, and elect officers for the ensuing year. The action of a majority of said persons shall be considered the action of the whole number, and the electors present at the time and place designated in said call may organize such meeting by choosing *viva voce*, two judges of election and one clerk, who, before entering upon the discharge of their duties, shall take and subscribe an oath or affirmation to faithfully discharge the duties required of them; and said judges and clerk, being duly qualified, shall forthwith open the polls by proclamation, and conduct the election in the manner provided by the statutes of the state for the election of township officers, and the judges of election shall give to each person elected a certificate of his election, and such officers shall, after having qualified according to law, forthwith enter upon the discharge of their duties. And all the necessary and proper expenses and charges incident to such incorporation, and the records thereof, shall be paid by such village.

(1885, c. 145, § 11; G. S. 1878, v. 2, c. 10, § 214; as amended 1893, c. 188, § 1.)

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97 - 121
97 - 124

§ 1209. Incorporated village may become separate election and separate assessment district from the town in which village is situated.

That any incorporated village in this state may, at any annual or special election, by an affirmative majority of the votes cast at such election, be made a separate election district and a separate assessment district and separate from the town or towns in which such village is situated for all purposes. Provided, that it shall be lawful for any township in which any such village, so to be separated, is situated, to hold its town meeting and elections within the limits of such village at a place to be designated therefor, but no resident of such village shall have the right to vote at such town meeting or election.

(1893, c. 199, § 1.)

²²An act to allow villages to separate themselves from the township government of the towns in which they are located. Approved April 1, 1893.

§ 1210. Same—Apportionment between town and village of taxes levied to pay joint indebtedness.

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97 - 353

In case any village and the town or towns in which any village is located shall have heretofore jointly or together contracted any bonded or other indebtedness, then and in every such case it shall be the duty of the county auditor in the county in which such village and town or towns are located, to apportion the amount of taxes necessary to be levied in each year to pay interest and principal of such indebtedness as the same may become due and payable upon the taxable property of such village and town or towns pro rata, according to the valuation of such town or towns and village, until such joint indebtedness, with the interest thereon, is fully paid. Where such indebtedness is to be provided for by tax levied upon the property of such village and town or towns jointly, it shall be the duty of the board of supervisors in each of the towns thereby affected to file with the county auditor a statement showing the amount of tax to be raised for such purpose.

(Id. § 2.)

§ 1211. County auditor to be notified of vote, when—His duty.

If by a majority vote the proposition carries, then within ten days after the election the village recorder shall notify the county auditor of the county in which said village is located; and the county auditor shall after that time keep the records and tax list separate and distinct from the town or towns in which such village is located, in the same manner as the town records and tax lists are kept.

(Id. § 3.)

§ 1212. Incorporated village—Adding territory—Detaching territory—Election.

1212
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1212 '05 . 273
'05 . 281

Added and adjacent territory may be annexed to any village, either originally incorporated or reincorporated under the provisions of this act, by a petition of at least five of the legal voters, residents of such adjacent lands, to the county commissioners, in the same manner as hereinbefore provided for the incorporation of villages; and it shall be the duty of such commissioners to proceed thereupon as in sections five, six, seven, eight, and nine of this act, to give notices of the time and place within the territory so to be annexed, when and where the electors thereof will vote for or against such annexation; and the ballots used shall have thereon the words, "For annexation," or "Against annexation;" and if the majority of the ballots cast shall be "For annexation," then the said commissioners shall file with the register of deeds the original petition, notice of election, and inspector's certificate, as provided in section nine of this act. Any territory within the corporate limit of any such village, not included within the platted portion thereof may be taken out of such corporation and detached therefrom by a petition of at least thirty of the legal voters of such village, including the owner of the land which is proposed to be detached, to the county commissioners in the same manner as provided for the annexation of territory to incorporated villages, and it shall be the duty of such commissioners to proceed thereupon as in sections five, six, seven, eight and nine of chapter one hundred and forty-five of the general laws of 1885, and to give notice of the time and place within the corporate limits of such village when and where the electors thereof will vote for or against such detaching, and the ballots used shall have thereon the words, "For Detaching" or "Against Detaching;" and if the majority of the ballots cast shall be for detaching, then the said commissioners shall file with the register of deeds the original petition, notice of election and inspector's certificate, as provided in section nine of chapter one hundred and forty-five of the general laws of 1885. And said territory when so detached shall belong to and be a part of the township in which it is when so detached. Provided that such land shall not be detached as herein provided in any case where such detaching would reduce the number of inhabitants of such incorporated village below the number

now required by law for the incorporation thereof. Provided further, that the detaching of any territory from any incorporated village under the provisions of this act shall not relieve such territory of its share of any indebtedness existing against such corporation, but the said territory shall be deemed a part of such village for the purpose of taxation imposed to discharge the principal and interest of such pre-existing indebtedness, until the same shall have been fully discharged.

(1885, c. 145, § 12; G. S. 1878, v. 2, c. 10, § 215; as amended 1893, c. 184, § 1.)

See *Bradish v. Lucken*, 38 Minn. 186, 190, 36 N. W. Rep. 454.

§ 1213. Same—Method of calling and holding special election.

It shall be the further duty of said commissioners, on receiving said petition, to serve a copy thereof upon the president or recorder of the village to which such annexation is proposed; and it shall be the duty of the village council thereof, within ten days, to call a special election in said village by posting, in three of the most public places therein, notices thereof, which shall contain a description of said territory so to be annexed, and stating the time and place when and where the electors of said village will vote for or against such annexation. Said election shall be held within thirty days from the time said petition is served on the president or recorder, and ten days' notice thereof shall be given. The ballots used shall have upon them the words, "For annexation," or "Against annexation," and the same laws shall apply in said election as apply in the election of the officers of said village. And if the judges of election shall find, on canvassing said ballots, that a majority thereof are "For annexation," then they shall make a certificate containing a description of the territory as set forth in the notice of said election, stating the whole number of votes cast, the number "For annexation," and the number "Against annexation," which said certificate shall be signed by said judges, and by them verified, to the effect that the statements therein contained are true; and they shall cause the same to be filed with the said register of deeds within ten days after such election.

(1885, c. 145, § 13; G. S. 1878, v. 2, c. 10, § 216.)

§ 1214. Same—Effect of filing certificate.

Upon filing with the said register the certificate hereinbefore mentioned showing a majority of votes cast both in the territory to be annexed as well as in the said village to be for annexation, then and thereupon the said territory shall be a part of said incorporated village; and all the necessary and proper expenses and charges incident to such annexation, and the records thereof, shall be paid by such village.

(1885, c. 145, § 14; G. S. 1878, v. 2, c. 10, § 217.)

§ 1215. Recording papers—Evidence.

It shall be the duty of the register with whom said papers are filed to record the same together in full; and the original papers so filed, or the records thereof, shall be *prima facie* evidence in all courts of law and equity that the territory therein described is a part of said incorporated village.

(1885, c. 145, § 15; G. S. 1878, v. 2, c. 10, § 218.)

§ 1216. Village elections—Judges—Annual meeting—Vote by ballot.

After the first election of officers the village council shall within twenty days before the time of holding any election of village officers, designate and appoint two qualified voters of such village who shall act as judges of such election; and in case of the neglect to make such appointment, or if the persons so appointed neglect or refuse to serve, the electors present at the time and place named for opening the polls of any such election may *viva voce*

MINNESOTA STATUTES 1894

Tit. 3]

CERTAIN VILLAGES.

§§ 1216-1218

elect two judges of election and one clerk, who before entering upon the discharge of their duties, shall take and subscribe an oath or affirmation to faithfully discharge the duties required of them, and the said judges and clerk being qualified, shall forthwith open the polls by proclamation, and conduct the election in the manner provided in this section. The annual meeting shall be on the second Tuesday of March for the election of officers and at such place as may be directed by the village council after giving ten days' notice thereof, either by posting written notices in three of the most public places in the village, or by publishing such notice in a newspaper printed in such village. The polls shall be open at ten o'clock a. m. and close at four o'clock in the afternoon of said day. At the close of the polls the votes shall be counted, and a true statement thereof proclaimed to the voters by some one of the judges of election, and the recorder shall make a true copy thereof in a book kept for such purposes, and within five days notify in writing the persons so elected of their election. All elections shall be by ballot, and all votes for elective officers and all questions to be submitted to the people thereof at any election shall be upon one ballot and be deposited in one ballot box; a plurality of votes shall elect, and if two or more persons receive an equal number of votes for the same office, the election shall be forthwith determined by lot in the presence of the judges of election in such manner as they direct, and every qualified elector, then actually resident in such village, may vote at any election; Provided, that no candidate for office shall act as judge or clerk at such election.

(1885, c. 145, § 16; G. S. 1878, v. 2, c. 10, § 219; as amended 1889, c. 125.)

Laws 1889, c. 67, approved March 1, 1889, relating to date of annual election in the village of Mazeppa, Wabasha county, and Laws 1889, c. 128, approved March 25, 1889, relating to date of annual election in the village of Mendota, Dakota county, appear to be repealed by Laws 1889, c. 125, approved March 23, 1889.

See Laws 1891, c. 103, for amendment permitting annual election in village of Annandale, Wright county, to be held on third Monday in March.

See State v. Cornwall, 35 Minn. 176, 23 N. W. Rep. 144; Stemper v. Higgins, 38 Minn. 222, 225, 37 N. W. Rep. 95.

§ 1217. Special elections—Elections governed by law of town meetings.

1217
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Special elections may be ordered by the council, but no special election shall be held unless ten days' notice thereof is given, nor shall any subject or question be considered or acted upon unless its objects are clearly set forth and stated in the notice for the call of such meeting. All village elections shall be, except as hereinbefore provided, conducted and the result canvassed and certified as in the case of town meetings; and, except as modified in this chapter, every statute relating to holding town meetings, canvassing and certifying the result thereof, and relating or applicable to the duties of judges of election and clerks, the challenging of votes, and to voting thereat, and every statute prescribing and punishing offenses for illegal voting, bribery, fraud, corruption, official delinquency, or other offense, at or concerning elections, which is applicable to town meetings, is hereby extended and applied to village elections.

(1885, c. 145, § 17; G. S. 1878, v. 2, c. 10, § 220.)

See Stemper v. Higgins, 38 Minn. 222, 225, 37 N. W. Rep. 95.

§ 1218. Village assessor—His duties.

The village council shall, at their first meeting in the month of April in each year, elect an assessor who shall be styled the "village assessor," who shall perform all the duties in relation to the assessing of property for the purpose of levying of all village, county, and state taxes, and upon the completion of the assessment roll he shall return the same to the village council, who may alter, revise, and equalize the same as they may deem it just and proper. Said village assessor shall hold his office for one year, and until his successor is elected and qualified: *provided*, that, unless said village is a separate election district, the assessor of the township in which said village is situated

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1218
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shall assess the property in the village in the same manner as property situated in the township.

(1885, c. 145, § 18, as amended 1887, c. 62, § 2; G. S. 1878, v. 2, c. 10, § 221; 1889, c. 122, § 1.)

See Laws 1891, c. 101, § 2, for election of village assessor in the village of Harris, Chicago county.

The election district mentioned in the amendment of 1887 has reference to general elections. State v. Spaude, 37 Minn. 322, 84 N. W. Rep. 164.

1219
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§ 1219. Village officers—Oath—Bond—Treasurer's duties.

The inhabitants of said village having the qualification of electors of members of the legislature of the state of Minnesota, as hereinafter provided, may elect a president, three trustees, a treasurer, and a recorder, who shall hold their respective offices for one year, or until their successors are elected and qualified; also two justices of the peace, and two constables, who shall hold their respective offices for two years, or until their successors are elected and qualified; and, before entering upon the duties of their respective offices, they shall each take an oath or affirmation to support the constitution and laws of the state of Minnesota, and faithfully discharge the duties of his office. The treasurer shall give such bonds as the village council may require. The treasurer shall keep a true account of all moneys by him received by virtue of his office, and the manner in which the same are disbursed, in a book provided for that purpose, and shall exhibit such account, together with his vouchers, to the village council at its annual meeting, or at any time when called for by resolution of said council for adjustment, and shall deliver all books and papers belonging to the office, and the balance of all moneys, as such treasurer, to his successor in office: *provided, further*, that the treasurer shall not pay out any moneys in his hands except upon the written order of the president of the council, attested by the recorder. The treasurer shall, from time to time, draw from the county treasurer such moneys as may be due said corporation, for the use of said village, and, on receipt of said moneys, give proper vouchers therefor.

(1885, c. 145, § 19, as amended 1887, c. 53, § 1; G. S. 1878, v. 2, c. 10, § 222.)

As to Rock county, see 1891, c. 118, § 2.

1220
99 - 107

§ 1220. Election of street commissioner in villages incorporated under special law.

All towns, boroughs and villages in this state incorporated under any special law shall elect at the same time that the president, recorder, trustee or common council are required to be elected by such special act one street commissioner, which officer shall have general supervision of the streets, alleys and public places in such town, village or borough subordinate to the president and common council of the same, and shall perform such duties of the same nature as shall be required by the said president and common council or by the provisions of such special act under which such borough, town or village is incorporated.

(1893, c. 198, § 1.23)

§ 2 repeals all inconsistent acts.

1221
97 - 151

§ 1221. Every village to elect two justices of the peace.

All incorporated villages within the state, whether incorporated under special or general laws, shall hereafter elect two justices of the peace, whose terms of office, powers and duties shall be such as are now or may be hereafter prescribed by law.

(1893, c. 197, § 1.24)

²³An act providing for the election of street commissioners in villages, boroughs and towns in this state incorporated under special acts of the legislature. Approved April 20, 1893.

²⁴An act to increase the number of justices of the peace in incorporated villages. Approved March 9, 1893.



Tit. 3]

CERTAIN VILLAGES.

§§ 1222-1224

§ 1222. Same—Appointment until next election.

The common councils or boards of trustees of said villages shall by appointment, until the next election therein, increase the number of justices of the peace in their respective villages to conform to section one of this act.

(Id. § 2.)

§ 1223. Treasurer to make annual statement.

The treasurer shall, one week previous to the annual election of village officers, make a detailed statement in writing of the moneys received by him, and the sources from which the same were received, and their respective amounts; and also the amounts paid out by him, and the purposes for which they were paid. Such statement shall be filed by him in his office, for the inspection of any tax-payer residing within the corporate limits of said village.

(1885, c. 145, § 20; G. S. 1878, v. 2, c. 10, § 223.)

1223 '05 74

§ 1224. Village council—Powers—Ordinances.

The president, the three trustees, and the recorder shall be the village council of said village, any three of whom shall constitute a quorum for the transaction of any business, and shall have full power and authority to enact, adopt, modify, enforce, and, from time to time, amend or repeal all such ordinances, rules, and by-laws as they shall deem expedient, for the following purposes, viz.:

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95 - 264
95 - 265
55-M - 127

1224

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97 - 28
97 - 85
97 - 179
97 - 181
97 - 182
97 - 187
97 - 255
97 - 282
97 - 296
62-M - 278
64-NW 812

Rules of procedure.

First. To regulate the mode of, and establish rules, for their proceedings.

Corporate seal.

Second. To adopt a corporate seal, and alter the same at pleasure.

To buy and sell real and personal property.

Third. To receive, purchase and hold for the use of said village any estate real and personal, and to sell, convey, lease or otherwise dispose of the same, and to dispose of, for any purpose and in any manner, all surplus light, heat, steam, water or electricity which may be had or produced after providing for the streets and the furnishing of water for the use of the village and its inhabitants.

(As amended 1891, c. 149, § 1.)

1224

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99 - 71
99 - 168
99 - 224
99 - 276
99 - 315
99 - 331
99 - 346
69-M - 206
72-NW 67
73-NW 403

Officers and agents.

Fourth. To limit and define the duties and powers of officers and agents of the village, fix their compensation, and fill vacancies when no other provision is made by law; to call special elections, and to designate trustees to act as judges of elections.

1224

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01 - 167
01 - 191
01 - 196
01 - 217
01 - 221
01 - 257
01 - 287
01 - 296
01 - 304

Records.

Fifth. To procure the books and records required herein to be kept by village officers, and such other furniture, property, stationery, and printing as shall be necessary for village purposes.

Actions at law.

Sixth. To provide for the prosecution or defense of all actions or proceedings in which the village is interested, and employ counsel therefor.

1224 '05 107
'05 138
'05 167
'05 169
'05 263
'05 286
'05 330

Village attorney—Street commissioner.

Seventh. To appoint a village attorney, a pound-master, one or more sextons or keepers of cemeteries, one or more fire-wardens, and one or more street commissioners, whenever they deem necessary. Every street commissioner, when, by resolution, the village board shall require it, shall take and file his oath of office, and execute a bond, conditioned for the faithful discharge of his duties, and the proper application and payment of all moneys that may come into his hands by virtue of his office.

Public buildings.

Eighth. To control and protect the public buildings, property, and records, and insure the same.

Village plat.

Ninth. To renumber the lots and blocks of the village, or any part thereof, and to cause a revised and consolidated plat of the same to be recorded in the office of the register of deeds.

Fire department.

Tenth. To establish a fire department; to appoint the officers and members thereof, and prescribe and regulate their duties; to provide protection from fire by the purchase of fire-engines and all necessary apparatus for the extinguishment of fires, and by the erection or construction of pumps, water-mains, reservoirs, or other water-works; to erect engine-houses; to compel the inhabitants of the village to aid in the extinguishment of fires, and to pull down and raze such buildings in the vicinity of fire as shall be directed by them, or any two of them, who may be at the fire, for the purpose of preventing its communication to other buildings; to establish fire limits or the limits within which wooden or other combustible buildings shall not be erected; to require the owners or occupants of buildings to provide and keep suitable ladders and fire-buckets, which shall be appurtenances to the realty, and exempt from seizure and forced sale; and after reasonable notice to such owner or occupant, and refusal or neglect by him, to procure and deliver the same to him, and in default of payment therefor to levy the cost thereof as a special tax upon such real estate, to be assessed and collected as other taxes in such village; to regulate the storage of gunpowder and other dangerous materials; to require the construction of safe places for the deposit of ashes; to regulate the manner of putting up stove-pipes, and the construction and cleaning of chimneys; to prevent bonfires and the use of fire-works and fire-arms in the village, or any part thereof; to authorize firewardens at all reasonable times to enter into and examine all dwelling-houses, lots, yards, inclosures, and buildings of every description, in order to discover whether any of them are in dangerous condition, and to cause such as may be dangerous to be put in safe condition; and, generally, to establish such necessary measures for the prevention or extinguishment of fires as may be necessary and proper.

Streets—Sewers—Sidewalks—Public grounds.

Eleventh. To lay out, open, change, widen, or extend streets, lanes, alleys, sewers, parks, squares, or other public grounds, and to grade, pave, improve, repair, or discontinue the same, or any part thereof, or to establish and open drains, canals, or sewers, or alter, widen, or straighten water-courses; to make, alter, widen, or otherwise improve, keep in repairs, vacate, or discontinue sidewalks and cross-walks; to prevent the incumbering of streets, sidewalks, and alleys with carriages, carts, wagons, sleighs, sleds, buggies, railway cars, engines, boxes, lumber, firewood, or other substances or materials; to prevent horse racing or immoderate riding or driving in the streets of the village; to prevent the riding or driving of animals, or the driving of vehicles of any kind, on the sidewalks of the village, or the doing of damage in any way to such sidewalks; and to require the owners or occupants of buildings to remove snow, dirt, or rubbish from the sidewalks adjacent thereto; and, in default thereof, to authorize the removal of the same at the expense of such owner or occupant.

To restrain cattle — To regulate rate of speed — Licenses.

Twelfth. To restrain the running at large of cattle, horses, mules, sheep, swine, poultry, and other animals, and to authorize the distraining, impounding, and sale of the same; to establish pounds, and regulate and protect the same; to require the owners or drivers of horses, oxen, or other animals, at-

1224¹¹
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 1224 '05 . 63

tached to vehicles or otherwise, to fasten the same while in the streets or alleys of such village; to prohibit the hitching of horses, teams, or animals to any fence, tree, or pump, and to prevent injury to the same; to regulate and control the running of engines and cars through the village, and rate of speed of the same; to prevent the running at large of dogs, and authorize the destruction of the same in a summary manner when at large contrary to the ordinances; and license public porters, solicitors, or runners, cartmen, hackmen, omnibus drivers, and guides, and to establish rules and regulations in regard to their conduct as such, and to prevent any unnecessary noise or disturbance during the arrival or departure of persons in public conveyances.

Markets.

Thirteenth. To establish and regulate markets, provide scales, appoint a weighmaster and restrain sales in street.

(As amended 1891, c. 102, § 1.)

Cemeteries—Public parks.

Fourteenth. To purchase and hold cemetery grounds within or without the village limits; inclose, lay out, and ornament the same, and to sell and convey lots therein by deed; to establish public parks and walks, inclose, improve, and ornament the same, and prevent the incumbering or obstruction thereof; and provide for and regulate the setting out of shade and ornamental trees in the streets, and in and around the cemeteries and public parks and walks of the village; and for the protection thereof.

To license amusements.

Fifteenth. To prevent or license and regulate the exhibition of caravans, circuses, mountebanks, theatrical performances or shows of any kind; to prevent or license and regulate the keeping of billiard tables, pigeon-hole tables, and bowling saloons; to restrain or license and regulate and tax auctioneers, hawkers and peddlers; and in all such cases they may fix the price of said license or tax, and prescribe the term of the continuance of such license, and may revoke such license when in the opinion of the village council the good order or the public interests of the village require it; Provided, That the council may in any case where, in their opinion, the public interests of the citizens of the village require it, refuse to grant any license for the above purposes, and provided, also, that twenty-five dollars a day shall be construed by the courts of said state as a reasonable price per day for an auctioneer's license issued under the above provision. The term of no such license shall extend beyond the annual election of officers next after the granting thereof.

(As amended 1889, c. 122, § 2.)

Shade trees.

Sixteenth. To provide for the planting and protection of shade-trees and monuments in said village.

To prohibit gaming.

Seventeenth. To restrain and prohibit gift enterprises, all description of gaming, and all playing of cards, dice, and other games of chance, for the purpose of gaming; and to license, or restrain and prohibit, any person from selling, bartering, disposing of or dealing in spirituous, malt, fermented, vinous, or mixed intoxicating liquors of any kind, and to punish any violation of law, or of the village ordinances relating thereto, and to revoke, for any cause, any license for the sale of intoxicating liquors granted by the village council, whenever the council, after a hearing of the case, shall deem proper.

Village marshal.

Eighteenth. To choose a village marshal, and to remove him at will; to prescribe his duties, and to fix his compensation for services.

As to Rock county, see Laws 1891, c. 118, § 2.

Public libraries.

Nineteenth. To establish and maintain public libraries and reading-rooms, purchase books, papers, and magazines therefor, and make all needful rules and regulations for the safe-keeping and handling of the same.

Street commissioner.

Twentieth. To appoint a street commissioner, regular and special policemen, and a chief of police, and to fix their compensation, and prescribe their duties.

As to Rock county, see Laws 1891, c. 118, § 2.

Removal of officers.

Twenty-first. To remove any officer appointed or elected by such council, whenever, in the judgment of such council, the public welfare will be thereby promoted.

Village jail.

Twenty-second. To purchase, build, or lease, and maintain and regulate, a watch-house, or place for the confinement of offenders against the ordinances and by-laws, and for temporary detention of suspected persons.

Board of health.

Twenty-third. To appoint a board of health, which shall have all the powers of such boards under the general laws of the state; to provide hospitals, and regulate the burial of the dead, and return of bills of mortality; to declare what are nuisances, and to prevent or abate the same; to require the owner or occupant of any grocery, cellar, tallow-chandler's shop, factory, tannery, stable, barn, privy, sewer, or other unwholesome or nauseous house, building or place, to remove or abate the same, or to cleanse it as often as may be deemed necessary for the public health; to direct the location and management of slaughter-houses, and to prevent the erection, use, or occupation of the same, except as authorized by them; to prevent persons from bringing, depositing, or leaving within the village any putrid carcass, or other unwholesome substance; to require the owners or occupants of lands to remove dead animals, stagnant water, or other unwholesome substance from their premises, and to provide for the cleaning and removal of obstructions from any river, stream, slough, or water-course within the limits of the village, and to prevent the obstruction or retarding of the flow of waters therein, or the putting of anything into the same which may be prejudicial to the health of the village.

Public reservoirs.

Twenty-fourth. To make and regulate the use of public wells, cisterns, and reservoirs.

Lighting streets.

Twenty-fifth. To erect lamp-posts and lamps, and provide for lighting any portion of the village or streets thereof, by gas or otherwise.

Harbors and docks.

Twenty-sixth. To establish harbor and dock limits, and to regulate the location and construction and use of all piers, docks, wharves, and boat-houses on any navigable waters, and fix rates of wharfage.

Taxes—Bonds—Fiscal statement.

Twenty-seventh. To levy and provide for the collection of taxes, including poll-tax and assessments, audit claims and demands against the village, and direct orders to issue therefor in the manner prescribed in this chapter; to refund any tax or special assessment paid, or any part thereof, when satisfied that the same was unjust or illegal; to authorize bonds of the village to be issued in the cases provided by law; and, generally, to manage the financial concerns of the village; and they shall cause to be prepared and read, at each

MINNESOTA STATUTES 1894

Tit. 3]

CERTAIN VILLAGES.

§§ 1224-1226

annual village election, a true detailed and itemized statement by them of the finances of the village, showing the amount in the treasury at [the] commencement of the year, when and from what sources all moneys paid into the treasury during the preceding year were derived, and the whole amount thereof, and when, to whom, and for what purpose all money paid from the treasury during the same period was paid, and the whole amount thereof, with the balance then in the treasury; which statement shall be recorded in the minute-book, and filed and preserved in the clerk's office.

Ordinances.

Twenty-eighth. To ordain and establish all such ordinances and by-laws for the government and good order of the village, the suppression of vice and immorality, the prevention of crime, the protection of public and private property, the benefit of trade and commerce, and the promotion of health, not inconsistent with the constitution and laws of the United States, or of this state, as they shall deem expedient; and to determine and establish by ordinance the mode of procedure, and what it shall be sufficient to allege and prove, in order to make out a *prima facie* case of violation of any ordinance.

Punishment for violation of ordinance.

Twenty-ninth. To prescribe penalties for the violation of any ordinance or by-law, to be not less than one dollar, nor more than one hundred dollars, in any case, besides the cost of suit in all cases; and in default of payment provide for committing the person convicted to the watch-house or place of confinement in the village, or to the county jail, until payment be made, but not to exceed ninety days in all; and to modify, amend, or repeal any ordinances, resolution, by-law or other former determination of the board.

(1885, c. 145, § 21; G. S. 1878, v. 2, c. 10, § 224; amended as supra.)

Subd. 11. A village organized under this act may cause a sidewalk to be built, and buy material therefor, without petition from adjacent owners, and without assessment first made on adjacent property. § 1247, post, does not limit the general power conferred by this section. *Bradley v. Village of West Duluth*, 45 Minn. 4, 47 N. W. Rep. 166.

Subd. 17. See *State v. Deusting*, 33 Minn. 102, 22 N. W. Rep. 442.

Subd. 23. See *State v. Lee*, 29 Minn. 445, 13 N. W. Rep. 913.

§ 1225. Waterworks and light plants.

That all villages now organized under the special or general laws of this state shall have power to make, erect, establish, purchase, lease and control waterworks for the supply of water for public and private use, also purchase, lease, build, establish and control all necessary buildings, machinery, apparatus and material for making, generating and supplying light for public or private use in said villages. Provided, that in all proceedings under this act the question of establishing such waterworks and electric light plants or the purchase or leasing of the same shall first be submitted to a vote of the people of such village in the same manner as now provided by law for the issuing of municipal bonds.

(1893, c. 196, § 1.25)

§ 1226. Legalizing certain grants for waterworks or gas works.

That in all cases where any village in this state incorporated under the provision of chapter one hundred and forty-five of the general laws of 1885, and prior to the year 1891, has heretofore adopted an ordinance or ordinances purporting to grant the right to any person, persons or corporation for the construction, operation and maintenance in such village of waterworks or gas works, and purporting to contract with such person, persons or corporation, or their assigns, for the furnishing of water or gas to such village and the inhabitants thereof, and any such person, persons or corporation has expended money in the construction and maintenance of said waterworks or gas works,

²⁵An act to provide for water works and lights in all villages in this state operating under special or general laws of this state. Approved March 30, 1893.

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and is now furnishing such village and its inhabitants with water or gas, pursuant to such grant and agreement, the same shall be and are hereby in all things ratified, legalized and confirmed.

(1893, c. 191, § 1.2^o)

§ 1227. Legalizing certain appropriations.

In all cases where the council of any village in this state has heretofore appropriated out of the general funds of said village any money for the benefit of agricultural fairs or for the benefit of any educational institution in such village, and village orders have been issued therefor, the acts of the council of such village in making such appropriation and issuing such village orders and paying the same are hereby legalized in all respects, the same as if said council had original authority to make such appropriation.

(1893, c. 192, § 1.2⁷)

1228

§ 1228. Corrected plat to be filed, when.

99 - 168

Whenever the plat of any village or city in this state of less than two thousand inhabitants, or of any subdivision or addition to such city or village, does not conform to the survey under which said plat purports to have been made, the council of such city or village are hereby authorized to make and file in the office of the register of deeds of the proper county a new or corrected plat of such defectively platted portion of its territory, and such corrected plat shall be recorded by the register of deeds, and shall in all respects supersede and take the place of the original plat of such territory.

(1893, c. 193, § 1.2⁸)

§ 1229. Affidavit by surveyor to be attached to such plat.

Before any such plat shall be entitled to record in the office of the register of deeds as aforesaid there shall be attached thereto a statement under oath by the city, village or county surveyor that an error exists in the original plat or plats of such city or village, or the subdivision or addition affected, and that such error is cured by said corrected plat.

(Id. § 2.)

1230

§ 1230. Legalizing franchises for telephone lines.

01 - 231

That the acts of any village council of any incorporated village which may have heretofore granted or attempted to grant to any person, persons, firm or corporation any rights, privileges or franchises for the erection and maintenance of telephone poles, wires and other appliances for the operation of telephone lines, either by ordinance, resolution or contract, within any such village, be and the same are hereby in all things legalized, confirmed and made valid.

(1893, c. 202, § 1.2⁹)

§ 1231. Auditing accounts—Power to borrow money—Indebtedness for fire apparatus.

No account or demand against such village shall be paid until it has been audited and allowed, and an order drawn on the treasurer therefor. Every such account shall be made out in items, and verified by affidavit indorsed or annexed, that the same is just and correct, and no part thereof paid. After auditing, the board shall cause to be indorsed by the clerk, over his hand, on each account, the words "Allowed," or "Disallowed," as the fact is, adding the amount allowed, if any, and specifying the items or parts of items disallowed, if disallowed in part only. The minutes of the proceedings of the board shall show the amount. Every such account or demand allowed, in whole or in

²⁶An act legalizing and confirming village ordinances and contracts in certain cases. Approved March 1, 1893.

²⁷An act to legalize subscriptions and contributions by villages for the encouragement of agricultural fairs, or for educational purposes. Approved March 14, 1893.

²⁸An act to authorize the council of villages and cities of less than two thousand inhabitants to file a corrected plat. Approved March 14, 1893.

²⁹An act to legalize the acts of village councils in granting franchises to telephone companies in this state. Approved April 18, 1893.

MINNESOTA STATUTES 1894

Tit. 3]

CERTAIN VILLAGES.

§§ 1231-1234

part, shall, with the affidavit thereto, be filed by the clerk, and those of each year consecutively numbered, and have indorsed the number of the order on the treasurer issued in payment; and the clerk shall take a receipt thereon for such order. No village, or any officer thereof, shall have power to issue at any time any negotiable order, or borrow money, except in the manner and for the purposes expressly declared by statute. Provided, however, That any village of this state shall have the power to issue negotiable certificates of indebtedness for the purpose of purchasing fire engines and necessary apparatus for the extinguishment of fires, for the use of said village; but no certificates of indebtedness shall be issued for said purpose unless the amount of certificates that may be issued has been submitted to a vote of the legal voters of such village at some special or general election of said village, and a majority of the legal voters voting at such election have voted in favor of issuing said certificates. Said certificates so authorized may be for such time and of such denomination, and of such form, and bear such rate of interest, payable annually, not exceeding, however, six per cent per annum, as the village council may, by resolution, determine; Provided, however, that the amount of such certificates outstanding at any one time shall never be in excess of five per cent of the assessed valuation of the real and personal property of the village issuing the same, including all other indebtedness of such village.

(1885, c. 145, § 22; G. S. 1878, v. 2, c. 10, § 225; as amended 1891, c. 100, § 1.)

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§ 1232. Bonds may be issued for any lawful improvement.

Every village of this state is hereby authorized to issue its bonds for the purpose of raising money for any lawful public improvement therein by conforming to the provisions of this act.

(1893, c. 200, § 1.⁸⁰)

1232
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§ 1233. Submission of question to vote of electors.

Whenever the village council or other similar body in any village of this state shall determine, by resolution duly passed and recorded, to raise the amount of money stated in such resolution for the purpose of erecting any public building or making any other lawful improvement therein; or when a petition addressed to such village council or other similar body and signed by at least twenty-five of the voters and freeholders residing in any such village, setting forth in such petition that it is the desire of such petitioners that the said village shall erect such public building or make such other lawful public improvement therein, the cost whereof shall not exceed the amount named in such petition, which said building or improvement shall be generally described in such petition, it shall be the duty of such village council or similar body to cause the proposition expressed in such resolution or petition to be submitted to the electors of such village at the next annual village election to be held therein, or at such special election as the said council or other similar body shall by resolution designate.

(Id. § 2.)

1232-1239
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73-M - 230

1232-1240
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§ 1234. Same—Form of ballot—Conduct of election.

There shall be provided by the village in case of such election a suitable box in which all ballots cast at such election for or against such proposition shall be deposited. There shall be printed on such ballots in apt terms the substance of such proposition, following which shall be printed in appropriate manner the words "yes" and "no" on two separate lines, and every person desiring to vote in favor of such proposition shall make his cross-mark thus X opposite the word "yes," and every person desiring to vote against such proposition shall make such mark opposite the word "no." The said election shall be conducted and the votes cast thereat shall be canvassed and counted, and the result thereof certified in like manner as in the case of an election for village officers.

(Id. § 3.)

⁸⁰An act to provide for the bonding of villages. Approved April 10, 1893.

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§ 1235. Bonds may be issued, when and how.

If a majority of the votes cast at such election be in favor of such proposition the said council or other similar body may issue and negotiate the bonds of such village to the amount necessary for the erection of such building or the making of such improvement, provided that such bonds shall not be negotiated or sold for less than their par value. Provided, that no village shall be authorized to issue or sell its bonds to an amount so that the aggregate bonded indebtedness thereof shall at any one time exceed ten per cent of the assessed valuation of the taxable property of such village as indicated by the last preceding assessment of such property. Provided further, that all such bonds shall be due and payable in not more than twenty years from the date of issue of such bonds.

(Id. § 4.)

1236
73-M - 230

§ 1236. Notice to be given of time and place for receiving bids.

1236 '05 . 111

Before any such village shall be authorized to issue its bonds as hereinbefore provided, the common council or other similar body thereof shall give notice by publication for three consecutive weeks in at least two weekly or daily newspapers printed in said county, if any be printed and published therein, and by a similar publication for the same length of time in a weekly or daily newspaper printed at the capital of the state, all of which said newspapers shall be designated therefor by the resolution of such council or other similar body; that said council or other similar body will receive bids for the sale of such bonds at the time and place to be named in such notice.

(Id. § 5.)

§ 1237. Power to award bonds or reject bids.

At the time and place named in such notice the said council or other similar body shall open and consider the said bids, and may thereupon award the sale of such bonds to the person, company or corporation offering to negotiate the same upon terms the most advantageous for the interests of such village; provided, that the said council or other similar body may reject any and all bids offered for the purchase of such bonds, if they deem the welfare of the village to require it.

(Id. § 6.)

§ 1238. Disposition of money realized from sale.

The moneys realized upon the sale of such bonds shall be placed in the village treasury and devoted, so far as may be necessary, to the purpose named in such resolution or petition, and the residue thereof, after the cost and expenses incident to the erection of such building or the making of such other public improvement shall have been paid and discharged, shall be paid into the general fund of such village.

(Id. § 7.)

1239
76-M - 486

§ 1239. Village defined.

The term "village," as herein used, shall be held to mean a village organized either under a general law or by special charter.

(Id. § 8.)

§ 1240. Right of eminent domain—Procedure.

Whenever the village council shall intend to lay out and open, change, widen, or extend any street, lane, alley, public grounds, square, or other places, or to construct and open, alter, enlarge, or extend drains, canals, or sewers, or alter, widen, or straighten water-courses therein, or take ground for the use or improvement of a harbor, and it shall be necessary to take private property therefor, they shall cause an accurate survey and plat thereof to be made and filed with the recorder, and they may purchase or take by donation such grounds as shall be needed, by agreement with the owners, and take from them conveyances thereof to the village for such use or in fee; but otherwise they shall, by resolution, declare their purpose to take the same, and therein describe by metes and bounds the location of the proposed improvements, and the land proposed to be taken therefor, defining separately

each parcel and the amount thereof owned by each distinct owner, mentioning the names of owners or occupants so far as known, and therein fix a day, hour, and place, when and where they will apply to a justice of the peace, resident in such village, for a jury to condemn and appraise the same. They shall thereupon cause to be made by the recorder a notice of the adoption of such resolution embracing a copy thereof, and notifying all parties interested that the council will, at the time and place named, apply to the justice named for the appointment of a jury to condemn and appraise such land. A copy of such notice shall be served by any constable on the owner of each such parcel of land to be taken, if known and resident within the county; such service to be made in the manner prescribed for serving a summons in a justice court, and the return of the officer shall be conclusive evidence of the fact stated therein. If the notice cannot be so given as to all the parcels, then the same shall be also published, once in each week for three successive weeks, in a newspaper published in such village or county; and the affidavit of the printer or foreman of such newspaper shall be conclusive evidence of such publication. Such notice shall be served, and such publication made, for three weeks, complete, at least one week before the time fixed therein for such application. If any person so served with notice [shall] be a minor, or of unsound mind, the justice, before proceeding, shall, on the day fixed for hearing such application, appoint for him a guardian for the purpose of such proceeding, who shall give security to the satisfaction of the magistrate, and act for such ward. (1885, c. 145, § 23; G. S. 1878, v. 2, c. 10, § 226.)

§ 1241. Same—Method of selecting a jury.

At the time and place fixed for such hearing, the application, accompanied by a copy of such resolution and such survey, and by proof of service of the notice, as provided in the last section, shall be filed with the justice, who shall thereupon make a list of twenty-four competent jurors, not interested, but residents of the village shall not be disqualified. He shall hear and decide any challenges for cause or favor, made to any one, and, if sustained, shall replace his name with an unobjectionable juror, until the list shall be perfected. Thereupon, under direction of such magistrate, each party—the village council, by its representative, on one side, and owners of land, or their agents, present, or if none be present, or they disagree, a disinterested person appointed by the justice, on the other—shall challenge six names, one at a time, alternately, the village council beginning. To the twelve jurors remaining, such justice shall issue a *venire*, requiring them at an hour on a day named, not more than ten nor less than three days thereafter, to appear before him to be sworn and serve as a jury to view lands and appraise damages, and at the same time shall publicly adjourn the proceedings to the time and place so named. Such *venire* shall be served by any constable, at least one day before such appointed time, by reading the same to each such juror, or by leaving a copy at his usual place of abode in the presence of a member of his family. The jurors summoned shall appear at the time and place named; and if any be excused by the justice, or fail to attend, he shall direct other disinterested persons to be forthwith summoned in their stead until twelve be obtained. The magistrate shall then administer to them an oath that they shall well and truly inquire into and determine the necessity for taking the lands mentioned in the resolution, and, if found necessary, the damages occasioned thereby, and faithfully discharge their duties as jurors according to law.

(1885, c. 145, § 24; G. S. 1878, v. 2, c. 10, § 227.)

§ 1242. Same—Duties of jury—Verdict to contain what.

Under the direction of such magistrate the jury shall view the lands to be taken, and shall then sit before him to hear such competent evidence as shall be produced by any party; and for such purposes such magistrate shall possess the same powers as a court in session with a jury, and if there be neces-

sity, may adjourn the sitting from day to day. The jury shall render a separate verdict in writing, signed by them, in which they shall find whether it be necessary to take such lands, or any part thereof, for such purposes, describing such as they find necessary to be taken; and if any be found necessary to be taken, then a verdict or appraisalment for damages, specifying therein the damages of each owner, and, separately, the value of the land taken for each, and the damage otherwise sustained by each by reason of the taking thereof, in estimating which they shall deduct therefrom any special benefit, if any, to be enjoyed by each from such improvements; and a majority of such jury may render such verdict or appraisalment of damages, and shall sign the same. Any technical error in such verdict may be immediately corrected, with the assent of the jury, and they shall be thereupon discharged, and their verdict filed by the magistrate. In case the jury shall fail to find a verdict, another jury shall be selected, summoned, sworn, and proceed in the same manner.

(1885, c. 145, § 25; G. S. 1878, v. 2, c. 10, § 228.)

§ 1243. Same—Right of appeal—Return upon appeal—Costs.

Within ten days after verdict any land owner whose land it has been found necessary to take may appeal from the action of the common council in determining to condemn any such land and from the award of damages to him, in such verdict, to the district court, and the village may likewise appeal from the award of damages to any owner, by filing with such magistrate a notice of appeal, specifying whether the appeal is from the whole award to him or a part, and if a part what part, and therewith an undertaking with two sufficient sureties, to be approved by the magistrate, to pay all costs that may be awarded against such appellant on the appeal, and paying the magistrate for his return thereof. Any party not so appealing shall be forever concluded by such verdict or appraisalment. Upon an appeal being taken, the magistrate shall transmit to the clerk of the district court within ten days the notice of appeal and undertaking, and thereto annexed a copy of all papers and proceedings before him, with his certificate thereof. He shall, after the time for appealing has expired, file with the village recorder, annexed together, all the original papers, including the verdict, with a certificate by him thereof, and that no appeal has been taken from such verdict, except as the facts are, which he shall briefly specify; and the clerk shall record all such proceedings. Upon filing such transcript in the district court, the appeal shall be considered an action pending in such court, and be so entered, the land owner as plaintiff, the village as defendant, and be subject to trial and appeal to the supreme court. The case shall be tried by a jury, unless waived, and the costs shall be awarded against the appellant, if more favorable verdict be not obtained; otherwise against the respondent. Upon entry of judgment, the clerk of the district court shall transmit a certified copy thereof to the village recorder.

(1885, c. 145, § 26; G. S. 1878, v. 2, c. 10, § 229; as amended 1889, c. 123, § 1.)

§ 1244. Same—Verdict for village—Payment of damages before entry on land—Discontinuance—Costs.

If the verdict of the jury first called find it necessary to take such land, or any part thereof, the village board may, upon return thereof to the recorder, enact an ordinance [in accordance] therewith, for laying out, changing, widening, or extending and opening any such street, lane, alley, public ground, square, or other public place, or constructing and opening, altering, enlarging, or extending any such drains, canals, or sewers, or altering, widening, or straightening any such water-course, or for the use or improvement of a harbor, but shall not enter upon any such land therefor until the owner be paid in full, or the damages be set apart for him in the hands of the treasurer, and an order therefor, lawfully executed to him, be deposited with the clerk to permanently remain subject to his order. At any time before causing any-

such land to be actually taken or put to public use, and before the rendition of a judgment in the district court for damages, the village board may discontinue all proceedings theretofore taken, and the village shall, in such event, be liable for the costs only. All the costs of every such proceedings shall be paid by the village, except when it recover costs in the district court.

(1885, c. 145, § 27; G. S. 1878, v. 2, c. 10, § 230.)

§ 1245. Assessment may be levied—Procedure—How collected.

For the purpose of payment of the expenses, including all damages and costs incurred for the taking of private property, and of making any improvement mentioned in the last preceding section, the village council may, by resolution, levy and assess the whole, or any part not less than half, of such expenses as a tax upon such property as they shall determine is specially benefited thereby, making therein a list thereof, in which shall be described every lot or parcel of land so assessed, with the name of the owner thereof, if known, and the amount levied thereon set opposite. Such resolution, signed by the president and recorder, shall be published once in each week for two weeks in a newspaper printed regularly in such village, or, if there be no such newspaper, three copies thereof shall be posted by the recorder in three of the most public places in such village, and a notice therewith that at a certain time therein stated the said council will meet at their usual place of meeting, and hear all objections which may be made to such assessment, or to any part thereof. At the time so fixed, the said council shall meet and hear all such objections, and for that purpose may adjourn from day to day not more than three days, and may, by resolution, modify such assessment in whole or in part. At any time before the first day of September thereafter, any party liable may pay any such tax to the village treasurer. On such first day of September, if any such tax remains unpaid, the recorder shall certify a copy of such resolution to the county auditor, showing what taxes thereby levied remain unpaid; and the county auditor shall put the same upon the tax-roll, in addition to and as a part of all other village taxes therein levied on such land, to be collected therewith.

(1885, c. 145, § 28; G. S. 1878, v. 2, c. 10, § 231.)

§ 1246. Power to vacate streets.

Upon the petition in writing of all the owners of lots or land on any street or alley in such village, and not otherwise, the board of trustees may discontinue such street or alley, or any part thereof. At least one week before acting on such petition, the council shall cause a written or printed notice to be posted in three public places in such village, stating when the petition will be acted on, and what street, or part thereof, is proposed to be vacated.

(1885, c. 145, § 29; G. S. 1878, v. 2, c. 10, § 232.)

§ 1247. What improvements may be made—Assessments for same.

The village council may cause any street, or any part of any street, not less than sixteen rods in length, to be graded, paved, macadamized, or otherwise improved, or any sidewalk, sewer or gutter to be built, upon a petition therefor in writing, signed by at least a majority of all the owners of real estate bounding both sides, and of the owners of at least one-half the frontage of such street or part of street to be improved; or order any sidewalk, sewer or gutter on one side of a street to be built, on the petition of a majority of such owners, and of the owners of at least one-half the frontage on such side; and may order any sidewalk, sewer or gutter previously built to be put in repairs, when necessary, without petition. For the purpose of so improving any street or building, or repairing any sidewalk, sewer or gutter, the village council may levy and cause to be collected upon the lots, tracts, or parcels of ground on such street or part of street improved, or on the side thereof,

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where only such sidewalk, sewer or gutter is to be built, and upon the owners thereof, a tax sufficient to pay the expense of constructing such improvement as ordered opposite such property to the center of the street, or such proportion thereof, not less than one-half, as they shall deem justly assessable to such property, if they shall think the whole ought not to be so assessed, in which case the remainder shall be paid from the village treasury. Every such tax for repair shall be for the entire cost of repairs in front of the property so assessed. If any tax levied under this section shall prove insufficient to pay the cost or proportion thereof assessed to such property, the village council may levy an additional tax thereon to make good such deficiency.

(1885, c. 145, § 30; G. S. 1878, v. 2, c. 10, § 233; as amended 1893, c. 185, § 1.)

For act legalizing assessments for local improvements heretofore made, see post, § 1505.

See Bradley v. Village of West Duluth, cited in note to § 1224, supra.

§ 1248. Collection of assessment—Duties of street commissioner.

Whenever the council shall levy any such tax as specified in the preceding section, they shall make out and deliver to a street commissioner of such village a list of the persons and a description of the property taxed, together with a warrant for the collection and expenditure of said tax, and thereupon the street commissioner shall notify the persons named in such tax-list by publishing a notice two weeks in some newspaper published in said village, if there be one, or by posting up notices in three or more public places in such village, and shall specify in such notice a time or times, not less than twenty days, nor more than forty days, from the date thereof, when the persons charged with taxes in such list may pay their taxes in labor, materials, or money; and the persons charged with such tax may, at such time and place as may be required by the said street commissioner, pay their taxes in labor or materials: *provided*, the labor and materials offered in payment of such taxes are such as may be required by the said street commissioner, and done and furnished to his satisfaction. The street commissioner shall be provided with a book or memorandum by the village recorder, in which he shall keep an accurate account of all moneys coming into his hands by virtue of his office; the amount received and disbursed by him, the name of every person from whom money or labor is due, the amount paid in money or labor, and a correct account of all expenditures by him made as a street commissioner. The book containing the account so kept shall, at all times, when required, be furnished for the inspection of the village council, and, ten days before the expiration of his term of office, shall be handed to the village recorder, to be filed in his office for the inspection of the tax-payers in his district.

(1885, c. 145, § 31; G. S. 1878, v. 2, c. 10, § 234.)

§ 1249. Delinquent tax—How returned.

At the expiration of forty days from the date of said notice given by said street commissioner, he shall make out and deliver to the recorder of such village a certified list of the lots, pieces or tracts of land in said village upon which any such tax remains unpaid, with the amount of such delinquent taxes upon each of said lots or parcels of land, and thereupon there shall be added to the amount of such tax a penalty of ten per cent of the amount thereof, which shall thenceforth be deemed to be a part of such tax, and from the time of the delivery of such certified list to said recorder, the said tax shall draw interest at the rate of ten per cent. per annum until paid; and at any time before the first day of September, any party liable may pay any such tax and interest thereon as aforesaid to the village recorder, who shall thereupon pay the same over to the village treasurer, taking his receipt therefor. And such recorder on the first day of September, or within five days thereafter, if any such tax remains unpaid, shall certify a copy of such delinquent taxes to the county auditor of his county, and the said auditor

shall, upon the receipt of said statement and list, enter and carry out the same upon the proper tax lists, and they shall be collected the same as other taxes are collected, and when collected, pay over the same to the village treasurer. Every county treasurer who shall collect or receive any moneys on account of such delinquent taxes shall pay the same to the treasurer of the proper village, and take duplicate receipts therefor, and file one of said receipts with the records of said village.

(1885, c. 145, § 32; G. S. 1878, v. 2, c. 10, § 235; as amended 1889, c. 123, § 2.)

§ 1250. Control of village streets, etc.

No part of the streets or highways of any village shall be in any road-district established by the town board, nor be under the control of town officers. Nor shall the town be liable for any damages occasioned by any insufficiency or want of repair thereof; and all bridges in such village shall be built, maintained, and repaired by the village in which the same are situated. No overseers of highways shall be elected in or for any such village, but the poll-tax shall be collected as hereinafter provided, and shall be expended, and the streets, highways, and public places governed, by the village council and officers of their appointment.

(1885, c. 145, § 33; G. S. 1878, v. 2, c. 10, § 236.)

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§ 1251. Amount of tax levy—Vote upon tax, when—Duty of recorder.

The village council shall, on or before the fifteenth day of August in each year, by resolution, to be entered of record, determine the amount of corporation taxes to be levied and assessed on the taxable property in such village for the current year, which shall not exceed in any one year two per centum of the assessed valuation of such property. Before levying any tax for any specific purpose, the board may, in their discretion, submit the question of levying the same to the village electors, at any special or general election, and in such manner as they may prescribe; when so submitted they shall be bound by the vote thereon. On or before the first day of September in each year, the village recorder shall deliver to the county auditor a copy of all such resolutions, certified under his hand and the corporate seal of such village, and such auditor shall enter such taxes upon the tax-books in the same manner as he is required to do in levying town taxes.

(1885, c. 145, § 34; G. S. 1878, v. 2, c. 10, § 237.)

1251
61-M - 233

§ 1252. Prosecutions by village—Process—Pleading ordinances.

All prosecutions for violating any of the ordinances, rules, or by-laws enacted under the provisions of this act, shall be brought in the corporate name of said village, and shall be commenced by warrant, upon complaint being made, as required by law in criminal cases, before justices of the peace; and the same proceedings shall be had therein as are required to be had by the laws of this state in criminal or civil actions before justices of the peace: *provided*, that no warrant shall be necessary in any case of the arrest of the person or persons while in the act of violating any law of the state of Minnesota, or ordinance of said village; but in such cases a complaint shall be made, which the justice shall reduce to writing, and the party be required to plead thereto, as to warrant in other cases; and the person or persons so arrested may be proceeded against in the same manner as if the arrest had been made by warrant. All processes issued by the justice of the peace of said village shall be directed to any constable of said village or county, or to the marshal of said village: *provided*, that said marshal shall serve said process only within the limits of said village. It shall be a sufficient pleading of the by-laws or ordinances of said village to refer to the chapter and section thereof, which are hereby declared to have all the force and effect of general laws within the jurisdiction of said village, and it shall not be necessary to read or

1252 91-M . 277

give them in evidence upon the trial of any proceeding or action, criminal or civil.

(1885, c. 145, § 35, as amended 1887, c. 82; G. S. 1878, v. 2, c. 10, § 238.)

§ 1253. Judgment—Commitment in default of payment.

Judgment shall be given, if for the plaintiff, for the amount of fine, penalty, or forfeiture fixed by such ordinance, resolution, or by-law, or such part thereof, if a discretion be given, as the court shall deem proportionate to the offense, together with the costs of suit; and shall in all cases further adjudge and order that in default of payment thereof the defendant be committed to the common jail of such county for such time, not exceeding ninety days, as the court shall think fit. If such payment be not forthwith made, the justice shall make out a commitment, stating the amount of judgment and costs, and the time for which committed, and in the usual form of commitments by justices of the peace. Every person so committed shall be received and committed to prison by the keeper of the county jail, and kept at the expense of the county until the expiration of the time; but he shall be released by order of the justice on payment to him of such fine and costs or by due course of law.

(1885, c. 145, § 36; G. S. 1878, v. 2, c. 10, § 239.)

1254
69-M - 350
72-NW 504

§ 1254. Same—Right of appeal—Appeal bond.

Appeal may be taken to the district court in the same manner as from judgments in civil actions by justices of the peace, except that, if taken by the defendant, he shall, as a part thereof, execute a bond to the village, with surety to be approved by such justice, conditioned that if judgment be affirmed, in whole or in part, he will pay the same and all costs and damages awarded against him on such appeal; and in case such judgment shall be affirmed, in whole or in part, execution may issue against both defendant and his surety. Upon perfection of such appeal, the defendant shall be discharged from custody.

(1885, c. 145, § 37; G. S. 1878, v. 2, c. 10, § 240.)

§ 1255. Fines, license fees, etc., to be paid into treasury—Duty of justices.

All fines, forfeitures, and penalties, recovered for the violation of any ordinance, rule, regulation, resolution, or by-law of any such village, and all moneys paid for licenses and permits, shall be paid into the village treasury for the use of such village. The justices of the peace shall report and pay into the treasury quarterly all moneys collected by them belonging to such village, which reports shall be verified by affidavit, and filed in the office of the treasurer; and such justice shall be entitled to duplicate receipts for such moneys, one of which such justice shall take and file with the village recorder.

(1885, c. 145, § 38; G. S. 1878, v. 2, c. 10, § 241.)

§ 1256. Disposition of money from liquor licenses.

That any incorporated village of this state is hereby authorized to donate to the school fund, library or other school purposes of any legally incorporated school district, the territory of which forms a part or all of the territory of said village, for the purpose of building or repairing the schoolhouses or providing a library, school apparatus or for any educational purpose, all or a percentage of the license money received by such village for licenses granted to any or all persons to sell, vend or deal in intoxicating liquors in said village. Provided, however, that before any village council shall donate any money as aforesaid the village council of such village shall be first authorized so to do by a vote of two-thirds of the legal voters of said village voting at a general or special election thereof.

(1893, c. 195, § 1.31)

1256
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³¹An act to authorize the village councils of the villages of the state of Minnesota to donate part or all of the moneys received by such villages for licenses granted to persons to sell, vend or deal in intoxicating liquors in said villages. Approved March 27, 1893.

§ 1257. Judgment against village—Assessment for.

1257
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Whenever a final judgment shall be obtained against any village, the judgment creditor, his assignee or attorney, may file with the village recorder a certified transcript of such judgment, or of the docket thereof, together with his affidavit, showing the amount due thereon and all payments, if any, and that the judgment has not been appealed from or removed to another court, or, if so appealed or removed, has been affirmed; and thereupon the village council shall assess the amount thereof, with interest from date of its rendition to the time when the same shall be paid, as near as may be, upon the taxable property of such village, and the village recorder shall return and certify the amount of such tax to the county auditor to be collected the same as other taxes levied upon said village.

(1885, c. 145, § 39; G. S. 1878, v. 2, c. 10, § 242.)

§ 1258. Disposition of fines and penalties.

All fines and penalties imposed under or by virtue of the provisions of this act shall belong to the village, and shall constitute a fund to pay the expenses incurred under the provisions of its charter.

(1885, c. 145, § 40; G. S. 1878, v. 2, c. 10, § 243.)

§ 1259. Powers and duties of village justices and constables—Fees—Village in more than one county.

1259
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The justice of the peace and constables of said village shall have and may exercise, in addition to the powers and authority herein specially granted to such officers, all the powers, authority, and jurisdiction in any case possessed by a justice of the peace or a constable elected in the county or counties in which such village is situated. The village justices and constables shall take the same oath of office, and execute, before entering upon the discharge of their duties as such officers, the same bond, as township justices of the peace and constables elected elsewhere in the state are now or hereafter may be required to do, and shall receive the same fees for their services as justices of the peace and constables, elected elsewhere in the state, are allowed under the general statutes of the state, now or hereafter in force; and in all cases where a village is situated in more than one county, the justice of the peace and constables of such village shall have and possess all the powers and jurisdiction conferred by this act in each of the counties in which such village is situated, and shall file their bonds in each of said counties.

(1885, c. 145, § 41, as amended 1887, c. 53, § 2; G. S. 1878, v. 2, c. 10, § 244.)

§ 1260. Vacancies—How filled.

Should a vacancy at any time occur in any of the offices provided for in this act, the village council, or the remaining members thereof, may fill the same by appointment, and the person so appointed may hold his office until his successor is elected and qualified.

(1885, c. 145, § 42; G. S. 1878, v. 2, c. 10, § 245; as amended 1891, c. 100, § 2.)

§ 1261. Road-district—Street commissioner—Road tax.

The village so organized shall constitute one road-district, and the street commissioner or road-master thereof be appointed by the village council, and all taxes raised within the limits of said village for road purposes shall be expended under the direction of the village council.

(1885, c. 145, § 43; G. S. 1878, v. 2, c. 10, § 246.)

See *Bradish v. Lucken*, 38 Minn. 186, 188, 36 N. W. Rep. 454.

1261
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§ 1262. Board of auditors—Report.

The village council shall constitute a board of auditors for the purpose of auditing all accounts payable by said village. Said board shall draw up a re-

port, stating in detail the items of accounts audited and allowed, the nature of each account, and the name of the person to whom the account was allowed, and also including a detailed statement of the financial concerns. Such report shall be filed with the recorder, and a copy thereof shall be posted at the time and place of holding the annual election, or published in a newspaper of general circulation in said village, two weeks before such election.

(1885, c. 145, § 44; G. S. 1878, v. 2, c. 10, § 247.)

§ 1263. Levy of taxes—Duty of council—Collection of tax.

The legal voters of said village may, at any annual or special meeting, authorize the village to levy a tax for any legitimate object, but in no case shall the tax so levied exceed the sum of five mills upon the dollar valuation in any one year; and all taxes levied, except for improvement of streets, sidewalks and crossings, shall be levied and collected as prescribed by the statutes of this state for the levying and collection of township taxes: *provided*, that the village council shall, on or before the first day of September in each year, make and certify to the county auditor of the county in which any of the lands or village lots within the corporate limits of such village are situate, a statement of all taxes levied and assessed by them, and shall also, at the same time, make and certify to the auditor of the proper county a list of the names of the owners of personal property subject to taxation within such village; and the county auditor shall, upon the receipt of said statement and list, enter and carry out the said tax or taxes against the property within such village, and the same shall be collected as other taxes are collected, and, when collected, paid over to the village treasurer.

(1885, c. 145, § 45; G. S. 1878, v. 2, c. 10, § 248.)

See Laws 1891, c. 101, § 3, as to levy of taxes in village of Harris, Chisago county.

§ 1264. Powers and duties of recorder—Bond.

The village recorder may administer oaths and take acknowledgments, and he shall give a bond in form similar to that required of town clerks. It shall be his duty:

First. To perform the duties of clerk of election, and keep a record of all proceedings at the annual and special elections of the village, to give notice of such elections as required by law, and to notify persons elected or appointed to offices thereof.

Second. To transmit to the clerk of the district court, within ten days after election and qualification, a certified statement of the name and term for which elected of all the officers elected at such election; and in case of the appointment or election of any justice of the peace, constable, treasurer, or recorder of said village to fill a vacancy, a like notice shall be so filed within ten days after such election or appointment.

Third. To attend all meetings of the village board; to record and sign the proceeding thereof, and all ordinances, rules, by-laws, resolutions, and regulations adopted, and to countersign and keep a record of all licenses, commissions, and permits granted or authorized by them, and for such purposes to keep the following books: A minute book, in which shall be recorded, in chronological order, all the papers mentioned in section twenty-two of this act; full minutes of all elections, general or special, and the statements of the judges thereof; full minutes of all proceedings of the village council; the titles of all ordinances, rules, regulations, and by-laws, with a reference to the book and page where the same may be found. An ordinance book, in which shall be recorded at length, in chronological order, all ordinances, rules, regulations, and by-laws. A finance book, in which shall be kept a full and complete record of the finances of the village, showing the receipts, the date, amount, and source thereof, and the disbursements, with the date, amount, and object for which paid out; and to enter in it such other matters as the council shall prescribe; and keep such other books as the council direct.

MINNESOTA STATUTES 1894

Tit. 3]

CERTAIN VILLAGES.

§§ 1264-1266

Fourth. To countersign and cause to be published or posted every ordinance, by-law, or resolution, as required by law, and to have proper proof thereof made and filed.

Fifth. To be the custodian of the corporate seal, and to file, as required by law, and to safely keep, all records, books, papers, or property belonging to, filed, or deposited in his office, and deliver the same to his successor when qualified; to permit any person, with proper care, to examine and copy any of the same, and to make and certify a copy of any thereof, when required, on payment of the same fees allowed town clerks therefor.

Sixth. To draw and countersign all orders on the village treasury ordered by the council, and none other.

Seventh. To file, when presented, all chattel mortgages and affidavits relating thereto, and to enter at the time of filing, in a book properly ruled and kept therefor, the names of all the parties, arranging mortgages alphabetically; the date of each mortgage, and the date of filing the same and of each affidavit relating to it; for which he shall receive the same fees allowed town clerks.

Eighth. To perform all other duties required by law or by any ordinance or other directions of the village council.

(1885, c. 145, § 46; G. S. 1878, v. 2, c. 10, § 249.)

§ 1265. Powers and duties of constable—Fees.

The constable shall give a bond similar to that required of constables elected by towns, and shall be deemed included and governed in every respect by the law prescribed to them. It shall be his duty to obey all lawful written orders of the village council; to arrest with or without process, and with reasonable diligence to take before the village justice, every person found in such village in a state of intoxication, or engaged in any disturbance of the peace, or violating any law of the state or ordinance of such village. He may command all persons present in such case to assist him therein, and if any person being so commanded shall refuse or neglect to render such assistance, he shall forfeit not exceeding ten dollars. He shall be entitled to the same fees allowed to constables for similar services; for other service rendered the village, such compensation as the council may fix.

(1885, c. 145, § 47; G. S. 1878, v. 2, c. 10, § 250.)

§ 1266. Intoxicating liquors—Local option—License.

The legal voters of any incorporated village, including all villages heretofore incorporated by special act or acts of the legislature, shall have the power and authority to vote upon and determine for themselves, the question whether license for the sale of intoxicating liquors as a beverage shall be granted by the council of said village or not; and it shall be the duty of the recorder of any such village, upon receiving a petition for that purpose of ten or more legal voters of his village, at any time not less than fifteen days before any annual election of such village, to give at least ten days' notice that the question of granting license for the sale of intoxicating liquors as a beverage in said village, will be submitted to the legal voters thereof at the next ensuing annual election, which question shall be determined by ballots containing the words, "In favor of license," or "Against license," as the case may be: *provided, however*, that the neglect of the recorder to give the required notice shall not invalidate the vote and determination made under the provisions of this act, if the petition named shall have been duly filed. The votes upon said question shall be taken, canvassed, returned and announced in the same manner as is prescribed by law for taking, canvassing, returning, and announcing the votes for the election of village officers, which determination so made shall continue until the same shall be reversed at a subsequent annual election in the same manner; and, if such returns show that a majority of the votes cast at such election on said question shall be "Against license," no license for the

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1266 '05 . 10

sale of intoxicating liquors shall be granted by the authorities of such village, except for medicinal or mechanical purposes, but if such returns show that a majority of the votes cast at such election, on said question, shall be "In favor of license," then the village council may grant license to any suitable person of lawful age for the sale of intoxicating liquors. The village council shall have the exclusive right to license persons vending, dealing in or disposing of intoxicating liquors within the limits of such village, and persons so licensed shall not be required to obtain a license from the board of county commissioners, nor shall said commissioners have authority to license any person to vend, deal in or dispose of, or sell intoxicating liquors in any such village. And no person shall be licensed by such village council to deal in or sell intoxicating liquors as a beverage in such village, unless he shall fully comply with all the requirements, and be subject to all the penalties, as provided in the General Statutes of the state, relating to the sale of intoxicating liquors, except as herein provided: *and provided*, that no license shall be granted by such village for a less sum than one hundred dollars, nor for a greater sum than five hundred dollars,* at the discretion of the village council, and that previous to granting any such license, a bond shall be executed with the same conditions, and with the same penal sum, as required by the General Statutes of this state; and the moneys received for such license shall be paid to the village treasurer for the use of such village; and all licenses granted by any such village council shall expire May first, after the annual election in and for said village.

(1885, c. 145, § 48; G. S. 1878, v. 2, c. 10, § 251; as amended 1893, c. 187, § 2.)

* See § 2024.

Laws 1893, c. 194, authorizes village council to return part of license fee for the year 1892 in certain cases where fee was paid twice.

See Village of St. James v. Hingtgen, 47 Minn. 521, 523, 50 N. W. Rep. 700.

1267 '05 . 26

§ 1267. Enactment and effect of ordinances.

All ordinances, rules, and by-laws shall be enacted by a majority of all the members of the village council, and shall be signed by the president, attested by the recorder, and published once in a newspaper published in the county in which said village shall be situated; and if there be no newspaper published in said county, then by posting them conspicuously in three of the most public places in said village for ten days, and shall be recorded in a book kept for that purpose. Proof of such publication by the affidavit of the printer or foreman in the office of such newspaper or of such posting, by the certificate of the village recorder, shall be attached to and filed with such ordinance or by-laws, and noted on the record thereof, and shall be conclusive evidence of the facts stated. All ordinances shall be suitably entitled, and in this style: "The village council of ——— do ordain as follows." All authorized ordinances and by-laws shall have the force of law, and remain in force until repealed.

(1885, c. 145, § 49; G. S. 1878, v. 2, c. 10, § 252.)

§ 1268. Authority of council to impose penalties, etc.

Said village council shall have power and authority to declare and impose fines, penalties, and punishments, and to enforce the same against any person or persons who may violate any of the provisions of any ordinance, rule, or by-law enacted by them; and all such ordinances, rules, and by-laws are hereby declared to have the force of law: *provided*, they are not repugnant to the constitution and laws of the United States and the state of Minnesota.

(1885, c. 145, § 50; G. S. 1878, v. 2, c. 10, § 253.)

§ 1269. Officers not to be interested in contracts—Letting of contracts.

No member of the village council shall become a party to or interested, directly or indirectly, in any contract made by the village council of which he

(342)

1269
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1269
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1269
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MINNESOTA STATUTES 1894

Tit. 3]

CERTAIN VILLAGES.

§§ 1269-1274

may be a member; and every contract or payment voted for, or made contrary to the provisions hereof, is void; and any violation of the provisions of this section, hereafter committed, shall be a malfeasance in office, which shall subject the officer so offending to removal from office. All contracts for village improvements, except expenditures of road and poll-tax, shall be let to the lowest responsible bidder, after public notice of time and place of receiving bids therefor.

(1885, c. 145, § 51; G. S. 1878, v. 2, c. 10, § 254.)

See *Bradley v. Village of West Duluth*, 45 Minn. 4, 8, 47 N. W. Rep. 166.

§ 1270. Peace officers—Powers.

The president and each trustee shall be officers of the peace, and may suppress in a summary manner any riotous or disorderly conduct in the streets or public places of the village, and may command assistance of all persons under such penalty as may be prescribed by the by-laws and ordinances.

(1885, c. 145, § 52; G. S. 1878, v. 2, c. 10, § 255.)

§ 1271. Officers to surrender records, etc., to successors.

Every village officer shall deliver to his successor, when qualified, all the books, records, papers, property, and money in his hands as such officer; and if a vacancy happen before such successor is appointed or elected and qualified, then to the village clerk, who shall demand and receive all such property, and deliver the same to the person who shall be selected to fill such vacancy, when qualified.

(1885, c. 145, § 53; G. S. 1878, v. 2, c. 10, § 256.)

§ 1272. Meetings of village council—Compensation.

The president shall preside at all meetings when present; in his absence the council may select another trustee to preside. Regular meetings shall be held at such times as may be prescribed by their by-laws. Special meetings may be called by any two trustees in writing, filed with the recorder, who shall thereupon seasonably notify all the trustees of the time and place thereof, in the manner directed by the by-laws. All meetings shall be open to the public. The council shall keep a record of all its proceedings, shall have power to preserve order at its meetings, compel the attendance of trustees and punish non-attendance; and it shall be judge of the election and qualifications of its members; the president and trustees shall be entitled to receive as compensation the sum of one dollar each per day for time actually employed as such officers, not to exceed ten each in any one year.

(1885, c. 145, § 54; G. S. 1878, v. 2, c. 10, § 257; as amended 1889, c. 125, § 2.)

§ 1273. Execution of instruments.

Every contract, conveyance, commission, license, or other written instrument, shall be executed on the part of the village by the president and clerk, sealed with the corporate seal, and in pursuance only of authority therefor from the village council.

(1885, c. 145, § 55; G. S. 1878, v. 2, c. 10, § 258.)

§ 1274. Dissolution of corporation—Petition—Election.

Whenever an application, in writing, signed by one-third as many electors of any such village as voted for village officers at the last preceding election therefor, shall be presented to the village council, praying for a dissolution of the village corporation, such council shall submit to the electors of such village, at an annual election, or special election called by them therefor, the question whether or not such village corporation shall be dissolved. The form of the ballot shall be "For dissolution," or "Against dissolution." Said ballots shall be deposited in a separate box, and such election shall be conducted, the votes thereat canvassed, and a statement thereof made, filed, and recorded as in other cases.

(1885, c. 145, § 56; G. S. 1878, v. 2, c. 10, § 259.)

(343)

1273
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1273
77-M - 92

1274
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§ 1275. Same—Adjusting village affairs—Incorporation of new village.

If a majority of the ballots cast at such election, on such proposition, shall be for dissolution, such village shall, at the expiration of six months from the date of such election, cease to be an incorporated village. Within six months the village council shall dispose of the village property, and settle, audit, and allow all just claims against the village. They shall settle with the village treasurer and other officers of the village, and shall cause the assets of the village to be used in paying the debts thereof. If anything remain after paying the village debts, they may designate the manner in which the same shall be used. If they have not sufficiency of funds to pay the debts of the village, they may levy a tax to cover such deficiency, which shall be collected as other taxes and shall be paid out by the town treasurer in payment of the outstanding village orders or bonds. Whenever the electors of any incorporated village shall vote to dissolve the same, nothing in this act shall be construed to prevent the requisite number of electors of any district, section or parts of sections contained in said village, from taking the steps provided in sections four, five, six and seven of this act to incorporate a new village prior to the expiration of six months from such voting, but the county commissioners shall fix a date for the voting for or against incorporation of such new village, to occur subsequent to the expiration of said six months.

(1885, c. 145, § 57; G. S. 1878, v. 2, c. 10, § 260; as amended 1893, c. 186; § 1.)

[TITLE 4.]

[VILLAGES OF OVER THREE THOUSAND INHABITANTS.]

1276 '05 . 10

(1) FORMATION.

§ 1276. Powers.

Any village in this state having a population of over three thousand shall have the powers generally possessed by municipal corporations at common law, and in addition thereto shall possess the powers hereinafter specifically granted, and shall have perpetual succession. It shall be capable of contracting and being contracted with, of suing and being sued, and of pleading and being impleaded in all courts of law or equity; it shall have a corporate seal, which it may alter at pleasure, and it may purchase, lease, take and hold such real, personal and mixed property as may be required for village uses or purposes, within or without its limits, and may lease, mortgage, sell and convey the same.

(1891, c. 146, subc. 1, § 1.32)

§ 1277. Territory to be divided into four wards.

The territory comprised in every such village shall be a separate election district* for all elections under the laws of this state, and shall be divided into four wards, as equal in population as may be, and the same shall by resolution be so divided into wards by the village council of such villages, respectively, within ten days after the passage of this act.

(Id. § 2.)

* See ante, § 8.

§ 1278. Addition to territory.

Whenever the majority of the owners of any property abutting upon any such village, or any addition thereto, shall petition the village council to have such property annexed to the village, the village council may by ordinance declare the same to be an addition to such village, and thereupon such territory shall become a part of such village as effectually as if it had been originally a part thereof; and the village council may by ordinance divide

*An act relating to villages of over three thousand inhabitants, and providing for municipal courts therein. Approved April 6, 1891.

1276-1424
74-M - 180
78-NW 106

1276

95 . 261
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1276-1424

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1276-1424

97 - 237
61-M - 547
63-M - 498
65-NW 935

1276-1278

99 - 289

1276-1424

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1277

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1278

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99 - 220

Tit. 4] VILLAGES OF OVER 3,000 INHABITANTS. § 1278-1282

such territory into wards, or shall annex the same to any existing ward or wards in such village.

(Id. § 3.)

(2) OFFICERS AND ELECTIONS.

§ 1279. Elective officers.

The elective officers of any such village shall be a president, recorder, treasurer, assessor, and two trustees from each ward, and a municipal judge.

(Id. subc. 2, § 1.)

§ 1280. Election precincts—Term of office.

Each ward shall constitute one or more election precincts,* as required by law, for the holding of all elections provided for under the general laws of this state, and also for all elections provided for by this act. All officers shall be qualified electors of the district in which they shall be elected or appointed; and all elective officers shall hold their offices for the term of one year and until their successors respectively are elected and qualified, except the municipal judge, who shall hold his office for two years and until his successor is elected and qualified.

(Id. § 2.)

* See ante. § 8.

§ 1281. General village election.

General elections after the first shall be held on the second Tuesday of March of each year. At least thirty days before any general election, after the first, the village council shall designate three persons to act as judges or inspectors, and two persons to act as clerks, for each election precinct at such election. All elections shall be held and conducted in the same manner and under the same penalties as required by the general laws of the state regarding elections, and like notice shall be given. When any election shall be closed, the judges or inspectors shall make return thereof to the village recorder, within twenty-four hours after such election, in the same manner as provided by law for the return of state and county officers to the county auditor; and within one day thereafter the village council shall meet and canvass the returns thereof and declare the result as it appears from such returns, and the village recorder shall forthwith give notice to the persons elected of their respective elections.

(Id. § 3.)

§ 1282. First general election—Notice.

The first general election of any such village shall be held on the twelfth day of May in the year one thousand eight hundred and ninety-one, at which time all elective village officers provided for herein shall be elected. The village council of such village shall, at least ten days before said first general election, designate three persons who are qualified electors to act as judges or inspectors at such election, and two persons to act as clerks at such election, in each ward or election precinct of such village. Such election shall be held at such places within the limits of such village as said village council shall designate, and the village recorder shall give notice thereof, by posting notices of the time and places of holding such election in at least three public places in said village, at least ten days before such election. Such notice shall also contain the boundaries of such wards or election precincts as the same shall have been designated by the village council, together with a list of all the officers elective hereunder. When said first election shall be closed, the judges thereof shall make returns thereof to the recorder of the village, within twenty-four hours after such election, in the same manner as provided by law for the returns of state and county officers to the county auditor; and within one day thereafter the council of the village shall meet and canvass the returns thereof and declare the result that appears therefrom, and the recorder of the village shall forthwith give notice to the persons elected of their respective elections.

(Id. § 4.)

§ 1283. Special elections.

Special elections in and for such village may be held at any time, for any proper purpose, upon the order of the village council. At least ten days' notice of any such special election shall be given as provided by law, and such notice shall state the object of such election.

(Id. § 5.)

§ 1284. Election to be by ballot—In case of tie vote—Appointment—Contracts—Oath and bond.

All elections by the people shall be by ballot, and each ballot shall contain the names of the persons voted for, with a proper designation of the office, and such ballots may be written or printed, or partly written and partly printed. A plurality of votes shall constitute an election. When two or more candidates for an elective office shall receive an equal number of votes for the same office, the election shall be determined by the casting of lots, in the presence of the village council, at such time and in such manner as the said council shall direct. All persons entitled to vote for state or county officers, and who shall have resided in such village or any election precinct thereof for ten days next preceding any general or special election, shall be entitled to vote thereat. Any person removing from the village or any ward thereof for which he was elected or appointed, or any person who shall refuse or neglect, for ten days after notice of his election or appointment, to qualify and enter upon the duties of his office, shall be deemed to have vacated his office; and any officer having entered upon the duties of his office may resign by giving notice thereof to, or with the consent of, the village council, and it shall then be the duty of such village council to declare the office vacant and to provide that the same shall be filled as hereinafter provided. Whenever a vacancy shall occur in any elective office by removal, resignation or otherwise, the village council shall have power to fill the same by appointment. Every person appointed to fill a vacancy shall hold his office and discharge the duties thereof for the unexpired term of his predecessor, and with the same rights and subject to the same liabilities as the person whose office he may be appointed to fill. All contracts made by the village council or any officer, board, or committee of such village, for the benefit of such village, with any officer thereof, either directly or indirectly, shall be wholly void. Every person elected or appointed to any office under the provisions of this act shall, before he enters upon the duties of his office, take and subscribe an oath of office and file the same with the village recorder; and the treasurer, recorder, engineer, and such other officers as the village council shall require, shall severally, before they enter upon the duties of their respective offices, execute to such village bonds in such amounts and with such sureties and conditions as the village council shall prescribe and approve.

(Id. § 6.)

§ 1285. In case of failure to elect.

Should there be a failure by the people to elect any person herein required to be elected on the day designated, the village council may order a new election to be held, ten days' notice of time and place being given.

(Id. § 7.)

(3) THE DUTIES OF OFFICERS.

§ 1286. Duties of president—Passage of ordinance over his veto—Indorsement by recorder.

The president shall be chief executive officer of the village and ex-officio president of the village council. He shall take care that the laws of the state and the ordinances of the village are duly observed and enforced, and that all the other officers of the village shall discharge their respective duties. All ordinances and resolutions shall, before they take effect, be presented to the president by the village recorder within forty-eight hours from the time of their passage or adoption, and upon approval thereof he shall sign the same. He shall return to the village council, with his objections thereto, all

MINNESOTA STATUTES 1894

Tit. 4] VILLAGES OF OVER 3,000 INHABITANTS. §§ 1286-1287

ordinances and resolutions not approved, by depositing the same with the village recorder, to be presented to the council at their next regular meeting thereafter. Upon the return of any ordinance or resolution by the president the vote by which the same was passed shall be deemed to be reconsidered, and the question shall be again put upon the passage of the same, notwithstanding the objection of the president, and thereupon an affirmative vote of two-thirds of the members shall have the same effect as the approval of the president. If any ordinance or resolution shall not be returned to the village recorder by the president within five days (Sundays excepted) after it shall be presented to him, the same shall be deemed approved. It shall be the duty of the village recorder to indorse upon each ordinance and resolution the time when such ordinance or resolution was adopted or passed, when delivered to the president, and the time when the same was returned to his office by the president.

(Id. subc. 3, § 1.)

§ 1287. Duties and powers of recorder—What shall be evidence—Compensation.

1287
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The village recorder shall keep his office at the place of meeting of the village council, or at such other place convenient thereto as the village council may determine. He shall keep the corporate seal and all papers and records of the village, and keep a record of the proceedings of the village council. Copies of all papers filed in his office and transcripts from all records of the council certified by him under the corporate seal shall be evidence in all courts as if the originals were produced. He shall draw and countersign all orders upon the village treasury in pursuance of any order or resolution of the village council, and keep a full and accurate account thereof in books provided for that purpose. The village recorder shall have power to administer oaths and affirmations. It shall be his duty to report to the village council the financial condition of the village whenever the council shall require. He shall make and keep a list of the village bonds, to whom issued, for what purpose, when and where payable and rate of interest they respectively bear, and shall recommend such action to the village council as will secure the payment of the interest on such bonds; on or about the first day of September, or before the time of the levy of the taxes in each year, to estimate the expenses of the village and the revenue to be raised for the ensuing year. He shall countersign all contracts made in behalf of the village and all certificates of work authorized by the village council or by any officer thereof. The village recorder shall keep regular books of account, in which he shall enter all indebtedness of the village, and which shall at all times show the precise financial condition of the village, the amount of bonds, orders, certificates of indebtedness which have been redeemed, and the amount of each outstanding; to countersign all bonds, orders and other evidences of indebtedness of the village, and keep accurate accounts thereof, stating to whom and for what purposes issued and the amounts thereof; to keep accounts of all receipts and disbursements of the officers of the village, showing the amount they have received from the different sources of revenue, and the amount they have disbursed under the direction of the village council. The recorder shall examine all the reports, books, vouchers and accounts of the village treasurer, and from time to time perform such other duties as the village council may direct, and shall keep a record of all his acts and doings, and keep a book in which he shall enter all contracts, with an index thereto. Such records shall be open to the inspection of all parties interested. He shall perform all other services by law required of the clerks of villages, cities or townships, within such village; but when services are required of him by public law for which compensation is provided, such services shall not be regarded as services for the village, and he may retain such compensation in addition to the salary paid to him by the village. He shall receive a compensation to be fixed by the village council, and they may change, increase or diminish the same during the time for which such officer was elected or appointed. He shall also be ex-officio clerk of the municipal court, and shall receive therefor such compensation as is provided for in this act.

1287 '05 . 10

(Id. § 2.)

§ 1288. Duties of treasurer—Bond.

The village treasurer shall receive all moneys belonging to the village, including all license money and fines, and keep an accurate and detailed account thereof in such a manner as to show the exact financial condition of the village. The treasurer shall report to the village council, annually, on or before the last day of February, a detailed statement of receipts and a gross statement of the village orders paid during the fiscal year ending on the said date, together with the condition of the treasury at such date, which statement shall be filed with the village recorder and a copy thereof published. The treasurer shall report to the village council at such other times and in such other manner as said council may require. The treasurer shall, before entering upon the duties of his office, give a bond to the village, with two or more sufficient sureties, to be approved by the village council, for at least twice the amount of money which will probably be in his hands at any one time during his term of office. Said bond shall be kept on file in the office of the village recorder.

(Id. § 3.)

1289
99 - 240 **§ 1289. Duties of assessor.**

The village assessor shall qualify and perform the duties pertaining to his office in accordance with the general laws of the state relative to assessors, and shall, at the time provided by the general laws of the state, be present at the office of the village recorder, or at such other place as the village council may require, with his assessment books for review. He shall be present during the review of such assessment to advise, if needed, in regard to the same, and, upon completion of said review, within the time prescribed by the general laws, shall make a final return to the county auditor. He shall also make the assessment rolls for local improvements when directed by the village council. He shall receive such compensation for his services as the village council shall direct.

(Id. § 4.)

§ 1290. Council authorized to elect village attorney.

The village council shall have power to elect an attorney for the village, who shall perform all professional services incident to his office and, when required, shall furnish opinions in writing upon any subject submitted to him by the village council or any of its committees.

(Id. § 5.)

§ 1291. Village engineer—Village property.

The village council may elect a city engineer, who shall be a practical surveyor and engineer. He shall keep his office in some convenient place in such village, and the village council may prescribe his duties and fix the fees and compensation for any services performed by him. All surveys, minutes of surveys, profiles, plans or estimates made by him for the village shall be the property of the village, and shall be filed and carefully preserved in the office of the engineer and be open to the inspection of all persons interested.

(Id. § 6.)

§ 1292. Powers of council in respect to village officers.

The village council shall have the power at any time to require other and further duties to be performed by any officer whose duties are herein described, and not inconsistent with this act, and to appoint such other officers as may be necessary to carry into effect the provisions of this act, and to prescribe their duties unless otherwise provided for; but no officer elected or appointed by the council shall be elected or appointed for a longer term than until the next annual election of officers and until his successor is elected or appointed and qualified. The village council shall have the power, unless otherwise provided, to fix the compensation of all officers elected or appointed under this act, which compensation shall be fixed by resolution; and the compensation so fixed shall not be changed, increased or diminished during the term for which such officer was elected or appointed, except as herein otherwise provided; Provided, That no member of the village council shall receive compensation for his services as such officer in excess of ten dollars in any one year.

(Id. § 7.)

MINNESOTA STATUTES 1894

Tit. 4] VILLAGES OF OVER 3,000 INHABITANTS. §§ 1293-1297

§ 1293. Delivery of property to successor—Penalty for failure.

If any person, having been an officer of such village, shall not within ten days after notification and request deliver to his successor in office all property, books, papers and effects of every description in his possession belonging to such village or pertaining to the office he may have held, his successor may take possession of said books, papers and effects in the manner prescribed by the laws of this state; and such person shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding ninety days.

(Id. § 8.)

§ 1294. Officers of the peace.

The president, chief of police, officers of the police next in rank to the chief, the sheriff of the county in which such village is situate, or his deputy or deputies, the coroner, each trustee, police officer and watchman, shall be officers of the peace, may command the peace and suppress in a summary manner all rioting and disorderly behavior within the limits of the village, and for such purpose may command the assistance of by-standers and, if need be, of all the citizens. If any person shall refuse to aid in maintaining the peace when so required, he shall forfeit and pay a fine not to exceed fifty dollars, and in default of the payment thereof be imprisoned not to exceed thirty days. In cases where the civil power may be required to suppress riots or disorderly behavior, a superior or senior officer present, in the order mentioned in this section, shall direct the proceedings.

(Id. § 9.)

1294
97 - 108

(4) THE VILLAGE COUNCIL—ITS GENERAL POWERS AND DUTIES.

§ 1295. Village council—Quorum.

The president and trustees of any village shall constitute the village council. The style of all ordinances shall be, "The Village Council of the Village of — do ordain." A majority of the councilmen shall constitute a quorum, but a less number may meet at the time of any stated meeting and adjourn, and all business transacted at such adjourned meeting shall have the same validity as if done at a stated meeting.

(Id. subc. 4, § 1.)

1295
01 - 93
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§ 1296. Stated and special meetings.

The village council shall hold stated meetings on the Monday following the annual election, at eight o'clock p. m., and other stated meetings shall be held as prescribed by the rules and resolutions of the council; and the president or any three trustees may call special meetings of the council by a written notice to each of the members, to be delivered personally or left at their usual place of abode or business, which notice shall contain a statement of the business for which meeting is called; and no other business shall be transacted at such special meeting except such as is designated in such notice.

(Id. § 2.)

1296
97 - 108

§ 1297. Rules and attendance—Vice-president.

The village council shall be the judge of the election and qualification of its members, and in such cases shall have power to send for persons and papers. It shall determine the rules and regulations of its own proceedings, and have power to compel the attendance of absent members, and may provide for the punishment of such absent members in addition to the forfeiture provided for in this act. At the first meeting of the village council in each year the village council shall elect from their number a vice-president, who shall preside at the meetings of the council in the absence of the president, and during the absence of the president from the village, or his inability from any cause to discharge the duties of his office, the said vice-president shall exercise all the powers and discharge all the duties of the president.

(Id. § 3.)

(349)

§ 1298. Power to remove from office, when.

The village council shall have power to remove from office any officer of the village, whether appointed by the council or elected by the people, but no officer elected by the people shall be removed except for cause nor unless first furnished with a copy of the charges against him, nor until such person shall have had reasonable opportunity to be heard in his own defense. Continued absence from the meetings of the council in case of the aldermen, and neglect of duty in the case of other officers, unless for good reason, or being in any way interested in any contract with the village, shall be good cause for removal. The village council shall fix a time and place for the trial of any officer against whom charges may be preferred, of which not less than ten days' notice shall be given to the accused, and shall have power to send for persons and papers, and shall have power to compel the attendance of witnesses, and to hear and determine the case; and if such officer refuse or neglect to appear and defend himself, the council may declare the office vacant.

(Id. § 4.)

§ 1299. Powers of council.

The village council shall have the management and control (subject to the provisions of this act) of the finances and all property of the village, and shall likewise, in addition to the power herein vested in them, have full power to make, enact, ordain, establish, publish, enforce, alter, modify, amend and repeal all such ordinances, rules and by-laws for the government of the village, and to promote the good order of the same, for the suppression of vice and intemperance, for the benefit of the inhabitants thereof, and for the prevention of crime, as they shall deem expedient. They shall have power to establish and maintain a village prison and workhouse for the imprisonment, custody and safe keeping of all persons arrested for or charged with any offense against any ordinance of the village or laws of the state cognizable by the justices of the peace for the state; to make rules and regulations for the government and management of said village prison and workhouse, and to appoint keepers and other officers of the same; to prescribe their duties and fix their compensation. The keepers of said prison and workhouse shall possess all the powers and authority of jailers at common law and by the laws of this state. The village council shall have full power and authority to declare and impose penalties and punishments, and to enforce the same against any person or persons who may violate any of the provisions of any ordinance, rule or by-law passed or ordained by them, to the extent of a fine not exceeding one hundred dollars, together with costs of suit, or imprisonment in the village prison or county jail of any county in which such village is situated, for a period not exceeding ninety days. All such ordinances, rules and by-laws are hereby declared to have the force of law within the village; Provided, That they are not repugnant to the constitution of the United States or of this state. And for these purposes said village council shall have authority, by ordinances, rules or by-laws—

Amusements—Auctioneers, butchers, etc.

First—To license and regulate the exhibition of common showmen and shows of all kinds, the exhibition of circuses, concerts, theatrical performances; and also to license and regulate all auctioneers, billiard tables, bowling alleys, nine or ten-pin alleys, butcher shops and butcher stalls and vendors of butchers' meats, pawnbrokers, drug stores, saloons, skating rinks, victualing houses, and all places of public amusement, and all dealers in second-hand goods, junk dealers, and all keepers of intelligence offices and employment offices, all draymen and hackmen; and Provided further, That the power to regulate above given shall extend to and be construed to include the power to define who shall be considered pawnbrokers, auctioneers, dealers in second-hand goods, and junk dealers.

Gaming.

Second—To restrain and prohibit all descriptions of gambling and fraudulent devices and practices, and all playing of cards, dice and other games of chance for the purpose of gambling, within the village.

1299	
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62-NW	1134
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72-NW	67
73-NW	403
1299	
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Preserving peace—Gambling apparatus.

Third—To prevent any fighting, brawling, assault, battery, disorderly noise, riot or disorderly assemblance in said village, and to provide for the arrest and punishment of any person or persons who shall be guilty of the same; to suppress disorderly houses and houses of ill fame and gambling houses, and to provide for the arrest and punishment of the keepers thereof, and to authorize the destruction of all instruments and apparatus used for the purposes of gambling.

Preserving health.

Fourth—To compel the owner or occupant of any cellar, tallow chandler's shop, soap factory, tannery, hide warehouse, stable, barn, privy, sewer or other unwholesome, nauseous house or place, to cleanse, remove or abate the same from time to time, as often as may be necessary for the health, comfort and convenience of the inhabitants of the village.

Offensive trades—Gunpowder, etc.

Fifth—To direct the location and management of stock yards, slaughter houses, markets, breweries, distilleries, soap factories, glue factories and bone-boiling establishments, and to regulate the storage, keeping and conveyance of gunpowder, dynamite, or other explosive or combustible material, and to regulate the use thereof in the village.

Incumbering streets.

Sixth—To prevent the incumbering or obstruction of streets, sidewalks, alleys, lanes and public grounds with carriages, railroad cars or locomotives, carts, wagons, sleighs, boxes, lumber, firewood, posts, awnings, signs or any other material whatever.

Railroads—Fastening horses—Public baths.

Seventh—To direct and control the laying out and construction of railroad tracks, bridges, turnouts and switches in the streets and alleys, and the location of depot grounds in said village; to require that the railroad tracks, bridges, turnouts and switches shall be so constructed and laid out as to interfere as little as possible with the ordinary travel and use of the streets and alleys, and that sufficient space shall be left on each side of such track for the safe and convenient passage of teams and persons; to require railroad companies to keep in repair the streets through which their tracks may run, and to construct and keep in repair sidewalks, also suitable crossings at the intersections of the streets and alleys, and sewers, ditches and culverts, when the council shall deem necessary; to regulate the movement and speed of railway locomotives and cars; to require the maintenance of flagmen, or the construction and maintenance of gates, at the crossings of railway tracks over such streets and avenues of the village as the village council shall deem to require such precaution; to regulate or prohibit the whistling of locomotive engines; to regulate or prohibit the unnecessary discharge of steam therefrom and the causing or permitting steam to escape therefrom unnecessarily, and to require the use thereon of such safety valves or other practical appliances as it may designate for the purpose of preventing or lessening the noise from the discharge or escape of steam; to compel persons to fasten their horses or other animals attached to vehicles, or otherwise, while standing in the streets, and to require that all persons driving horses or mules attached to sleighs at a faster gait than a walk shall have a sufficient number of bells to give notice of their approach; and to regulate places of bathing and swimming in the waters within the village limits.

Restraining cattle.

Eighth—To restrain the running at large of horses, mules, cattle, swine, sheep, poultry and geese, and to authorize the distraining and sale of the same when at large contrary to the ordinance, and to impose penalties upon the owners of such animals for the violation of such ordinance; Provided, That when a sale of such animals shall be made, the proceeds thereof, after deducting the expenses of distraining, keeping, advertising and selling such

animals, shall be deposited in the office of the treasurer of said village, for the use and benefit of the owners thereof, if called for by such owner within six months from the date of such sale.

Dogs.

Ninth—To prevent the running at large of dogs, and to require a license for keeping the same, and to provide for and authorize the impounding and destruction, in a summary manner, of all dogs when at large contrary to the ordinance.

Unsound meats.

Tenth—To prevent any person from bringing, depositing or leaving within the village any putrid carcass or other unwholesome substance, and to require the removal of the same by any person who shall have upon his premises such substance, or putrid or unsound beef, pork, fish, hides or skins of any kind, and, in default, to authorize the removal thereof by some competent officer at the expense of such person or persons, and to provide for the punishment of offenders.

Water works—Gas works—Electric light and heating plants.

Eleventh—To make and establish public grounds, pumps, wells, cisterns, hydrants, reservoirs and fountains, and to provide for and conduct water into and through the streets, avenues, alleys and public grounds of said village; and to provide for and control the erection and operation of water works by said village for the supply of water to said village and its inhabitants, and to grant the right to one or more private companies or corporations to erect and operate water works to supply said village and inhabitants thereof with water, and to authorize and empower said company or corporation to lay water pipes and mains into, through and under the streets, avenues, alleys and public grounds of the said village, and, when necessary for properly carrying out the purpose of said company or corporation, to appropriate private property in such village for and to the use of said company or corporation, in the manner provided in their charter, and to control the erection and operation of such water works and the laying of such pipes and mains in accordance with such terms and conditions as may be agreed upon with said company or corporation. To provide for and control the erection and operation of gas works, electric light works or other works or means for lighting streets, avenues, alleys and public grounds and buildings of said village, and supplying light and power to said village and to the inhabitants thereof, and to grant the right to erect, maintain and operate such works, with all rights incident or appurtenant, to one or more private companies or corporations; and to control the erection and operation of such works and the laying of pipes, mains and wires into, through and under the streets, avenues, alleys and public grounds of said village, and the erection of poles, masts and towers, and the running of wires thereon over, in, upon and across the streets, avenues, alleys and public grounds of the village. To provide for and control the erection and operation of works for heating the public buildings of the village by steam, gas or other means, and supplying heat or power to the inhabitants of the village; to grant the right to erect such works and all incident rights to one or more private companies or corporations, and to control the erection and operation of such works and the laying of pipes and mains into, through and under the streets, avenues, alleys and public grounds of the village. Provided, That every grant hereafter made to a company or corporation to erect, maintain or operate any of said works, shall provide that the village or its successor may purchase the same at any time after fifteen years from the commencement of such grant, at a valuation to be agreed upon or determined in a manner to be prescribed in the grant.

Sanitary measures.

Twelfth—To establish and regulate boards of health, private hospitals and hospital grounds, and for the registration of births and deaths, and the return of bills of mortality, and regulate or prevent the burial of the dead within the village limits.

Bread.

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

Sidewalks.

Fourteenth—To prevent any person from riding or driving any horse, ox, mule, cattle or other animal on any sidewalk in said village, or in any way doing damage to such sidewalks.

Firearms, etc.

Fifteenth—To prevent the shooting of firearms or firecrackers, and to prevent any exhibition of fireworks in any situation which may be considered by the village council dangerous to the village or any property therein, or annoying to any citizen thereof.

Drunkenness, etc.

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

Hackmen, etc.

Seventeenth—To license and regulate porters, expressmen, hackmen, and also runners, agents and solicitors for boats, vessels, stages, cars, hotels, public houses or other establishments.

Markets.

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

Sale of provisions—Peddlers.

Nineteenth—To license and regulate butchers' stalls, shops and stands for the sale of game and fish, butter, poultry, butchers' meats and provisions; and also to license and regulate peddlers, hawkers and canvassers doing business within the village.

Hay and wood.

Twentieth—To regulate the place, the manner of weighing and selling hay and straw, and the measuring and selling of firewood, coal and lime, and to appoint suitable persons to superintend and conduct the same.

Removal of snow—Stagnant water.

Twenty-first—To compel the owners or occupants of buildings or grounds to remove snow, dirt and rubbish from the sidewalk, street or alley opposite thereto, and to compel such owners or occupants to remove from the lot owned or occupied by him all such substances as the board of health or village council shall direct, and, in his default, to authorize the removal or destruction thereof by some officer at the expense of the owners or occupants; also to compel the owner or owners of low grounds, where water is liable to collect and become stagnant, to fill or drain such low places, and, in their default, to authorize such filling or draining at the expense of such owner or owners, and to provide that such expense shall become a lien upon the lot or property so drained or filled.

1299²¹
99 - 260

Contagious diseases.

Twenty-second—To regulate and prevent the landing of persons, from railroad cars or other conveyances, infected with contagious or infectious diseases or disorders, and to make such disposition of such persons as may be necessary to preserve the health of the village.

Auctions.

Twenty-third—To regulate the time, manner and place of holding public auction or vendues.

Police, etc.

Twenty-fourth—To provide for watchmen and prescribe their number and duties, to regulate the same, and to create and establish the police of said village, and prescribe the number of police officers and their duties, and to regulate the same, except as herein otherwise provided.

Inspection of fuel, provisions, etc.

Twenty-fifth—To regulate the inspection of wood, hay, milk, grain, flour, pork, beef, mutton, veal and all kinds of meat, poultry, game, fish, salt, whiskey and other liquors and provisions, and to authorize the seizure and destruction of any grossly impure or adulterated articles sold or offered for sale that are dangerous to the public health, and to provide for the punishment of the use of false weights and measures.

Weighers.

Twenty-sixth—To appoint inspectors, weighers and gaugers, and to regulate their duties and prescribe their compensation.

Parks.

Twenty-seventh—To purchase or acquire by gift, devise or condemnation lands within the village limits, or to take and hold by lease such lands, for the purpose of parks or public grounds, and to provide for the improvement of the same; and also to direct and regulate the planting and preservation of ornamental or shade trees in the streets, alleys, parks or public grounds or highways of said village, and to appoint a suitable person to inspect and take charge of the same, and to fix his compensation and prescribe his duties.

Nuisances.

Twenty-eighth—To remove and abate any nuisance injurious to the public health or morals; and the village council shall have power to define what shall be considered nuisances, and to provide for the punishment of all persons who erect or maintain such nuisances.

Obstruction upon streets.

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

Public health.

Thirtieth—To do all acts and make all regulations which may be necessary and expedient to preserve the health of the inhabitants of the village and the suppression of disease; to prevent the introduction of contagious or infectious diseases into the village, and to make quarantine laws and enforce the same within the village.

Vagrants.

Thirty-first—To restrain and punish vagrants, tramps, mendicants, street beggars and prostitutes.

Express and hack fares.

Thirty-second—To license and regulate draymen, hackmen, expressmen and other persons engaged in the carriage of passengers, baggage or freight, and to regulate their charges therefor, and to authorize the president and chief of police of the village to regulate and direct the location of vehicles standing upon streets and public grounds in the village.

Fire limits—Wooden buildings.

Thirty-third—To regulate the construction of all buildings more than two stories in height, and prescribe fire limits in the village, and to prohibit the erection of wooden buildings or placing wooden sidewalks within such limits.

Hitching posts.

Thirty-fourth—To provide for and regulate the erection of hitching posts or rings for the fastening of horses or other animals, or to prohibit the same, in any portion of the village.

Hatchways.

Thirty-fifth—To regulate the opening of hatchways and cellarways upon the streets or sidewalks of the village, and to compel proper guards about the same.

Street numbers.

Thirty-sixth—To regulate the numbering of houses and lots, and to compel owners of houses and other buildings to have such numbers designated thereon.

Protection against fire.

Thirty-seventh—To require the owner or lessee of any building or structure, now or hereafter erected in the village or within any limits in the village designated by the village council, to place thereon such fire escapes and such appliances for the protection against or extinguishment of fires as it may direct, and to do each and every other act which it may think necessary or advisable to lessen the danger to human life in the case of fire or accident; and to require the owner or occupant of any lot or parcel of land within the village to clear and keep clear the same of all dead wood or other combustible or inflammable rubbish or refuse likely to increase danger from fire or to facilitate the spread of fire, and to provide for the doing of such work upon the failure of the owner or occupant so to do, and to assess the cost thereof as a special tax upon the land so cleared, such tax to be returned as collected in the same manner as other village taxes.

Manufacture and sale of gas.

Thirty-eighth—To regulate and control the quality and measurement of gas; to prescribe and enforce rules and regulations for the manufacture and sale of gas; to provide for the inspection of gas and gas meters, and to appoint an inspector and prescribe his duties; also to establish and maintain gas works within the village.

Steam boilers.

Thirty-ninth—To regulate the location, size and construction of such steam boilers as it may designate as being dangerous to life or property in the village, and to prohibit the location of such boilers at any place which the village council may deem dangerous to life or property.

Electric wires.

Fortieth—To regulate and control or prohibit the placing of poles for the suspension of electric or other wires along or across any of the streets of the village, or the suspension of such wires; and to require any already placed or suspended, either in limited districts or throughout the entire village, to be removed and placed beneath the streets and sidewalks of the village; and to compel the proper insulation of all electric light wires in use within the village.

1299⁴⁰
99 - 312

Herding cattle.

Forty-first—To regulate the penning, herding and treatment of all animals within the village.

Streets, sidewalks, and parks.

Forty-second—To lay out, open, change, widen or extend streets, avenues, lanes, alleys, parks, squares or other public grounds, and to grade, pave, improve, repair or discontinue the same, or any part thereof; to establish, open, maintain and repair drains, canals or sewers, or alter, widen or straighten water-courses; to make, widen, alter or otherwise improve, keep in repair, vacate or discontinue sidewalks and crosswalks.

1299⁴²
99 - 49

Wards.

Forty-third—To divide the village into wards and number the same, whenever in the judgment of the village council such division is necessary or proper.

Docks and ferries—Landing of infected persons.

Forty-fourth—To construct all needful harbor improvements; to erect and repair public wharves, piers and docks; to regulate marine railways; to regulate all ferries, towboats, and other water crafts; to establish ferry rates; to regulate the stationing, anchoring and mooring of vessels and wharf boats within the village, and to charge and collect wharfage and tonnage dues. To establish dock and harbor lines, and exercise general supervision over docks, piers and wharves in said village, to secure uniformity in the construction thereof, and unobstructed navigation; Provided, however, That no wharfage duty or tolls shall be allowed or chargeable to any boat, vessel or craft landing at any public dock, pier or wharf within said village. To regulate, control and prevent the landing of persons from boats, vessels or other conveyances whereon contagious or infectious diseases or disorders exist, and to make disposition of such persons, for the preservation of the health of the village; and to confine, wall up, cover over, alter or change the channel of all water-courses.

Sale of liquor, etc.

Forty-fifth—To license and regulate the sale of intoxicating liquors, and to inspect all said liquors when deemed necessary; to regulate shooting galleries, menageries and circuses, and all places of amusement or entertainment of whatsoever description for which money is charged for entrance.

Public library.

Forty-sixth—To establish and maintain a public library and reading room, and purchase therefor books, periodicals and papers, and to make all needful rules and regulations for the use and safe keeping of the same.

Franchises—General powers.

Forty-seventh—To provide for and control the erection and operation of electric lights, street railways, telephone exchanges, belt lines or incline railways, or all railways within the corporate limits of said village, and generally to have control of and to regulate all franchises that have heretofore or may hereafter be granted within and for said village; and to regulate the supply of light and motive power in all forms to the inhabitants thereof; and generally to have power to control and lay streets and public highways on, over and across any and all railway tracks that may now or hereafter may be laid, operated or used within the boundary of said village; and the said council may exercise all further powers requisite and proper to carry into effect the express powers in this charter specified; and the authority hereinbefore in general terms conferred upon the said council shall not be limited or qualified by any specific grant of power herein.

(Id. § 5.)

§ 1300. Passage of ordinances.

All ordinances shall be passed by an affirmative vote of a majority of the members of the village council, by yeas and nays, which shall be entered upon the records of the council and published once in the official paper of the village, signed by the president and recorder, and recorded by the recorder in a book to be kept for that purpose, before they shall take effect. No ordinance shall be passed at the same meeting at which it shall have been presented, except by the unanimous consent of the members present, which shall be noted in the records; but this shall not preclude the passage of any ordinance reported by any committee of the council to whom the subject of such ordinance shall have been referred at any previous meeting.

(Id. § 6.)

§ 1301. Ordinances—What shall be evidence—Pleading.

A copy of the record of any ordinance passed, certified by the village recorder and attested by the seal of the village, and any copy thereof published as aforesaid, or compilations of the ordinances made and published under the direction of the village council, shall be prima facie evidence of the contents of such ordinance and of the regularity of all proceedings relative to the adoption and approval thereof, and shall be admitted as evidence in any

Tit. 4] VILLAGES OF OVER 3,000 INHABITANTS. §§ 1301-1307

court of this state without further proof. In all actions, prosecutions and proceedings of every kind before the municipal court of such village it shall not be necessary to plead or prove such ordinance in court.

(Id. § 7.)

§ 1302. Appropriations to be by majority vote.

No appropriation shall be made without a vote of a majority of all the members of the village council in its favor, which vote shall be taken by yeas and nays and entered among the proceedings of the council.

(Id. § 8.)

§ 1303. Prosecution of nuisances.

The powers conferred upon the village council to provide for the abatement or removal of nuisances shall not bar or hinder suits, prosecutions or proceedings according to law.

(Id. § 9.)

§ 1304. Auditing accounts—Powers of council—Suits.

The village council shall examine, audit and adjust the accounts of the treasurer and all other officers of the village at such times as they shall deem proper, and also at the end of each year and before the terms for which the officers of the village were elected or appointed shall have expired; and if any officer shall refuse his books, accounts and vouchers for examination and settlement, or shall refuse to comply with the orders of the village council in the discharge of his duties, in pursuance of this section, the village council shall declare his office vacant; and the village council shall institute suits and proceedings at law against any officer or agent of the village who may be found delinquent or defaulting in his accounts or the discharge of his official duties, and shall make a full record of all settlements and adjustments.

(Id. § 10.)

§ 1305. Control of finances—Sale of property.

The village council shall have the management and control of the finances and of all the property of the village, both real, personal and mixed, and may provide for the sale of any village property in such manner as it shall consider for the best interests of the village.

(Id. § 11.)

§ 1306. May revoke licenses—Term of license.

Any license issued by the authority of the village council may be revoked by the said council at any time, for cause, and upon conviction before any court of any person holding a license for the violation of any provision or of any ordinance relative to the exercise of any right granted by such license, the council may, and upon second conviction shall, revoke such license, in addition to the penalty provided by law or ordinance for any such violation. No license shall be granted for a longer period than one year, and any license granted for a longer period than one year shall be void from the beginning.

(Id. § 12.)

§ 1307. Prisoners may be kept at hard labor, when.

The village council may also provide by ordinance that any person convicted of any offense before the municipal court of such village, subjecting such offender to imprisonment under the ordinances of the village, may be kept at hard labor in any workhouse established for such purpose, or, in case of a male offender, may be kept at hard labor during his imprisonment in such workhouse or upon public improvements of said village, or otherwise or both, and may also provide by ordinance that anyone convicted of an offense before such municipal court and committed for non-payment of fine imposed may be kept at hard labor, either in such workhouse or upon public improvements, or otherwise or both, until such person shall work out the amount of such fine at such rate of compensation as said council may prescribe, not exceeding the time of such commitment; and the council shall have full power to establish by ordinance all needful regulations for the security of such person so employed, and to prevent escape and secure proper discipline.

(Id. § 13.)

(357)

§ 1308. Bids for printing—Official newspaper—Evidence.

The village council shall, at their first meeting after each annual election, or as soon thereafter as may be, advertise for proposals to do the village printing, giving notice of not less than one week, in such manner as the council may direct, that sealed bids will be received by the recorder to do such printing. The bid or bids shall be publicly opened and read by the recorder at such time and place as the council shall appoint, and the person or persons offering to do such printing at the lowest sum of money or price, in any newspaper printed and published in said village or in the county in which such village is situated, and who shall give satisfactory security for the performance of the work, shall be declared the village printer, and such newspaper the official newspaper of said village, for the ensuing year; Provided, That the village council shall have the right to reject any or all bids. In the newspaper designated in the accepted bid or proposal shall be published all ordinances, by-laws and other proceedings and matters required by this act or by the by-laws or ordinances of the village council to be published in a public newspaper. The village printer or printers, immediately after the publication of any notice, ordinance or resolution which is required to be published, shall file with the village recorder a copy of such publication, with his affidavit, or the affidavit of his or their foreman, of the length of time the same has been published, and such affidavit shall be prima facie evidence of the publication of such notice, ordinance or resolution.

(Id. § 14.)

(5) OF THE POLICE.

§ 1309. Powers of president.

The police force of the village shall consist of the president, who shall be the chief executive officer of the city and who shall at all times have control and supervision of the police of the village, and such other policemen and watchmen as he shall by and with the consent of the village council appoint. He shall have the power to remove, suspend or discharge any police officer summarily, whenever in his opinion the welfare of the village may demand it, either for the appointment of other officers in their places or for the reduction of the police force.

(Id. subc. 5, § 1.)

§ 1310. Special watchmen.

The president may likewise, at the request of any person, firm, society or organization, appoint policemen or watchmen, who shall serve without expense to the village and have police powers to preserve the peace and protect the property within such limits and at such places as may be designated in such appointment; but such limited policemen shall not exercise any police authority, nor wear any official badge, outside the limits named in such appointment.

(Id. § 2.)

§ 1311. Special officers may be appointed, when.

The president shall, in case of riot or large public gatherings or disturbance, or when in his judgment the case requires it, appoint such number of special policemen or temporary police officers as he may deem necessary; but such temporary appointments shall not continue more than one week without the consent of the council.

(Id. § 3.)

§ 1312. Chief of police.

The president shall, in his appointments, designate one officer to be chief of the police, and such other officers for special duties and with such control over the other officers or watchmen as he may deem necessary, and may designate the rank of such police officers by such proper title as he may select.

(Id. § 4.)

§ 1313. Powers of police.

All police officers and watchmen of the village shall possess the powers of constables at common law under the laws of the state, serve and execute all

MINNESOTA STATUTES 1894

Tit. 4] VILLAGES OF OVER 3,000 INHABITANTS. §§ 1313-1317

warrants, processes, commitments and any writ whatsoever issued out of the municipal court of the village; and they shall have power, with the consent or by the direction of the president, to pursue and arrest any person fleeing from justice in any part of the state. When they pursue criminals out of the village, and such criminals are charged with offenses against the state law, they shall be entitled to receive for their own use all fees for such pursuit and all rewards offered for the apprehension of such criminals.

(Id. § 5.)

§ 1314. Police regulations.

The president shall, with the consent and approval of the village council, from time to time make such regulations for the control of the police force, and the powers and duties of the several officers thereof, as he may deem necessary. Such regulations may designate uniforms, badges, arms, discipline and drill exercises of the police force, as well as the conduct of the officers and men when on and off duty, and all other matters deemed necessary to promote the efficiency of the force.

(Id. § 6.)

§ 1315. Penalty for impersonating policeman.

If any person shall without authority assume to act as a policeman, or pretend to have such power, or wear a badge of a policeman within the village, he shall be deemed to be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not exceeding one hundred dollars, or imprisonment in the village or county jail not exceeding thirty days.

(Id. § 7.)

(6) FIRE DEPARTMENT.

§ 1316. Power to establish and regulate.

The village council shall have power to establish a fire department, to appoint officers and members thereof, and shall have supervision of such officers and members, and shall have power to fix their compensation and prescribe and regulate their duties; to provide protection from fire by the purchase of fire engines and all necessary apparatus for the extinguishment of fires, and by the erection or construction of pumps, water mains, reservoirs or other water works; to erect engine houses; to compel the inhabitants of the village and all others present to aid in the extinguishment of fires, and to pull down and raze such buildings in the vicinity of fire as shall be directed by them or any two of them who may be at the fire, for the purpose of preventing its communication to other buildings; to establish fire limits or limits within which wooden or other combustible buildings shall not be erected; to require the owners or occupants of buildings to provide and keep suitable ladders and fire buckets, which shall be appurtenances to the realty and exempt from seizure and forced sale; and, after reasonable notice to such owner or occupant, and refusal or neglect by him, and in default of payment therefor, to levy the cost thereof as a special tax upon such real estate, to be assessed and collected as other taxes in the city; to regulate the storage of gunpowder and other dangerous materials; to require the construction of safe places for the deposit of ashes; to regulate the manner of putting up stovepipes and the construction and cleaning of chimneys; to prevent bonfires and the use of fireworks and firearms in the village or any part thereof; to authorize fire wardens at all reasonable times to enter into and examine all dwelling houses, lots, yards, enclosures and buildings of every description, in order to determine whether any of them are in a dangerous condition, and to cause such as may be dangerous to be put in safe condition; and generally to establish and enforce such measures for the prevention and extinguishment of fires as may be necessary and proper.

(Id. subc. 6, § 1.)

(7) TAXATION AND BONDS.

§ 1317. Power to levy annual tax.

The village council shall have power to levy an annual tax upon all property in said village, taxable under the laws of this state; but no such tax

(359)

1316
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97 - 179

MINNESOTA STATUTES 1894

§§ 1317-1322

TOWNSHIP ORGANIZATION.

[Ch. 10

shall exceed one per cent of the assessed valuation of said property. All taxes so levied and collected shall be paid into the village treasury and become part of the general fund.

(Id. subc. 7, § 1.)

§ 1318. Tax levied by resolution of council.

Taxes may be levied by resolution of the village council, to be entered on the record, and no tax shall be invalid by reason of any informality in the manner of levying the same nor because the amount levied shall exceed the amount to be raised.

(Id. § 2.)

§ 1319. Statement of village taxes to be sent to county auditor—Advances from county treasurer, when.

The village council shall cause to be transmitted to the county auditor of the county in which such village is situate, on or before the first day of October of each year, a statement of all taxes as levied by them, and such taxes shall be entered and collected and payment thereof enforced with the state and county taxes, and in the same manner in which they are collected and enforced; and the county treasurer shall pay over to the treasurer of the village any and all taxes collected by him or received by him for such village, as provided by general law. Whenever, previous to any of the settlements provided by law, there shall be a lack of funds in the village treasury for any purpose, and there shall be funds in the county treasury collected on account of village assessments or taxes, the county treasurer may, at the request of the village council, advance and pay over to the village treasurer such sums as shall be estimated to be the amount collected on account of such village taxes or assessments, and shall take the village treasurer's receipt therefor; and such advances shall be accounted for and adjusted at the next regular settlement with the village.

(Id. § 3.)

§ 1320. Board of review.

The village council, or a majority of them, shall constitute a board of review, and shall meet and revise, alter and equalize the assessment roll of the assessor as they deem just and proper. The general laws of this state shall apply to said board of review, and said board shall be governed thereby.

(Id. § 4.)

§ 1321. Council may issue bonds, when—Limit of indebtedness.

The village council shall have power, when so authorized by a majority of the legal voters present and voting at any general or special village election of which due notice as to time, place and object of the election has been given, to issue the bonds of the village, running not more than twenty years, and bearing interest at a rate not to exceed eight per cent per annum, payable semi-annually, principal and interest payable at such times and places as may be fixed by the resolutions of the council. Such bonds shall be signed by the president, attested by the recorder and sealed with the seal of the village. Such bonds shall be sold at not less than par, and the proceeds from the sale thereof shall go into and become a part of the general fund of the village. Such bonded indebtedness of the village shall not at any time exceed two and one-half per cent of the assessed valuation of the property in such village.

(Id. § 5.)

(8) CONDEMNATION OF PRIVATE PROPERTY FOR PUBLIC USE.

§ 1322. Right of eminent domain, when.

Every such village is authorized and empowered to condemn property, or any right, interest or easement therein, for any or all of the following purposes, to-wit: For water works, gas works, heating works and electric light and power works; for markets, parks, public grounds, public squares, and sites for public buildings, and for buildings for the fire department; for the construction of slopes, embankments or cuts; for sewers, drains, ditches, res-

MINNESOTA STATUTES 1894

Tit. 4.]

VILLAGES OF OVER 3,000 INHABITANTS. §§ 1322-1326

ervoirs and cisterns; for the laying out, opening, altering, widening and extending, parking and otherwise improving of streets, avenues, parkways, lanes and alleys; for erecting poles and suspending wires thereon; for constructing and laying conduits, mains and pipes and branches and connections pertaining thereto, whether for gas, water, sewerage or wires, or for lowering, raising, changing the course of or diverting any stream of water, ditch, sewer or drain, and also for any and all other public purposes. Whenever it shall be deemed necessary to condemn private property for any of the aforesaid purposes, which necessity shall be determined by a majority vote of all the members elect of the village council, said village council shall proceed in the manner hereinafter provided.

(Id. subc. 8, § 1.)

§ 1323. Commissioners.

The village council, upon any improvement above mentioned to be made, shall appoint three commissioners, no two of whom shall be residents of the same ward of said village, and all of whom shall be disinterested freeholders and qualified voters of the city, to view the premises and assess the damages which may be occasioned by the taking of private property for any of the purposes aforesaid. Said commissioners shall be notified, as soon as practicable, by the recorder of the village to attend at his office, at a time to be fixed by him, for the purpose of qualifying and entering upon their duties; and in case any such commissioner, upon being so notified, shall neglect or refuse to attend as aforesaid, he shall forfeit and pay a fine to said village not exceeding fifty dollars, and shall be liable to be prosecuted therefor before the municipal court of said village in the same manner as for a violation of any ordinance of said village; and the commissioners in attendance shall be authorized to appoint another commissioner or commissioners in place of an absentee or absentees aforesaid, selected from some ward of the village not represented on said board of commissioners, and possessing the qualifications aforesaid. In all other cases of vacancy the village shall fill such vacancy.

(Id. § 2.)

§ 1324. Oath of commissioners.

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

(Id. § 3.)

§ 1325. Notice of meeting.

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

(Id. § 4.)

§ 1326. To hear testimony and assess damages.

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

(Id. § 5.)

§ 1327. Separate assessment of damages for building.

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

(Id. § 6.)

§ 1328. Assessment of respective interests.

If the lands and buildings belong to different persons, or if the land shall be subject to lease, mortgage or judgment, or if there be any interest in it less than an estate in fee, the injury or damage done to such persons or interests respectively may be awarded to them by the commissioners, less the benefit resulting to them from the improvement; but in no case shall the aggregate damages assessed to the owners, lessee, mortgagee or other persons having an interest therein, exceed the value of the parcel of property sought to be taken.

(Id. § 7.)

§ 1329. To file report with recorder.

The said commissioners, having ascertained and assessed the damages aforesaid, shall make and file with the village recorder a written report to the village council of their action in the premises, embracing a schedule or assessment of the damages in each case, with the description of the land and names of the owners, if known to them, and also a statement of the costs of the proceedings.

(Id. § 8.)

§ 1330. Notice of meeting to confirm assessment—Objections.

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

(Id. § 9.)

§ 1331. Damages to be paid or tendered, when.

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

(Id. § 10.)

§ 1332. Buildings to be removed by owners or sold by village.

In case any owner or owners of buildings aforesaid shall have elected in manner aforesaid to remove his or their buildings, he or they shall so remove them within thirty days from the confirmation of said report, or within such further time as the village council may allow for the purpose, and shall thereupon be entitled to payment from said village of the amount of damages awarded in such case in the event of removal. When such person or persons shall not have elected to remove such buildings, or shall have neglected (after having elected to remove) to remove the same within the time prescribed, such buildings, or so much thereof as may be necessary, upon paying or depositing the damages awarded for such taking in manner aforesaid, may be taken and appropriated, sold or disposed of, as the village council shall direct, and the same or the proceeds thereof shall belong to said village.

(Id. § 11.)

§ 1333. Where owner is under disability, guardian to be appointed.

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

(Id. § 12.)

§ 1334. Right of appeal to district court—Procedure.

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

(Id. § 13.)

§ 1335. Plat of street, etc., to be filed, when.

Whenever any public ground, street or alley shall be laid out, altered, widened or enlarged, under the provisions of this chapter, the village council shall cause an accurate survey and profile thereof to be made and filed in the office of the register of deeds of the county.

(Id. § 14.)

§ 1336. Record of all proceedings to be kept—Evidence.

It shall be the duty of the village recorder to keep in his office a record of all proceedings taken under this chapter, and after the confirmation of any report mentioned in section eight of this chapter, said village recorder shall carefully record and transcribe in such record all the proceedings taken in relation to the matter in said report, including all petitions, orders and appointments of commissioners, returns and reports of commissioners, notices and proofs of publication thereof, and orders and resolutions of the village council; and the said record, or a certified transcript thereof, or the original papers, petitions, proofs of publication, orders, or resolutions on file in his

(363)

MINNESOTA STATUTES 1894

§§ 1336-1340

TOWNSHIP ORGANIZATION.

[Ch. 10

office, shall be prima facie evidence of the facts therein contained in any court in this state; Provided, That the provisions of this chapter shall not apply to any proceedings now pending, but the same shall be completed as though this act had not been passed.

(Id. § 15.)

(9) LOCAL IMPROVEMENTS AND SPECIAL ASSESSMENTS.

1337
63-M - 497
65-NW 935

§ 1337. May levy assessments for local improvements.

Every such village is authorized to levy assessments for local improvements upon the property fronting upon such improvements, or upon the property to be benefited by such improvements, without regard to cash valuation.

(Id. subc. 9, § 1.)

1337-1353
61-M - 542
63-M - 499
64-NW 190
65-NW 935

§ 1338. For what improvements.

Such assessments may be made by such village for filling, grading, leveling, paving, curbing, railing, bridging, graveling, macadamizing, planking, opening, extending, widening, contracting, altering or straightening any street, avenue, lane, alley or highway, and for keeping the same in repair; also for filling, grading, protecting, improving or ornamenting any public park, square or grounds now or hereafter laid out; also for planting and protecting shade and ornamental trees in its public parks and along its streets and avenues; and also for constructing, laying and repairing crosswalks and sidewalks, retaining walls, gutters, sewers and private drains; Provided, That the village council may, when any contract is let for paving, include therein the expense of laying sewer pipe to the lot line and cause the expense of same to be assessed against the lot to which the sewer pipes are supplied, as a part of the cost of such paving.

(Id. § 2.)

§ 1339. On what real estate—Petition, when necessary.

The expense of any improvement mentioned in the foregoing section may be defrayed, save as herein otherwise provided, by an assessment upon the real estate benefited thereby, or by an assessment upon the real estate fronting thereon, in the discretion of the village council, to be levied in the manner hereinafter provided. No assessment, however, to defray the cost of any improvement mentioned in section two of this chapter shall be levied upon the property abutting upon such improvement or upon the property to be benefited thereby, unless a petition for such improvement, in writing, shall have been presented to said village council, signed by at least one-half of the owners of property that would be liable to such assessment, or by the owners of at least one-half of the property which would be so liable, except by an affirmative vote of at least three-fourths of the village council elect, by yeas and nays, to be entered on the minutes.

(Id. § 3.)

1340
57-M - 74
95 - 354
97 - 307

§ 1340. Procedure in obtaining bids and letting contract—Duties and powers of council—Payment.

Before ordering any improvement mentioned in section two of this chapter, the village council shall cause plans and specifications and an estimate of the cost of the proposed improvement to be made and filed in the office of the village recorder, and, when the same is to be done by contract, shall give at least ten days' notice, in the official newspaper of the village, that at a time stated the village council will meet at its usual place of meeting and receive sealed bids for the performance of such work. Such sealed bids shall be accompanied by a certified check to the amount of ten per cent of the estimated cost of such improvement, or by a bond with two sufficient sureties to the like amount, conditioned that he will, within ten days after notice that his bid has been accepted, enter into the contract, if awarded to him, to be provided by the village council, and furnish a bond with sufficient sureties in a penal sum of at least thirty per cent of the estimated cost of the improvement, conditioned to fulfill the terms of the contract; and if the contract shall be awarded to him, and he shall fail to enter into the said contract within the time limited and furnish the bond aforesaid, then the said bidder

1340
72-NW 565
72-NW 568

MINNESOTA STATUTES 1894

Tit. 4]

VILLAGES OF OVER 3,000 INHABITANTS. §§ 1340-1341

shall be liable to such village for all damages and costs that the said village may sustain by reason thereof; and the measure of damages shall be the difference between the bid made, which was accepted, and the amount the village may finally be compelled to pay for making the improvement, and the same may be retained from the amount of the certified check, if said check shall be deposited as aforesaid, or recover by action on the bond, in the name of such village, in any court having jurisdiction of the amount. Whenever the village council shall award to any person upon his bid the contract for making any of the improvements herein mentioned, he shall at the time of the execution of said contract furnish to such village a bond, with sufficient sureties, to be approved by said council, for an amount at least thirty per cent of the estimated cost of such improvement, conditioned that he will execute the work for the price mentioned in his bid and according to the plans and specifications; and said bond shall contain a further condition that he will pay for all labor done and material furnished for or on account of said improvement, and the contract to be executed shall also contain a covenant or agreement to pay for all labor done and materials furnished for or on account of said improvement. In case of default on his part to execute and fulfill the terms of the contract and perform the work, said bond may be sued upon and judgment recovered therein by the said village for all damages sustained in the premises, in any court having jurisdiction of the amount. No extension of the time for fulfilling any contract by the village council shall have the effect to release the sureties upon said bond. Said bids shall be opened by the council at the meeting specified in the published notice calling for bids, or such other time thereafter as said council may appoint. All contracts shall be let to the lowest responsible bidders who shall have complied with the above requisitions and who shall guarantee to the satisfaction of the council the performance of said work, except in case of paving streets with patent pavement or pavements; in such case notice for bids may call for wood, stone or other kinds of pavements, and when all the proposals therefor are in, the council may select the one which is relatively the lowest or most satisfactory, all things considered. If the pavement selected is patented, the council shall require a license from the patentee to lay and relay the same for all time thereafter free from all claims of royalty. A copy of said contract shall be filed in the office of the village recorder and registered by him in a book kept for that purpose. The said council shall reserve the right in their said contract, in case of improper construction, to suspend the work at any time and relet the same, or to order the entire reconstruction of said work, if improperly done. In cases where the contractor shall proceed to properly perform and complete the said contract, said council may from time to time, in their discretion, as the work progresses, grant to said contractor an estimate of the amount already earned, reserving fifteen per cent therefrom, which shall entitle said contractor to receive the amount due thereon. When the whole work has been done by said contractor to the satisfaction of the village council, the amount or balance due him shall be audited and allowed by said council and shall be payable out of the moneys applicable to the payment of such work, except upon paving and sewer contracts, when five per cent may be retained for six months to provide for the expense of back-filling and repairing streets.

(Id. § 4.)

Where a village sues on a contractor's bond for a sum due from him to one furnishing material, it is no defense that it has in its hands sufficient funds withheld from the contractor to pay such claims. *Village of West Duluth v. Norton* (Minn.) 53 N. W. Rep. 829.

§ 1341. Amount to be assessed.

After the work shall have been placed under contract as herein provided, the council shall assess upon the property fronting upon such improvement, or upon the property to be benefited thereby, seventy-five per cent of the estimated cost of such improvement, and in addition thereto ten per cent of such estimated cost, which shall be added to the assessment to defray necessary expenses of making surveys, plans, specifications and superintendence, in proportion to the frontage on such improvement, or in proportion to the ben-

(365)

1341
61-M - 543

MINNESOTA STATUTES 1894

§§ 1341-1343

TOWNSHIP ORGANIZATION.

[Ch. 10

efits to be derived therefrom, as they shall decide. If the amount so assessed shall be insufficient to complete the work, the village council shall, after the completion of the work, make a final assessment in the same manner to pay the same. Provided, that if in any case no assessment shall have been made until after the work shall have been completed or total cost thereof definitely ascertained, the council may make an assessment in an amount sufficient to cover the entire cost of such improvement, together with ten per cent thereof for expenses.

(1891, c. 146, subc. 9, § 5, as amended 1893, c. 190, § 4.)

§ 1342. Assessment upon railroad company, how collected..

When in any case any portion of the improvements mentioned in this chapter shall, by virtue of any law or ordinance, or by virtue of any valid contract, be chargeable upon any railroad company, the amount so chargeable may be assessed upon such railroad company and collected by distress and sale of personal property in the manner provided for by the general laws of the state in the cases of taxes levied upon personal property or by suit brought for that purpose; Provided, That any real estate belonging to said railroad company and being benefited by said improvement shall be assessed as in other cases.

(1891, c. 146, subc. 9, § 6.)

§ 1343. Assessment roll—Confirmation of assessment—Objections.

Upon making any assessment the village council shall direct the village assessor to make an assessment roll describing each lot or parcel of land with reasonable certainty liable to such assessment, the amount for which each lot or parcel is liable, and the names of the supposed owners thereof. Such assessment roll, with a notice in substantially the following form, shall be published in the official paper at least three times before the same is confirmed, the first of which publications shall be at least ten days before such confirmation. Such notice and assessment roll shall be substantially as follows:

“Village of _____.

“Notice is hereby given that, whereas, a contract has been let for [herein describe the nature and locality of the improvement], and the expense of such improvement to be assessed to each lot or tract of land fronting on such improvement (or to be benefited by such improvement) having been determined by the village council of said village, Now, therefore, said village council will, at their council chamber in said village, at — m. of —, the — day of —, 18—, meet to review and confirm such assessment, at which time and place all persons interested may appear and make objections to the same.

“It is proposed to issue bonds, chargeable to the abutting real estate (or the real estate to be benefited by such improvement), to pay such assessment, and such bonds will be issued covering all such assessments, except in cases where the owners of the property shall pay to the village treasurer, within thirty days after the confirmation of such assessment, the amount thereof assessed against their property.

“The following is a list of the supposed owners’ names, a description of the property liable to such assessment, and the amount assessed against the same, to-wit:

Names of supposed owners _____.

Description of property _____.

Amount assessed _____.

Dated _____.

_____ President of
the Village of _____.

Attest: _____ Village Recorder.”

At the time and place mentioned in such notice, or at such time and place as they may adjourn to, said village council shall meet and review and confirm such assessment, which confirmation shall be final, except as hereinafter provided. And no omission, informality or irregularity in or preliminary to the making of any special assessment for any local improvement shall, after-

1343

61-M - 544
63-M - 498
65-NW 935

MINNESOTA STATUTES 1894

Tit. 4] VILLAGES OF OVER 3,000 INHABITANTS. §§ 1343-1346

such confirmation, affect the validity of such assessment, unless objection specifying the grounds thereof shall have been made in writing and duly filed with the village recorder on or before the date of such confirmation.

(Id. § 7, as amended 1893, c. 190, § 1.)

§ 1344. Improvement bonds shall be issued for unpaid assessments.

After the expiration of said thirty days the council shall issue improvement bonds covering all the assessments except such as the owners shall have already paid, as provided in the preceding section. Such bonds shall be signed by the president and recorder, be sealed with the corporate seal of the village, and contain such recitals as may be necessary to show for the payment of which improvement they were issued, and the number and amounts of such bonds. Said bonds shall be semi-annual interest coupon bonds, divided into five equal series, payable respectively in one, two, three, four and five years from date, and shall draw interest at a rate not exceeding seven per cent per annum, payable semi-annually. Said bonds shall be semi-annual interest coupon bonds, payable at the option of the village after five years, and absolutely at the expiration of seven years from their date, and shall draw interest at a rate not exceeding seven per cent per annum. The village recorder shall carefully prepare a statement of the special assessments on which the bonds are issued, and record the same, together with a copy of said bonds, in his office.

(1891, c. 146, subc. 9, § 8.)

§ 1345. Special tax to be levied—How assessment may be paid—Duty of county auditor.

In each year after the issuing of said bonds the village recorder shall certify to the county auditor, in the same manner and at the same time that other village taxes are certified to such auditor, one-fifth of the special assessment on each parcel of property covered by said bonds, with eight per cent interest on the amount of such special assessment then unpaid, as a special tax on said property; and the said auditor on receipt thereof shall enter and carry out the same upon the proper tax lists, and they shall be collected the same as other taxes are collected, and when collected paid over to the village treasurer. Provided, That the owner or any party interested in any piece or parcel of land against which said assessment is levied may pay the full amount or any part thereof, with interest thereon at the rate of eight per cent per annum to the date of payment, to the village treasurer at any time before the roll is delivered to the county treasurer; and the village treasurer shall thereupon give his receipt in duplicate for the same, which shall be sufficient authority, upon presentation to the village recorder or to the county auditor, for the cancellation of said assessment, or of so much thereof as has been paid, upon the said assessment roll and upon the certified copy of the roll filed with the county auditor. Upon the presentation of such receipt the village recorder and county auditor shall cancel the same on the said roll and copy respectively, and from and after that time the lien on said land shall cease to the amount of such payment. After the said assessment roll has been delivered to the county treasurer, the assessment, or such part as has been certified to the county auditor, must be paid to said county treasurer with interest, and subject to all the penalties allowed by law, and the county treasurer shall report all such payment to the county auditor and village treasurer, giving items of assessment, interest and penalty thereon. The county auditor shall not issue his certificate that taxes are paid on any piece of land upon which any such assessment has been certified to him until such assessment, interest and penalties thereon, as aforesaid, have been paid and canceled as aforesaid or paid to the county treasurer.

(Id. § 9.)

§ 1346. Actions to avoid assessments—Evidence.

No action shall be maintained to avoid any of the special assessments of taxes levied pursuant to this chapter after bonds have been issued covering

(367)

1345
63-M - 502
65-NW 935

1346
63-M - 498
65-NW 935

MINNESOTA STATUTES 1894

§§ 1346-1351

TOWNSHIP ORGANIZATION.

[Ch. 10

such special assessments, and said bonds shall be conclusive proof of all the proceedings on which the same are based.

(Id. § 10.)

§ 1347. Deduction for payment, when.

Any person paying his assessment within thirty days of the date of the confirmation of the same, shall be entitled to a deduction of ten per cent added for survey, plans, specifications and superintendence, and the village treasurer is authorized to allow such deduction. Upon presentation to the village recorder of the treasurer's receipt, it shall be his duty to mark "Cancelled" the assessment on his books, opposite the description in said receipt.

(Id. § 11.)

§ 1348. Deeds of the land subject to lien of assessment, when.

All deeds of conveyance of the land affected by any assessment mentioned in this chapter shall be subject to the lien of such assessment from and after the time such assessment has been confirmed by the village council and certified to the county auditor.

(Id. § 12.)

§ 1349. Council may require full payment, when.

The village council may require the payment of all assessments within thirty days after the date of the confirmation of the same, when the estimated cost of the improvement for which the assessment is levied does not exceed fifty cents per front foot of the property to be assessed therefor; and may require the payment within such time of all assessments for the construction of sidewalks. In such cases the notice published with the assessment roll shall state that payment must be paid within such time.

(Id. § 13.)

§ 1350. Appeal from assessment may be made within twenty days from confirmation—Evidence.

Any person feeling himself aggrieved by such assessment may, by notice in writing served on the president or recorder of said village, a copy whereof with proof of service shall be filed in the office of the clerk of the district court of the proper county within twenty days of the confirmation of such assessment, appeal from such assessment to the district court aforesaid, when such appeal shall be tried by the court as in ordinary cases; but no pleadings shall be required, and the party appealing shall specify in the notice of appeal the grounds of objection to such assessment, and shall not be entitled to have any other grounds than those specified considered, and no question shall be tried as to any fact which may have arisen prior to the letting of the contract for the improvement; and a copy of the assessment roll in question and of the resolution of the village council confirming the same, certified by the village recorder, or the originals thereof, shall be prima facie evidence of the facts therein stated, and that such assessment was regular and just and made in conformity to law, and the judgment of such court therein shall be final. Such appeal shall be entered and brought on for trial and be governed by the same rules as appeals from justices of the peace in civil actions, and like bonds shall be given to such village by the person appealing as are required of appellants in such actions.

(Id. § 14, as amended 1893, c. 190, § 2.)

§ 1351. Council may sell bonds at not less than par.

The said council may at any time authorize the sale and assignment of said bonds at a price not less than their par value, and may apply the proceeds thereof to the payment of the cost of the improvement for which they are respectively issued, and the village recorder shall keep a record of all such assignments.

(1891, c. 146, subc. 9, § 15.)

MINNESOTA STATUTES 1894

Tit. 4]

VILLAGES OF OVER 3,000 INHABITANTS. §§ 1352-1354

§ 1352. Form of improvement bond.

Said bonds shall be substantially in the following form:

"Public Improvement Bonds of the Village of _____

Series No. _____

Amount _____

Date _____

"To Whom It May Concern:

This is to certify that the sum of _____ Dollars has been duly assessed against the lots and parcels of land mentioned in the assessment roll for the improvement of _____, which said assessment is a valid and substantial lien and charged against the lots and parcels of land therein described, and that the said sum has been by said village divided into five series or installments; that this bond represents the sum of _____ Dollars, the same being series No. _____, which is due and payable to the said village of _____, out of the property pledged by law for its payment, on or before _____, and is issued pursuant to the provisions of the laws of the State of Minnesota therefor; and the said village of _____ hereby guarantees to the holder of this bond that it will cause the said assessment to be collected and will pay, upon surrender of this bond to the village treasurer, at his office in said village of _____, on the first day of July in the year _____, the said sum of _____ Dollars, with interest thereon, from the date hereof to the time mentioned herein for payment, at the rate of _____ per cent per annum.

"In Testimony Whereof, the said Village of _____ has caused this bond to be signed by its president and attested by its recorder, and its corporate seal affixed thereto, this _____ day of _____, A. D. _____.

President.

Attest;

Recorder."

(Id. § 16.)

§ 1353. Reassessment when assessment declared void.

Where an assessment for any local improvement on any lot, piece or parcel of land has been made and the same has been or hereafter shall be set aside or declared void by reason of any defect or irregularity affecting the validity of such assessment, the council may make a new assessment as to such lot, piece or parcel of land. And no error or omission or irregularity, whether jurisdictional or otherwise, shall prevent such reassessment to the extent of the benefits conferred on such lot, piece or parcel of land when ordered by the council.

(Added 1893, c. 190, § 3.)

For act legalizing assessments for local improvements heretofore made, see post § 1505.

(10) VACATION OF STREETS, AVENUES, AND ALLEYS.

§ 1354. Council authorized to vacate streets—Procedure.

The village council of any such village shall have power to vacate or discontinue streets, avenues, alleys and highways within said village. No such vacation or discontinuance shall be granted or ordered by the village council except upon the petition of a majority of the owners of the property on the line of such street, avenue, alley or highway resident within the said village. Such petition shall set forth the facts and reasons for such application, accompanied by a plat of such street, avenue, alley or highway proposed to be vacated, and shall be verified by the oath of at least two of the petitioners. The village council shall thereupon order the petition to be filed of record with the village recorder, who shall thereupon give notice, by publication in the official paper of the village for four weeks, at least once a week, to the effect that such petition has been filed as aforesaid, and stating in brief its object, and that said petition will be heard and considered by the village council, or a committee appointed by them, at a certain time and place therein specified not less than ten days from the expiration of such publication. The village council, or such committee as may be appointed by them for the purpose,

MINNESOTA STATUTES 1894

§§ 1354-1357

TOWNSHIP ORGANIZATION.

[Ch. 10

at the time and place appointed, shall investigate and consider the said matter and shall hear the testimony and evidence on the part of the parties interested.

(1891, c. 146, subc. 10, § 1.)

§ 1355. Resolution to be published and recorded.

The village council thereupon, after hearing the same, or upon the report of such committee in favor of granting such petition, may by resolution of a three-fourths vote of all the members elect, declare such street, avenue, alley or highway vacated, which resolution, before the same shall go into effect, shall be published as in the case of ordinances; and thereupon a transcript of such resolution, duly certified by the village recorder, shall be filed for record and duly recorded in the office of the register of deeds of the proper county.

(Id. § 2.)

§ 1356. Appeal may be taken within twenty days—Procedure—Jurisdiction of district court.

Any person feeling himself aggrieved by any such vacation or discontinuement, or refusal so to do, may within twenty days after the publication of such resolution or after such refusal, by notice in writing served upon the president or recorder of said village, a copy whereof, with proof of service, shall be filed in the office of the clerk of the district court of the proper county, appeal to said court from such vacation or discontinuance or such refusal, when such appeal shall be tried by the court as in ordinary cases, and the judgment of such court shall be final. It shall be the duty of said village recorder, as soon as such appeal is taken, to transmit to the proper court a certified copy of the records and files of all proceedings in the case, at the expense of the appellant. Such appeal shall be entered and brought on for trial and be governed by the same rules as appeals from justices of the peace in civil suits, except that no pleadings shall be required; Provided, That this chapter shall not be construed to oust the district court of jurisdiction to vacate any such street, avenue, alley or highway in such village as provided by the general laws of this state; but in all such cases notice of such application must be served in writing upon such village authorities by delivering to and leaving with the president or recorder of such village a true and correct copy of such application and notice of hearing, at least twenty days before the day of hearing.

(Id. § 3.)

(11) MUNICIPAL COURT.

§ 1357. Court established—Jurisdiction.

There is hereby established in every such village in the state of Minnesota a municipal court. The said court shall be located and its sessions shall be held in the village hall of such village, if there be such, and if there be no such hall, then at some suitable place to be provided therefor by the village council of such village. Said court shall be a court of record and shall have a clerk and a seal, and the jurisdiction of said court shall be coextensive with the limits of the county in which such village is situated, except as herein-after provided.

CIVIL JURISDICTION. Said court shall have jurisdiction to hear, try and determine civil actions and proceedings as follows:

First—Of an action arising on contract for the recovery of money only, if the sum claimed does not exceed five hundred dollars.

Second—Of an action for damages for injuries to the person or to real property, or for taking, detaining or injuring personal property, if the damages claimed, or, if replevin, the value of the property in controversy, does not exceed five hundred dollars.

Third—Of an action for a penalty, given by statute, not exceeding five hundred dollars.

Fourth—Of an action upon a bond, conditioned for the payment of money, not exceeding five hundred dollars, though the penalty exceeds that sum, the

1356

97 - 199

1357-1408

95 - 229

1357

97 - 140

1357-1408.

99 - 301

1357

01 - 181

MINNESOTA STATUTES 1894

Tit. 4]

VILLAGES OF OVER 3,000 INHABITANTS. §§ 1357-1361

judgment to be given for the sum actually due. When the judgments are to be made by installments, an action may be brought for each installment as it becomes due.

Fifth—Of an action upon an official bond or bond taken in said court, if the penalty does not exceed five hundred dollars.

Sixth—To take and enter judgment on the confession of a defendant, when the amount does not exceed five hundred dollars.

Seventh—To hear and determine all questions that may arise in actions before it in Chapter eighty-four of the General Statutes of one thousand eight hundred and seventy-eight and the acts amendatory thereto, relating to forcible entries and unlawful detainers, whether involving the title to real estate or otherwise.

Eighth—Said court shall also have all the powers and jurisdiction conferred by law upon justices of the peace in this state.

Ninth—CRIMINAL JURISDICTION. To hear all complaints and conduct all examinations and trials in criminal cases arising or triable in the county in which said village is situate and cognizable before a justice of the peace, or arising under the charter, ordinances, laws, regulations or by-laws of such village. A change of venue may be demanded and had in the same manner and with like effect as in the district courts of this state.

(Id. subc. 11, § 1.)

§ 1358. Limit of jurisdiction.

The jurisdiction of said court, however, shall not extend—

First—To any civil action involving the title to real estate, save and except an action brought under and pursuant to Chapter eighty-four of the General Statutes of Minnesota, A. D. one thousand eight hundred and seventy-eight, and the amendments to such chapter.

Second—Nor to any action for divorce, or any action wherein the relief demanded in the complaint is equitable in its nature.

Third—Nor to any action to recover damages for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, or upon a promise to marry.

Fourth—Nor to any action against an executor or administrator as such.

Fifth—Nor to any civil action against such village.

(Id. § 2.)

§ 1359. Powers.

Said court shall have full power and authority to issue all process, civil and criminal, necessary and proper to carry into effect the jurisdiction given to it by law, and its judgments and other determinations, save as hereinafter provided. And it shall have and possess all the powers usually possessed by courts of record at common law, subject to the modifications of the statutes of this state applicable to courts of record. And said court is hereby vested with all powers over cases within its jurisdiction; and all laws of a general nature shall apply to such municipal courts so far as the same are applicable and not inconsistent with the provisions of this act. Provided, That such municipal courts shall not have power to issue writs of habeas corpus, quo warranto, ne exeat, mandamus, prohibition or injunction.

(Id. § 3.)

§ 1360. Judge—Term of office.

There shall be one judge of said municipal court. The term of office of said judge shall be two years and until his successor shall have been duly elected and qualified.

(Id. § 4.)

§ 1361. Same—How elected.

The judge of said court shall be elected by the legal voters of said village at the special election to be held the 12th day of May, A. D. 1891, and thereafter at the general election for village officers on each odd-numbered year, and the person receiving the highest number of votes at such election shall be declared duly elected said judge.

(Id. § 5.)

(371)

§ 1362. Vacancy—How filled.

In case of a vacancy in the office of judge, by reason of the death, removal from office of said judge, or otherwise, his place may be filled by the election of another judge, who shall be elected at a special election of said village called for that purpose by the council of said village, which election shall take place not later than sixty days after the said vacancy occurs, and it shall be the duty of the said council to call such special election; and during the period intervening between the time of said vacancy and said election, it shall be the duty of said council to appoint some suitable person to act as said judge, and such person so appointed shall possess the powers herein conferred upon the judge of said court, and the judge so elected at such special election shall have and possess all the powers herein conferred upon the judge of said court.

(Id. § 6.)

§ 1363. Qualification of judge.

The judge of said court shall be a resident of such village, a person learned in the law and duly admitted to practice as an attorney in the courts of this state; and before entering on the duties of his office he shall take and subscribe an oath as prescribed by the General Statutes for judicial officers, which oath shall be filed in the office of the village recorder of said village.

(Id. § 7.)

§ 1364. Powers of judge.

The judge of said municipal court shall have the general powers of judges of courts of record, and may administer oaths, take and certify acknowledgments in all cases, and as a conservator of the peace shall have all power and authority which is or may hereafter be vested in justices of the peace or any other judicial officer of this state. He shall see that the criminal laws of this state and the ordinances, laws, regulations and by-laws of said village are observed and executed; and for that purpose said judge shall open the court every morning (Sundays and legal holidays excepted) and proceed to hear and dispose of, in a summary manner, all cases which shall be brought before him by the police officers of the village or otherwise, either with or without process, for the violation of the criminal laws of this state committed within the county in which said village is situate, or of the ordinances, laws, regulations and by-laws of said village. The judge of this court shall be the chief judicial magistrate of the village.

(Id. § 8.)

§ 1365. Rules.

Said judge shall have power to make and prescribe such rules and regulations for the government of said court and the dispatch of the business coming before it as shall be by him deemed proper and as shall not be inconsistent with the provisions of this act and the laws of the state.

(Id. § 9.)

§ 1366. Clerk—Oath—Bond.

The office of clerk of said municipal court shall be filled by the recorder of such village. Such clerk, before he enters upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States and of the state of Minnesota, and to faithfully and honestly discharge and perform the duties of his office; and shall execute to the said village a penal bond in such sum and with such sureties as the village council may direct and approve, conditioned that he will account to and pay over to the treasurer of said village, on each day, all fines, penalties, fees and other moneys belonging or to go to said village which may have come into his hands during said day, and that he will at all times pay over to all persons, on demand, all moneys to which they may be entitled which may have come into his hands in virtue or by reason of his office. Such oath and bond shall be filed in the office of the village treasurer of said village.

(Id. § 10.)

MINNESOTA STATUTES 1894

Tit. 4]

VILLAGES OF OVER 3,000 INHABITANTS. §§ 1367-1372

§ 1367. Deputy clerk—Appointment—Oath—Bond—Powers.

Such clerk shall have power to appoint, subject to the approval of the judge of said municipal court, a deputy clerk with like powers of the clerk, but acting under the authority of the said clerk; and said deputy may be removed from office in the same manner as herein prescribed for the removal of the clerk.

(Id. § 11.)

§ 1368. Clerk—Duties.

The clerk shall have the care and custody of all the books, papers and records of said court. He shall be present by himself or deputy at all trials, unless absent by reason of sickness or by consent of the judge; and in case of the absence of both clerk and his deputy, the judge may appoint some suitable person temporarily to the position. He may swear all witnesses and jurors, and administer all oaths and affidavits, and take acknowledgments, and, when appointed by the court, he shall, without compensation, act as referee in any civil action pending in said court. He shall keep minutes of proceedings and enter all judgments, orders and sentences, issue commitments as well as all other writs and processes, and make up and keep the record of the court under the direction of the judge, and, when a judge is not present, adjourn the court from day to day. He shall tax all costs and disbursements allowed in every action, subject to review by the judge, and do all other things and acts necessary and proper to the enforcement and carrying out of the jurisdiction of the court. He shall receive all fines, penalties and fees of every kind accruing to the court or any officer thereof, including police officers, and keep full, accurate and detailed accounts of the same, and shall on each day deliver over to the village treasurer of such village all moneys so received, with detailed accounts thereof, and take his receipt therefor. Said clerk, as well as the judge of said court, is hereby made a conservator of the peace and vested with the same authority, discretion and power to act on receiving complaints and issuing warrants of said court in criminal cases.

(Id. § 12.)

§ 1369. Books, blanks, etc., to be furnished.

Said clerk shall, under direction of the judge and with the consent of the village council of said village (unless otherwise provided), from time to time procure and furnish all the necessary blanks, stationery and record books for the use of the court and the officers thereof, at the expense of said village.

(Id. § 13.)

§ 1370. Duties of village and county attorney.

The village attorney of such village shall have charge of the prosecution of all criminal cases in said court not indictable; and the county attorney for the proper county shall act in the prosecution of offenders charged with indictable offenses, when so required by law to prosecute before justices of the peace or otherwise.

(Id. § 14.)

§ 1371. Stenographer.

The judge of said court may employ and appoint a shorthand writer, and fix his compensation, to make in shorthand writing a true record or report of the proceedings and evidence taken upon the trial of issues of fact in said court and of all examinations had therein; and, when required by the court or either of the parties to any such trial or examination, to transcribe such report or record into words which shall be represented by the characters used by him in reporting such proceedings or examination as the same shall occur.

(Id. § 15.)

§ 1372. Same—Oath—Duty.

Before such reporter shall enter upon the performance of his duties, he shall take and subscribe an oath similar to the oaths required of the reporters in the district court of this state, and file the same with the clerk of the court. The evidence and proceedings in trials of issue of fact in this court shall be reported in like manner as in the district court, provided the

(373)

party calling for a reporter pays into the village treasury the amount ordered by the court, and shall be filed with the clerk of this court and remain so on file for the use of all parties interested. In the performance of his duties said reporter shall be subject to the orders and directions of the court, and the judge may at any time discharge such reporter and employ and appoint another, and fix the compensation of said reporter not to exceed five dollars per day for the time actually employed, to be paid out of the village treasury on the order of the judge of said court; and such expense shall be taxed in the costs of the case, for the use of the prevailing party, provided said party calls and pays for said reporter.

(Id. § 16.)

§ 1373. Same—Fees.

When the official reporter of said court shall be required by any of the parties to an action, proceeding or examination to transcribe his record into ordinary writing or print, the parties requiring such transcript shall pay to the clerk of said court five cents per folio of one hundred words for the transcript, and three cents per folio of one hundred words for each copy thereof, two-thirds of said amount to be paid to the reporter and one-third to the village treasurer.

(Id. § 17.)

§ 1374. Terms of court.

Such court shall hold regular terms for the transaction of civil business and trial of civil actions, on each Tuesday of every month, which terms shall continue from day to day, with such adjournments as the court may deem proper, until the business of such term shall be finished; Provided; That the judge of said court may set cases for hearing and trial upon any day in that or any subsequent term. The terms of said court shall open at ten o'clock in the forenoon.

(Id. § 18.)

§ 1375. Term calendar.

The clerk of the court shall, prior to each term of the court, make up a calendar of the causes which will come up for trial or for any other disposition before the court at such term, adopting such arrangements as the judge may direct.

(Id. § 19.)

1376
99 - 143

§ 1376. Actions—How commenced and conducted.

All civil actions and proceedings in said court shall be commenced and conducted as prescribed by the statutes regulating the commencement, pleading, practice and procedure in the district courts of this state, as far as the same may be applicable, except, however, as in this act otherwise provided.

(Id. § 20.)

1377
99 - 143

§ 1377. Time to serve pleadings, etc.

The time within which any act is to be done in this court shall be one-half of the statutory period prescribed in the district court proceedings; Provided,—

First—That no such period shall be less than three days.

Second—That two days' notice of taxation shall be given.

Third—Notes of issue shall be filed at least three days before the term, and notices of trial shall be served at least four days before the term.

Fourth—The time within which motions for new trials and appeals may be made or taken shall be the same as in the district court.

Fifth—The practice and proceedings in actions under Chapter eighty-four of the General Statutes of one thousand eight hundred and seventy-eight shall be the same as in justice's court, except that the summons shall be issued by the clerk and be made returnable on the first day of a regular term of said court.

Sixth—The notice required of the taking of depositions to be used in said court shall be the same as in the district courts of this state.

Seventh—Defaults may be opened and judgments and orders set aside or modified, for good cause shown, within sixty days after the party affected thereby shall have notice or knowledge of the same.

(Id. § 21.)

Sub. 5.
1377 87-M . 205

MINNESOTA STATUTES 1894

Tit. 4]

VILLAGES OF OVER 3,000 INHABITANTS. §§ 1378-1384

1378 91-M . 244

§ 1378. Transfer of certain actions to district court.

Where any equitable defense or ground for equitable relief is interposed, or where it appears that the title to real estate is involved, save as is provided in section one, subdivision seven of this act, said court shall immediately cause an entry of the fact to be made of record and cease all further proceedings in the case, and within twenty days thereafter certify and return to the district court of the proper county a transcript of all entries made in the record relating to the case, together with all process and other papers relating to the suit; and thereupon said district court shall proceed in the case to final judgment and execution, according to law, the same as if the said suit had been originally commenced in the district court, and the costs shall abide the event of the suit.

(Id. § 22.)

§ 1379. Attachment—Replevin—Garnishment.

Proceedings by attachment for more than fifty dollars, replevin or garnishment in said court shall be conducted as in the district courts of this state; Provided, That the bonds required in such proceedings shall be executed with sufficient sureties and be in double the amount claimed in attachment, and not less than the sum of one hundred dollars, or in double the value of the property claimed in replevin; and all bonds required or allowed in such proceedings shall be approved by the judge of said court; and Provided further, That in garnishment proceedings the affidavit required shall be the same as required in justice's court; and no judgment shall be rendered against a garnishee when the judgment against the defendant is less than ten dollars, exclusive of costs, nor when the indebtedness of the garnishee to the defendant, or the value of property, money or effects of the defendant, in the hands or under the control of the garnishee as provided, is less than ten dollars; and Provided further, That all attachment proceedings for less than fifty dollars shall conform to the practice in justices' courts in this state.

(Id. § 23.)

§ 1380. Depositions.

Depositions may be taken and used in said court in like manner as in the district court.

(Id. § 24.)

§ 1381. Tenders.

Tenders of money may be pleaded and made in said court in like manner and with like effect as in the district court.

(Id. § 25.)

§ 1382. Stay of execution.

Executions may be stayed in this court in like manner as in the district courts.

(Id. § 26.)

§ 1383. Confession of judgment.

Judgment may be confessed and filed and entered in said court as in the district court.

(Id. § 27.)

§ 1384. Appeals from justice courts.

All appeals from judgments of justices of the peace in such village shall be taken to this court, and this court shall have the same powers in such cases now possessed by the district courts of this state; and all laws applicable to appeals to the district court are made applicable to said courts; Provided, however, That the appellant shall cause such appeal to be entered in such court and placed upon the calendar for trial at a term occurring not more than twenty days from the time of the allowance of such appeal; and Provided further, That the appellant shall cause to be served upon the respondent or his attorney a notice of trial at least three days before the term at which said appeal is to be heard; and Provided further, That if the appellant fails or neglects to enter the appeal as aforesaid, the respondent may enter the same at the next or any succeeding term of said court, and have the judgment of the court below affirmed with interest and costs.

(Id. § 28.)

(375)

MINNESOTA STATUTES 1894

§§ 1385-1390

TOWNSHIP ORGANIZATION.

[Ch. 10

§ 1385. Second trial under G. S. 1878, c. 84.

Whenever the title to the real estate, for the possession of which the action is brought under Chapter eighty-four of the General Statutes of one thousand eight hundred and seventy-eight, is involved and determined in this court, the person aggrieved thereby may, after written notice of the judgment entered in said action, apply to the court and have said cause transferred to the district court for the proper county, upon complying with the following requisites:

First—He shall deposit with the clerk of this court, for the use of the person entitled thereto, the amount of costs and disbursements included in said judgment.

Second—Within twenty-four hours after notice of such judgment he shall serve upon the adverse party a notice in writing of at least three days, stating that he will apply to the court at the next regular term thereof, occurring not less than four days after such judgment is entered, naming such term, for an order of the court certifying said cause to the district court of the proper county for a second trial, and that he will then apply to the court to find the amount of the bond hereinafter provided for, and that he will then propose the names of [insert names] as sureties in such bond.

Third—The amount of the bond having been fixed by the court and the proposed sureties approved, such bond, conditioned that the party aggrieved will pay the costs of said second trial and abide any order the court may make therein, and pay all rents, issues, profits and damages justly accruing to the adverse party during the pendency of the action, shall be filed with the clerk of this court within five days thereafter.

(Id. § 29.)

§ 1386. Court to make order.

Upon the filing of such bond the court shall make an order directing that the cause be certified to the district court for a second trial therein.

(Id. § 30.)

§ 1387. Cause to be certified.

The clerk of this court shall, within ten days after the filing of such order, certify the cause and all papers of record therein to the district court, and thereafter all proceedings in said action shall be had and conducted in said district court.

(Id. § 31.)

§ 1388. Judgment—Stay.

Upon filing the notice provided for in section thirty-one, subdivision two, together with proof of service upon the adverse party, all proceedings in the action shall be stayed in the court until the further order of the court.

(Id. § 32.)

§ 1389. Process.

All process shall be tested in the name of the judge of this court and issued under the seal of the court, and signed by the clerk and directed for service to the sheriff of the proper county, except as herein otherwise provided. The forms of process may be prescribed by the court, by rule or otherwise, and any form so prescribed shall be valid and sufficient, and such forms may be changed by the court at any time. In the absence of such prescribed forms, the forms of the process in use in the district courts of this state may be changed and adapted to the style of the court, and used at the discretion of the court.

(Id. § 33.)

§ 1390. Summons and subpoenas.

The summons and subpoenas may be served by any constable of such village, or by the sheriff of the proper county, or by any other person not a party to the action, and the service shall be made and the summons returned and filed with the clerk of the court with all reasonable diligence.

(Id. § 34.)

§ 1391. Criminal proceedings—Procedure.

Complaints in criminal cases, where the defendant is not in custody, may be made to the court while in session, or to the judge or clerk when not in session, and shall be made in writing or reduced to writing by the judge or clerk and sworn to by the complainant, whether the offense charged be a violation of the criminal laws of the state or of the ordinances, regulations, laws or by-laws of said village. Complaints, warrants and other process in criminal cases may follow substantially the forms heretofore in use by justices of the peace, with such alterations as may be convenient to adapt the same to the style of this court, or may be in such other form as the court may prescribe, sanction or approve. In cases when alleged offenders shall be in custody and be brought before the court or the clerk without process, the clerk shall enter upon the records of the court a brief statement of the offense with which the offender is charged, which statement shall stand in the place of a complaint, unless the court shall direct a formal complaint to be made. The plea of the defendant shall be "Guilty" or "Not guilty." In case of a failure to plead, the clerk shall enter a plea of not guilty, and a former acquittal or conviction for the same offense may be proved under the plea of not guilty with like effect as if formerly pleaded. In the examination of offenders charged with indictable offenses, such minutes of the examination shall be kept as the court may direct, and be properly returned to the court before which the party charged with the offense may be bound to appear.

(Id. § 35.)

§ 1392. Costs.

Costs are allowed to the prevailing party in actions commenced in said court, as follows:

First—To the plaintiff, upon a judgment in his favor of fifty dollars or more in an action for the recovery of money only, when no issue of law or fact is joined, five dollars; when an issue is joined, ten dollars.

Second—In all other actions, five dollars.

Third—To the defendant, upon discontinuance or dismissal, when the amount claimed in the plaintiff's complaint is fifty dollars or more, five dollars.

Fourth—When judgment is rendered in his favor on the merits, five dollars; and when the amount claimed in the plaintiff's complaint is fifty dollars or more, ten dollars.

Fifth—Costs may be allowed on a motion or demurrer, in the discretion of the judge, not exceeding ten dollars, and may be made absolute or directed to abide the event of the action.

Sixth—Save as hereinbefore provided, costs shall be allowed in all cases to the prevailing party, as in the district courts of this state.

(Id. § 36.)

§ 1393. Disbursements.

Disbursements necessarily paid or incurred shall in all cases be allowed to the prevailing party.

(Id. § 37.)

§ 1394. Taxation of costs.

Costs and disbursements shall be taxed and allowed by the clerk of said court as in the district courts of this state.

(Id. § 38.)

§ 1395. Clerk's and officer's fees.

In all proceedings had in said courts, like fees shall be charged and collected by the clerk as costs as are allowed by law to the clerk of the district court of the proper county for like services; Provided, That the plaintiff, upon the filing of his complaint in said court, and the appellant or party procuring the transfer of any action from a justice's court, upon filing the return on appeal or other paper, shall pay to the clerk the sum of two dollars and fifty cents, for the use of such village, which sum shall be in full of all costs and fees of said court and clerk up to and including the entry of judgment and certifying transcript of judgment to the district court, and no rebate shall be allowed to any such person making such payment.

(Id. § 39.)

(377)

§ 1396. Trial by jury.

Trial by jury in said court shall in all respects be conducted as in the district courts of this state, and all laws of a general nature applicable to jury trials in said district courts shall apply to said municipal courts.

(Id. § 40.)

§ 1397. Jury—Method of drawing.

The judge of said court and the president of the common council of such village shall, on the last Saturday of each and every month, meet at the municipal court room in said village and from the electors of said village select and designate forty-eight of said electors as the jurors of said court, to serve therein when required and drawn during the succeeding month and until their successors are selected. The clerk of the court shall thereupon write the names of the jurors so selected upon separate slips of paper and place the same in a wheel or box, and whenever a jury is required in said court he shall thereupon, by lot, draw for a jury of six men, twelve jurors, and for a jury of twelve men, twenty-four jurors. The jurors so drawn shall be summoned to attend the trial of the case wherein they are drawn. The first six or twelve jurors drawn shall constitute the jury, unless some of said jurors are excused or challenged, in which case the clerk shall call so many of the remaining jurors as shall be required to fill the places of the jurors excused. And in the event that a jury cannot, for any cause, be filled and sworn from the jurors so summoned, then the clerk shall draw other names from said box or wheel and summon the same until the jury is full; Provided, however, That each party to a civil or criminal action shall be entitled to three peremptory challenges and no more.

(Id. § 41.)

§ 1398. Fees of jurors.

Jurors so summoned and attending as aforesaid in said court, and duly sworn as such for the trial of any action, shall be entitled to like compensation as jurors in justice's court; but the party demanding a jury in any civil action shall be required to advance the fees for such jury before the venire shall issue.

(Id. § 42.)

§ 1399. Appeals to the supreme court.

Any cause, including actions under Chapter eighty-four of the General Statutes of one thousand eight hundred and seventy-eight, may be removed from said courts to the supreme court of the state in like manner and upon like proceedings, and with like effect, as from the district court, except in cases where appeals are prohibited.

(Id. § 43.)

§ 1400. Transcript—Lien.

No judgment rendered in said court shall attach as a lien upon real estate until a transcript thereof shall be filed in the district court, as hereinafter provided. Every person in whose favor a judgment is rendered in any such municipal court may demand and receive from such clerk a transcript of such judgment, duly certified, and file the same in the office of the clerk of the district court of the proper county, who shall file and docket the same as in the case of transcripts of judgments from courts of justices of the peace. And every judgment shall become a lien upon the real estate of the debtor, from the time of filing such transcript, to the same extent as a judgment of said district court, and shall thereafter, so far as relates to the enforcement of same, be exclusively under the control of said district court and carried into execution by its process, the same as if rendered in said district court. But writs of execution thereon in civil actions may issue against the goods and chattels of the judgment debtor, returnable within thirty days, as in justices' courts in this state.

(Id. § 44.)

§ 1401. Duty of sheriff.

It shall be the duty of the sheriff of the proper county, in the state of Minnesota, to serve all civil process and other papers in civil actions issued by

MINNESOTA STATUTES 1894

Tit. 4.]

VILLAGES OF OVER 3,000 INHABITANTS. §§ 1401-1407

the said court, and to summon all persons required therein, except as herein otherwise provided.

(Id. § 45.)

§ 1402. Police officers—Process in criminal and civil actions.

The police officers of the said village are hereby vested with all the powers of constables under the statutes of this state as well as the common law. It shall be the duty of the police officers of said village to serve all process or other papers issued by said court. All such process shall be delivered to the chief of police, and it shall be his duty to see that all such process is faithfully served and duly executed, except as otherwise provided herein.

(Id. § 46.)

§ 1403. Police officers and bailiff.

It shall be the duty of the president of said village to see that a sufficient number of police officers are always in attendance upon said court and in readiness to obey its mandates and preserve order in its proceedings. And said president shall have the power, in his discretion, to appoint not exceeding three persons, approved by the judge of said municipal court, as policemen for special attendance and duty in said court, irrespective of the general or special rules or legal regulations or enactments relative to the qualifications of policemen; but such persons shall receive the same but no greater compensation, unless the council directs greater compensation than ordinary police; and all policemen attending said court may be required to give bonds to said village in such sum as the council shall direct for the faithful performance of their duties, such bonds to be for the use of all persons interested; Provided, however, That nothing herein contained shall affect the powers and duties of the general police in said court.

(Id. § 47.)

§ 1404. Fees of police.

Police officers shall hereafter receive for their services no other compensation than the salary paid them by the village, except as otherwise provided herein; and if any fee shall be paid to any police officer or bailiff for any service in connection with this court, he shall forthwith pay the same over to the clerk of the court for the use of said village, and a failure to do so shall be a misdemeanor punishable by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days, and the said clerk shall pay the same to the village treasurer in the same manner as provided by section twelve of this act.

(Id. § 48.)

§ 1405. Deputy clerk to act as bailiff.

The deputy clerk may, when required by said court, perform the duties imposed by this act upon its special policemen, and shall have the same authority and powers as are conferred by law upon police officers of the village; Provided, That he shall receive no other or further compensation for such services than his compensation as deputy clerk.

(Id. § 49.)

§ 1406. Salaries.

The salary of the judge of any such municipal court shall be sixteen hundred dollars for the first year, eighteen hundred dollars for the second year, and thereafter two thousand dollars per annum, and the same shall be paid out of said village treasury in equal monthly installments. The salary of the clerk of the municipal court shall be five hundred dollars per annum, which shall be paid out of said village treasury in equal monthly installments.

(Id. § 50.)

§ 1407. Judge—May act how.

The judge of the municipal court may hold session and act as such court, and shall be fully possessed of all the powers and authority of said court. Said judge may act at any time or upon any occasion deemed proper by him; and any such judge may practice in the district courts and supreme court of

§§ 1407-1414

TOWNSHIP ORGANIZATION.

[Ch. 10

this state in all cases which have not arisen in the municipal court of which he is judge.

(Id. § 51.)

1408
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§ 1408. Municipal court in village annexed to city.

Whenever any village existing under this chapter shall become a part of any city by annexation, the municipal court of such village shall become a municipal court of such city, and be governed by the same laws governing the municipal court of such city. Provided, however, that such court shall always be held and maintained within the territory which comprised said village before its annexation to said city; and provided further, that the judge of said court at the time of such annexation shall remain judge thereof through the full term for which he was elected or chosen; and provided further, that the municipal courts of such city, after such annexation, shall be known and designated by numbers according to the respective dates of their establishment, and the judges of said courts may preside in either of the municipal courts of such city.

(Added 1893, c. 190, § 5.)

(12) MISCELLANEOUS PROVISIONS.

§ 1409. Rights of creditors preserved.

The rights of the creditors of such village shall not be prejudiced by anything contained herein, but the same are preserved to them, and they shall have the same rights and remedies against the village as they would have had if this act had not been passed.

(1891, c. 146, subc. 12, § 1.)

§ 1410. Recognizances, etc., heretofore in force to continue.

All recognizances, obligations and all other instruments entered into or executed by any such village before this act goes into effect, and all fines, taxes, penalties and forfeitures due or owing to the same, and all writs, prosecutions, actions and causes of action, shall continue and remain unaffected by this act going into operation.

(Id. § 2.)

§ 1411. Ordinances to continue in force.

All ordinances in force in any such village at the time this act goes into effect shall remain in full force and effect until altered or repealed by the village council, and all rights or contracts of any such village shall continue the same as if this act had never been passed.

(Id. § 3.)

§ 1412. Records, etc., to be kept by village recorder.

All papers, files, plats and other public records to be kept, preserved or filed, unless otherwise provided for in this act, shall be placed on file and preserved in the office of the village recorder.

(Id. § 4.)

§ 1413. Other laws affect this act, when.

No law of this state contravening the provisions of this act shall be considered as repealing, amending or modifying the same, unless such purpose be clearly set forth in such law.

(Id. § 5.)

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§ 1414. Service of process against village.

When any suit or action shall be commenced against said village, service or process therein shall be made by leaving a copy thereof, by the proper officer, with the president or recorder; and it shall be the duty of the president or recorder forthwith to inform the village council thereof and to take such other proceedings as by the ordinances or resolutions of the village council may have been in such cases provided.

(Id. § 6.)

MINNESOTA STATUTES 1894

Tit. 4] VILLAGES OF OVER 3,000 INHABITANTS. §§ 1415-1423

§ 1415. Not to be liable for jail fees of offenders under general laws.

Such village shall not be liable in any case for the jail fees of any person committed to the common jail of the proper county by any officer of said village, or any magistrate of said village, for offenses punishable under the general laws of this state.

(Id. § 7.)

§ 1416. Public property exempt from taxation, etc.

The public property of such village shall be exempt from seizure or sale on execution and from taxation.

(Id. § 8.)

§ 1417. Inhabitant not incompetent as judge, witness, or juror.

No person shall be an incompetent judge, witness or juror by reason of his being an inhabitant of the village in any proceeding or action in which the village shall be a party in interest.

(Id. § 9.)

§ 1418. Rescinding of votes of city council.

No vote of the village council shall be reconsidered or rescinded at a subsequent meeting, unless at such subsequent meeting there are present as large a number of aldermen as were present when the vote was taken.

(Id. § 10.)

§ 1419. When penalty, etc., may be remitted.

No penalty or judgment recovered in favor of the village shall be remitted or discharged, except by vote of two-thirds of the village council elect.

(Id. § 11.)

§ 1420. How instruments shall be executed.

Every contract, conveyance, commission, license or other written instrument shall be executed on the part of the village by the president or acting president and the village recorder, sealed with the corporate seal, and in pursuance only of authority therefor from the village council.

(Id. § 12.)

§ 1421. When work to be done by contract.

Work done or constructions made of any kind by such village may be done by contract awarded as hereinbefore provided, or the village council may, in its discretion, direct any such work or construction, or any part thereof, to be done by day's work under the direction of said council, or any officer of said village or street commissioner whom the village council may designate; Provided, That when any work or construction shall involve an expenditure of more than five hundred dollars, such work or construction shall be done by contract, let to the lowest responsible bidder, after due public notice shall have been given and proposals invited for the same, as hereinbefore provided.

(Id. § 13.)

§ 1422. Notice of personal injury to be given within thirty days.

Before any such village shall be liable for damages to any persons injured upon any of the streets, avenues, alleys or sidewalks of said village the person so injured, or some one in his behalf, shall give notice to the council of such injury within thirty days after receiving such injury, stating in such notice when, where and how the injury occurred and the extent thereof and the amount of damages he claims therefor, except that in case such injury has so far disabled such person as to prevent the giving of such notice within such time, it shall be sufficient in such case to give such notice within thirty days after the removal of such disability.

(Added 1893, c. 190, § 6.)

§ 1423. Duties of recorder and treasurer after annexation.

Whenever any such village shall become a part of any city by annexation, the duties imposed in this act upon the recorder of such village shall be as-

(381)

1420
69-M - 336
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77-M - 92

1422
95 . 133
1422
97 - 248

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95 . 251

MINNESOTA STATUTES 1894

§§ 1423-1425

TOWNSHIP ORGANIZATION.

[Ch. 10]

sumed and performed by the city comptroller of such city in so far as it is necessary to continue the duties of such recorder in order to complete the unfinished business of such village, and the duties imposed herein upon the treasurer of such village shall, upon such annexation, be assumed and performed by the treasurer of such city in so far as is necessary to continue the duties of such village treasurer in order to complete the unfinished business of such village.

(Id.)

§ 1424. Village assessments after annexation.

Whenever any such village shall become a part of any city by annexation, all assessments theretofore made by such village for the purpose of paying for local improvements therein shall be collected and enforced by such city in accordance with the provisions of sub-chapter nine of this act, and such city may, after such annexation, make any assessment or reassessment necessary to be made or do any act or thing necessary to be done in order to complete the unfinished business of such village in the same manner and under the same provisions of law and to the same effect as such assessments, reassessments, acts or things might or could have been made or done by such village if such annexation had not taken place.

(Id.)

[TITLE 5.]

[MISCELLANEOUS PROVISIONS.]

(1) PUBLIC LIBRARIES AND READING ROOMS.⁸³

§ 1425. Council may establish—Use by non-residents— Submission to vote, when.

That the city council of any incorporated city, or village council of any incorporated village, shall have power to establish and maintain a public library and reading-room, or either of them, for the use and benefit of the inhabitants of such city or village, and may levy a tax, not to exceed one mill on the dollar annually, and in cities of over thirty thousand inhabitants not to exceed one-half of one mill on the dollar annually, on all the taxable property in the city; such tax to be levied and collected in like manner with other general taxes of said city or village, and to be known as the "Library Fund." And the board of directors in this chapter provided for shall have power, in their discretion, to admit to the benefit of any such library persons not residing within the corporate limits of the city or village, and they shall execute a contract in writing, in the form of a bond, to the village or city council, to be approved by the board of directors, conditioned to make good all damage to or loss of books issued to them, with sufficient sureties, and covenanting that the person so receiving the benefits of the library shall at all times conform to all the laws, rules and regulations governing the said library. And such non-resident patrons shall pay for such privileges such sums, and at such times, as may be by the directors prescribed, into the village treasury, for the use of the said library. Upon petition of fifty freeholding citizens in any such city or village the council of any such city or village shall submit the question of the establishment of such public library or reading-room to the legal voters of such city or village at the next annual election held therein, and if a two-thirds majority of the votes cast at such election are in favor of the establishment of such public library or reading-room, then the council of such city or village shall establish the same and shall annually thereafter levy for the maintenance of such public library or reading-room the tax recommended by the said petitioners, not to exceed, however, the rate hereinbefore provided.

(1879, c. 100, § 1; G. S. 1878, v. 2, c. 10, § 297; as amended 1891, c. 97, § 1; 1893, c. 100, § 1.)

⁸³An act to provide for the establishment and maintenance of free public libraries and reading-rooms. Approved March 4, 1879.

1425
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MINNESOTA STATUTES 1894

Tit. 5]

MISCELLANEOUS PROVISIONS.

§§ 1426-1430

§ 1426. Directors—Appointment.

When any city or village council shall have decided to establish and maintain a public library and reading-room, or either of them, under this act, the mayor of such city or president of such village shall, with the approval of the city or village council, proceed to appoint a board of nine directors for the same, chosen from the citizens at large, with reference to their fitness for such office, and not more than one member of the city or village council shall be at any time a member of said board.

(1879, c. 106, § 2; G. S. 1878, v. 2, c. 10, § 298.)

1426
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1426
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§ 1427. Same—Term of office—Removal.

Said directors shall hold office one-third for one year, one-third for two years, and one-third for three years from the first of May following their appointment, and at their first regular meeting shall cast lots for the respective terms, and annually thereafter the mayor of such city, or president of such village, shall, before the first day of May in each year, appoint as before three directors to take the place of the retiring directors, who shall hold office for three years, and until their successors are appointed. Such mayor or president may, by and with the consent of the council, remove any director for misconduct or neglect of duty.

(1879, c. 106, § 3; G. S. 1878, v. 2, c. 10, § 299.)

1427
01 - 272

§ 1428. Same—Vacancies—Compensation.

Vacancies in the board of directors occasioned by removals, resignations, or otherwise, shall be reported to the city or village council, and be filled in like manner as original appointments, and no director shall receive compensation as such.

(1879, c. 106, § 4; G. S. 1878, v. 2, c. 10, § 300.)

1428
99 - 162
1428
01 - 272

§ 1429. Same—Powers and duties.

Said directors shall, immediately after appointment, meet and organize by the election of one of their number president, and by the election of such other officers as they may deem necessary. They shall make and adopt such by-laws, rules, and regulations for their own guidance, and for the government of the library and reading-room, or either of them, as may be expedient, not inconsistent with this act. They shall have the exclusive control of the expenditure of all moneys collected and placed to the credit of the library fund, and of the construction of any library building, and of the supervision, care, and custody of the grounds, rooms, or buildings constructed, leased, or set apart for that purpose: *provided*, that all moneys received for such library shall be deposited in the treasury of said city or village to the credit of the library fund, and shall be kept separate and apart from other money of said city or village, and shall be paid out only upon the properly authenticated vouchers of the library board. Said board shall have power to lease and [provide] appropriate rooms for the use of said library; shall have power to appoint a suitable librarian and necessary assistants, and fix their compensation; and shall also have power to remove such appointees; and shall in general carry out the spirit and intent of this act. Said board shall have power, when approved by such city or village council, to purchase ground, and erect thereon a suitable building for the use of said library.

(1879, c. 106, § 5; G. S. 1878, v. 2, c. 10, § 301.)

1429
97 - 114
1429
99 - 48
1429
01 - 272
01 - 272

§ 1430. Libraries to be free.

Every library and reading-room, or either of them, established under this act, shall be forever free to the use of the inhabitants of the city or village where located, always subject to such reasonable rules and regulations as the library board may adopt in order to render the use of the said library and reading-room, or either of them, of the greatest benefit to the greatest num-

MINNESOTA STATUTES 1894

§§ 1430-1435

TOWNSHIP ORGANIZATION.

[Ch. 10

ber; and said board may exclude from the use of the said library and reading-room, or either of them, any and all persons who shall willfully violate such rules.

(1879, c. 106, § 6; G. S. 1878, v. 2, c. 10, § 302.)

§ 1431. Annual report of directors.

The said board of directors shall make, on or before the first day of April in each year, an annual report to the city or village council, stating the conditions of their trust on the first day of March of that year; the various sums of money received from the library fund and other sources, and how such moneys have been expended, and for what purposes; the number of books and periodicals on hand; the number added by purchase, gift, or otherwise, during the year; the number lost or missing; the number of persons attending; the number of books loaned out, and the general character and kind of such books, with such other statistics, information, and suggestions as they may deem of general interest.

(1879, c. 106, § 7; G. S. 1878, v. 2, c. 10, § 303.)

§ 1432. Council may impose penalties.

The council of said city or village shall have power to pass ordinances imposing suitable penalties for the punishment of persons committing injury upon such library or other property thereof, and for injury to or failure to return any book belonging to such library.

(1879, c. 106, § 8; G. S. 1878, v. 2, c. 10, § 304.)

§ 1433. Donations for library.

Any person desiring to make donations of money, personal property, or real estate for the benefit of such library, shall have the right to vest the title to the money, property, or real estate so donated in the board of directors created under this act, to be held and controlled by such board, when accepted, according to the terms of the deed, gift, devise, or bequest of such property; and as to such property the board shall be held and considered to be special trustees.

(1879, c. 106, § 9; G. S. 1878, v. 2, c. 10, § 305.)

§ 1434. Transfer of libraries to directors—Reading-rooms in cities.

Any library already existing or hereafter established in any city or village, which shall establish a free library and reading-room, or either of them, under the provisions of this act, may be transferred by the society, association, or individuals owning the same, to the board of directors created under this act, on such terms, not inconsistent with the objects of this act, as may be mutually agreed upon; and as to such property the said board of directors shall be held and considered to be special trustees: *provided, also*, that any incorporated city may establish one or more reading-rooms to accommodate the inhabitants thereof, in different parts of said city, under the provisions of this act.

(1879, c. 106, § 10; G. S. 1878, v. 2, c. 10, § 306.)

(2) MUNICIPAL BONDS FOR PUBLIC BUILDINGS.⁸⁴

§ 1435. Council may issue bonds, when.

Whenever the council of any city, borough, or village in this state, having a population not exceeding ten thousand inhabitants, and who are authorized

⁸⁴An act to authorize certain cities, boroughs, and villages to issue bonds for the erection of public buildings, and provide for the payment of the same. Approved March 7, 1881.

1433
97 - 114

1435-1440
95 - 230

1435
97 - 3
97 - 26

1435
01 - 288

to erect buildings therefor, and levy taxes to pay for the same, shall determine that it is for the interest of such city, borough, or village to erect a building for the purpose of a city hall, market-house, engine-house, city offices, or city prison, or one building for all or several of these purposes combined, it shall be lawful for them; and they are hereby authorized and empowered, to issue for that purpose, at any time, the bonds of such city, borough, or village, as hereinafter stated, with interest coupons attached, to an amount not exceeding two per cent. of the total assessed valuation thereof, as the same appears by the assessment of the preceding year, and with the proceeds of such bonds to erect any such hall, market-house, engine-house, city offices, or city prison, or building for all or several of these purposes combined: *provided*, that whenever the council of any city, borough, or village in this state contemplating the erection of any such building, the proposition shall first be submitted to the legal voters within the limits of such city, borough, or village for their approval or rejection; and if a majority of the electors present and voting is in favor of such proposition, then such council shall proceed as herein provided; but if such majority is opposed, then it shall be illegal for such council to issue any bonds or other evidences of indebtedness for any such purposes.

(1881, c. 93, § 1; G. S. 1878, v. 2, c. 10, § 307.)

§ 1436. Authorized to erect public hall — Application of rents.

1436
97 - 26

Any such council is hereby authorized and empowered, if desired by them, to so erect and construct any such building that there may be therein a hall suitable to be used by the public for exhibitions, lectures, or other public entertainments or purposes; and to fix the rate of and collect rent for the use of the same from parties renting and using the same for any such exhibitions, entertainments, or purposes. All rents, revenues, or income received by any such city, borough, or village, for or on account of the use or rent of said hall, shall be set apart in the treasury of said city for the exclusive purpose of paying the interest upon said bonds; and if, at the end of each year, when said bonds become due, there is found to be a greater sum derived from said rent than is required to pay the interest due upon said bonds, the said council shall cause such excess to be invested in unquestioned securities, or unquestioned bonds of such city, borough, or village, or of the state of Minnesota, or some city or county therein, to create a sinking fund to pay said bonds at maturity. After the interest and principal of said bonds have been paid, the revenue derived thereafter from the rent of said hall shall belong to and be a part of the general revenue fund of such city, borough, or village.

(1881, c. 93, § 2; G. S. 1878, v. 2, c. 10, § 308.)

§ 1437. Form of bonds.

Said bonds shall be issued in such sum as said council shall determine, by resolution, not exceeding five hundred dollars each, with interest coupons attached, and payable in not less than five nor more than twenty years from the date of issue, as such council shall determine, with interest at a rate not to exceed seven per cent. per annum, payable semi-annually.

(1881, c. 93, § 3; G. S. 1878, v. 2, c. 10, § 309.)

§ 1438. Payment of interest—Sinking fund.

The council of any such city, borough, or village, in case there is not sufficient revenue derived from the rent of any public hall as aforesaid, shall annually levy and include in the general tax thereof an amount sufficient to pay all the interest on such of said bonds as may be issued, and before the principal, or any part thereof, becomes due, a sufficient amount to pay such principal, or to create a sinking fund to pay the same, or any part thereof.

(1881, c. 93, § 4; G. S. 1878, v. 2, c. 10, § 310.)

§ 1439. Execution—Record.

The bonds and coupons issued under this act shall be signed by the mayor or other chief executive officer of such city, borough, or village, and be attested by the recorder or clerk thereof; and said bonds shall be sealed with the seal of such city, borough, or village; and such recorder or clerk shall keep a true record of all the bonds issued under the provisions of this act.

(1881, c. 93, § 5; G. S. 1878, v. 2, c. 10, § 311.)

§ 1440. Not be sold below par.

Such council shall not have authority to negotiate said bonds at less than their par value.

(1881, c. 93, § 6; G. S. 1878, v. 2, c. 10, § 312.)

(3) CONSTRUCTION OF CANALS, ETC.

§ 1441. Canals and improved waterways—Municipal aid.

Any county, town, incorporated city or incorporated village in this state is hereby authorized and empowered, in the manner herein provided, to aid in the construction of any canal or improved waterway in this state, to be constructed by any canal or improved waterway company, for public use, by authority of any law of the state, in the manner herein provided, and which will promote the general prosperity and welfare of the taxpayers of such municipality, and the mutual agreement hereinafter referred to, when the same shall be arrived at, shall be conclusive evidence that such canal or improved waterway will so promote the general prosperity and welfare of the taxpayers of such municipality; but no bond shall be issued by any city, village or town, under the provisions of this act, to an amount exceeding, together with its then existing indebtedness, five per centum upon the value of the taxable property therein, the amount of such taxable property to be ascertained and determined by the last assessment of said property made for the purpose of city and county taxation, previous to the incurring of such indebtedness.

(1893, c. 205, § 1.³⁵)

§ 1442. Same—May be by issue of bonds.

The aid to be contributed to the construction of any such canal or improved waterway by any such county, town, city or village, shall be by the bonds of such municipality, to be issued to or for the use of such canal or improved waterway company, in consideration of which such municipality shall, at its election, be entitled to receive from such canal or improved waterway company such number of shares of its capital stock as will, at the par value of such stock, correspond with the principal sum of such bonds.

(Id. § 2.)

§ 1443. Same—Bonds and stock—Agreement between municipality and company.

No such bonds shall be issued to or for the use of any such canal or improved waterway company, and no such stock shall be issued to any such municipality until a mutual agreement in relation thereto shall have been arrived at, in the mode hereinafter specified; and when such mutual agreement shall have been arrived at, the proper officers of such municipality shall be authorized and required to issue and deliver such bonds in conformity with the mode so agreed upon, and the stock of such canal or improved waterway company shall also be issued in conformity therewith, in case such municipality shall have elected to take stock.

(Id. § 3.)

§ 1444. Same—Proposition to be presented in writing.

Whenever any such canal or improved waterway company, specified in the first section of this act, shall desire aid in the construction of its canal or im-

³⁵An act to authorize municipal corporations to aid in the construction of canals and improved waterways. Approved April 8, 1893.

MINNESOTA STATUTES 1894

Tit. 5]

MISCELLANEOUS PROVISIONS.

§§ 1444-1445

proved waterway from any county, town, city or village, specified in said first section, it shall make and deliver to the county auditor of such county, the town clerk of such town, or the clerk of such incorporated city or village, as the case may be, a definite proposition, in writing, signed by the president and secretary of such canal or improved waterway company, and sealed with its seal, which proposition shall contain a statement of the amount of bonds desired, the time when payable, and whether payable before maturity, at the option of such municipality, the rate of interest which they shall bear, and such proposition shall contain a statement specifying when said bonds are to be delivered, with reference to the time of the entire or partial construction of said canal or improved waterway, and may contain a statement that such bonds may be deposited in escrow, prior to the delivery to the canal or improved waterway company; and such proposition shall contain a statement that the said canal or improved waterway company will, in consideration of such bonds, at the election of such municipality, issue to the municipality from which it is to receive the same such number of the shares of its capital stock as will, at par value of such stock, correspond with the principal sum of such bonds. In case such bonds are proposed to be deposited in escrow, as aforesaid, the proposition shall also state that the certificate of the stock to be exchanged therefor shall be placed with the same depository at the same time, and in that case the proposition shall set forth the full name and residence of the trustee, or trustees, who shall be the custodian of the stock of said company, and of the bonds of such city, village, town or county; the auditor or clerk with whom any such proposition shall be filed shall immediately indorse thereon the date of its receipt by him, and transcribe the same into the record book of the county, town, city or village, as the case may be, of which he is such clerk.

(Id. § 4.)

§ 1445. Proposition to be submitted to legal voters.

The mode of arriving at such mutual agreement, as is hereinbefore specified, shall be as follows:

First. Upon receiving such proposition, the county auditor of such county, the town clerk of such town, or the clerk of such incorporated city or village, as the case may be, shall immediately publish a notice of an election to be held by the legal voters of such county, town, incorporated city or village, at the usual place or places of holding elections therein, and at such time as such clerk may designate, not less than ten or more than twenty days from the date of such notice, which notice shall contain a substantial statement of the proposition made by said canal or improved waterway company for the issue of the bonds of such municipality, and shall notify the legal voters thereof to deposit a ballot, upon which shall be written, or printed, the words "For the canal proposition," or "For the improved waterway proposition," as the case may be, or the words "Against the canal proposition," or "Against the improved waterway proposition," as the case may be; and such notice shall be posted in three public places in each election precinct in the district in which aid is desired, at least seven days before the day of such election, and shall also be published at least twice before such election, in one newspaper in such city, village or town, if any is published therein, and if the aid is asked of a county, in one newspaper in each village and city in such county in which a newspaper is published, and if there is no newspaper published in such city, village, town or county, then such notice shall be so published in a newspaper published at the nearest place thereto in which one is published; and said canal or improved waterway company so desiring aid shall pay the expenses of advertising such proposition in said newspapers.

How conducted.

Second. Such election shall be held and conducted in the same manner that general elections in such counties, towns, incorporated cities or villages are by law required to be held and conducted, and the votes cast at such election shall be counted, canvassed and returned in the same manner as the votes at such general election, and the canvassers shall make, certify, sign and deposit with the county auditor, town clerk or clerk of such incorporated city or village, as the case may be, a statement of the result of such election; and such

certified statement shall be prima facie evidence of the number of votes cast for or against such proposition, and also

Second election may be held.

Third. If in any of said counties, towns, cities or villages any election shall fail to be held on the day appointed therefor, or if the majority of votes cast at any such election shall be against the canal or improved waterway proposition, such county auditor, town clerk or clerk of such city or village shall, at the written request of the president of such canal or improved waterway company, at any time thereafter call another election or elections, in the manner provided in this act, upon the same or different propositions of such canal or improved waterway company; and such other election or elections shall be conducted in like manner and upon like notice as is provided in this act for the first election. Provided, that not more than one election authorized by this act shall be held in any one calendar year in the same town, county, village or city.

Upon favorable vote bonds to be issued.

Fourth. If a majority of the legal voters who shall vote upon the question at any election to be held in any such county, town, city or village, in pursuance of the provisions of this act, shall, as indicated by the official returns of any such election, vote "For the canal proposition," or "For the improved waterway proposition," as the case may be, then such mutual agreement for the issue of bonds by such municipality, and of stock by such canal or improved waterway company, as the case may be, as provided by this act, shall be deemed and considered to have been arrived at and perfected, and thereupon such bonds and stock shall be issued and delivered by the proper officer, in conformity with the true intent of such proposition and with the provisions of this act. Provided, that the board of county commissioners of any such county, or the board of supervisors of any such town, or the common council of any such village or city, may, in case it shall deem it for the interests of such county, town, village or city to do so, waive the issuance by such canal or improved waterway company of any such stock to such county, town, village or city.

(Id. § 5.)

§ 1446. Work to be completed before issue of bonds.

No bonds shall be delivered to the company under such proposition until the canal or improved waterway, for the construction of which the aid has been granted, shall have been substantially completed through or to the municipality granting aid, or to the nearest point on the line of its route to such municipality, or from and to such point as the company in its proposition shall have proposed to construct said canal or improved waterway.

(Id. § 6.)

§ 1447. Stock transferred to municipality.

The stock received by any such county, town, city or village, in pursuance of such mutual agreement, shall be entitled to all and the same rights, benefits and privileges as the stock of the same class held by any such person or persons; and the municipality receiving any such stock shall, so long as it shall hold the same or any part thereof, be a part owner of such canal or improved waterway and its franchises; and the proper authorities of the municipality holding such stock shall appoint a person to vote thereon, in behalf of such municipality, and such authorities may also sell and dispose of the said stock in such manner as shall to them seem best for the interest of such municipality.

(Id. § 7.)

§ 1448. Tax to be levied for payment of bonds.

Every county, town, city or village which shall issue any bonds in pursuance of the provisions of this act shall be severally liable in law, faithfully, promptly and at maturity, to pay and discharge the principal and interest upon every such bond issued by it; and the faith of every such county, town, city or village shall, by the issue of such bond or bonds, be and stand irrevocably pledged to the prompt discharge of every such liability; and every such coun-

MINNESOTA STATUTES 1894

Tit. 5]

MISCELLANEOUS PROVISIONS.

§§ 1448-1453

ty, town, city or village shall annually levy and collect a tax on all taxable property therein, as indicated by the assessment roll or rolls for the payment of all moneys to become due upon such bonds, whether for the principal or interest, in addition to all other taxes, and the money so raised shall be kept as a separate fund, and strictly applied to that purpose; and it may, in the discretion of the proper authorities, raise a greater sum in any one year than is needed to pay what shall become due in that year, and apply the same to the purchase and discharge of such bonds at the lowest practicable rate or price.

(Id. § 8.)

§ 1449. Neglect of official duty.

If any officer upon whom any duty is imposed by this act shall willfully fail faithfully and promptly to discharge the same, as by this act required, he shall be liable to the party or parties aggrieved for all actual damages suffered by such party or parties by reason of such failure.

(Id. § 9.)

§ 1450. Proper officers to issue bonds—Signature.

For the purpose of this act the term "proper officer" shall be construed and held to intend and mean, in the case of a county, the chairman of the board of county commissioners and county auditor of any such county; in the case of a town, the chairman of the town board and the town clerk; in the case of a city, the mayor, or the officer performing the duties of mayor, and the city clerk; and in the case of a village, the president and clerk of the village; and the term "proper authorities" shall be construed and held to intend and mean, in the case of a county, the board of county commissioners; in the case of a town, the town board of supervisors; in the case of a city, the common council, or other authorities possessing the usual powers of the common council of cities; and in the case of a village, the board of trustees, or other local governmental board, by whatever name it may be called, which is vested with the power to levy taxes; and any and all bonds issued under this act by any county, town, city or village shall be officially signed by the proper officers thereof as aforesaid, and sealed with its corporate seal, if it have one; and in the case of a town, it shall be the duty of the county clerk of the county in which said town is situated, if requested to do so, to add to each of such bonds a certificate, under the seal of the county, to the effect that the town officers subscribing the bonds are in fact such officers, and that he believes their signature thereto to be genuine.

(Id. § 10.)

§ 1451. No other aid to be voted for same purpose.

If any county, town, city or village shall issue and deliver to any canal or improved waterway company any bonds in pursuance of the provisions of this act, it shall not thereafter issue or deliver any bonds or incur any liability in aid of the construction of the canal or improved waterway of such company by virtue of the authority of any other law of this state.

(Id. § 11.)

§ 1452. Limit of time for earning aid may be fixed.

It shall be lawful for any town, county, city or village which shall have voted aid to any canal or improved waterway company, or which shall hereafter vote aid to any canal or improved waterway company, without limiting the time when such aid shall be earned by the company, by the proper authorities thereof, to fix and limit the time when such aid shall be earned. Provided, that the time so fixed shall not be less than one year from the date of giving notice to such canal or improved waterway company of the fixing such limit, and if the aid shall not be earned in accordance with the conditions upon which it was voted, within the time so fixed by such authorities, then such aid shall be forfeited.

(Id. § 12.)

§ 1453. Money payments instead of bonds.

Any county, town, city or village is hereby authorized, instead of issuing bonds in aid of canals or improved waterways, as hereinbefore provided, by agreement to be arrived at, as is herein provided for the issuance of bonds,

(389)

to subscribe to the capital stock of such company, the subscription to be paid in money, in one or more installments, at such times, not exceeding three years from the time of entering into such contract, as may be agreed upon, and after such parts of the work of constructing the canal or improved waterway aided shall be done, as shall be agreed upon; the last installment not, however, to be paid until the canal or improved waterway shall have been substantially completed to the place which it is agreed to be built, in consideration of the aid so granted. If such an agreement shall be arrived at in the manner herein provided, it shall be the duty of the proper officers of such county, town, city or village, from time to time, to levy and collect a tax in the same manner as general taxes are levied, of sufficient amount to pay the installments as the same shall fall due, according to the terms of such agreement.

(Id. § 13.)

§ 1454. Proposition in due form must be submitted.

Whenever any canal or improved waterway company shall make a proposition to any county, town, incorporated city or incorporated village in this state, asking such municipal corporation to issue its bonds, as a bonus to aid in the construction of the canal or improved waterway of such company, or offering to exchange the mortgage bonds of such canal or improved waterway company for an equal amount of the municipal bonds of such municipal corporation, to be used in the construction of such canal or improved waterway, if such proposition shall be made in the form prescribed in section four of this act, for making the proposition therein provided for, then it shall be the duty of the proper authorities of such municipal corporation to entertain and act upon such proposition, and to submit the same to the electors of said municipal corporation, in the same manner as they are directed to entertain and act upon the said proposition hereinbefore provided for in this act, and to submit the same to the electors of such municipal corporation. And when such proposition is submitted for the approval of the electors of such municipal corporation, if it shall be approved by a majority of said electors who shall vote upon such proposition, then the proper authorities of said municipal corporation shall issue the bonds of such corporation to said canal or improved waterway company, in accordance with the provisions of this act, and the conditions contained in such proposition.

(Id. § 14.)

(4) EMPLOYMENT BUREAU.

§ 1455. Keeper of employment bureau to obtain license—Penalty.

No person shall engage in the business of keeping an employment bureau or office, or agency for the purpose of hiring men to work for others, and receive a compensation for such hiring, without first having obtained a license so to do, as hereinafter provided; and any person who shall engage in such business, without such license, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding ninety days, or both.

(1885, c. 205, § 1; G. S. 1878, v. 2, c. 10, § 261.)

The business of employment agencies is a proper subject for police regulation. Moore v. City of Minneapolis, 43 Minn. 418, 45 N. W. Rep. 719.

Laws 1885, c. 205, did not repeal the special act empowering the city council of Minneapolis to license that business. Id.

§ 1456. Same—License fee and bond.

Any person who desires to engage in said business may apply to the common council, if such business is to be carried on in a city, or to the village council, if in a village, or to the county commissioners of the county in which such business is to be carried on, if in the country, for such license; and upon

* An act to regulate employment bureaus or offices. Approved February 28, 1885.

1455
69-NW 1012

1455-1458
95 74

1455-1458
58-M- 244

MINNESOTA STATUTES 1894

Tit. 5]

MISCELLANEOUS PROVISIONS.

§§ 1456-1461

paying into the treasury of such city, village, or county the sum of one hundred dollars, and upon executing and delivering to such common council, village council, or county commissioners, a bond in the penal sum of ten thousand dollars, with sufficient sureties, to be approved by such common or village council, or county commissioners, he shall be entitled to such license. (1885, c. 205, § 2; G. S. 1878, v. 2, c. 10, § 262.)

§ 1457. Same—Condition of bond—Effect of license.

The bond shall run to the state of Minnesota, and shall be conditioned for the payment of any damage which any person secured or engaged to labor for others by the obligor may sustain by reason of any unauthorized act, fraud, or misrepresentation on the part of such agent, for such hiring. The bond shall be filed with the city clerk, if approved by the common council, with the village recorder if approved by a village council, and with the county auditor if approved by the board of county commissioners. Any person licensed and having given bond as herein provided, may, while continuing to reside or maintain his office at the place mentioned in such license, prosecute his said business in any part of the state.

(1885, c. 205, § 3; G. S. 1878, v. 2, c. 10, § 263.)

§ 1458. Same—Action on bond.

Any person hired or engaged to work for others, by one so licensed as aforesaid, who shall fail to get employment according to the terms of such contract of hire or engagement, by reason of any unauthorized act, fraud, or misrepresentation on the part of such agent, may bring an action upon said bond, and may recover in such action against the principal and sureties the full amount of his damages, sustained by reason of such unauthorized act, fraud, or misrepresentation, together with his cost and disbursement in such action. (1885, c. 205, § 4; G. S. 1878, v. 2, c. 10, § 264.)

1458
99 - 42

(5) BOARD OF HEALTH.

§ 1459. Board of health—Powers.

All incorporate towns, villages, boroughs and cities shall have a board of health, who shall have and exercise all the powers necessary for the preservation of the public health, and who shall hold regular monthly meetings.

(1873, c. 8, § 1; G. S. 1878, c. 10, § 117.)

See ante, § 970 et seq.

1459
01 - 106

§ 1460. Composition of such board.

Said board shall consist of not less than three members, one of whom, when practicable, shall be a physician, and such physician shall be health officer and ex officio president of the board, and shall receive such compensation for his services as the council, or other body answering thereto, of the town, village, borough or city shall determine.

(1873, c. 8, § 2; G. S. 1878, c. 10, § 118.)

§ 1461. Duties of such board—Penalty for neglect.

It shall be the duty of the health officer to make, once in every three months, and oftener if necessary, a thorough sanitary inspection of said town, village, borough, or city, and present a written report of such inspection at the next meeting of the board of health, and he shall forward a copy of his monthly report, as soon as rendered, to the state board of health; and all local boards of health and health officers shall make such investigations and reports, and obey such directions as to infectious diseases, as shall be directed by the state board of health. And any member of any board of health, or health officer, who shall neglect to perform the duties required of him under the provisions of this act, or any other act relating to the duties of boards of health, or health

1461
97 - 133

officers of this state, or who shall neglect or refuse to obey any reasonable directions as to infectious diseases as shall be directed by the state board of health, shall be liable, upon conviction in any court having competent jurisdiction, to be fined in a sum not less than twenty-five dollars or more than one hundred dollars, and shall become disqualified from holding the office of a member of a board of health.

(1873, c. 8, § 3; G. S. 1878, c. 10, § 119; as amended 1881, Ex. S. c. 11.)

See §§ 7045-7079.

§ 1462. Election of board.

The board of health referred to in section one, shall be elected annually by the council, or other body answering thereto, of each incorporate town, village, borough and city, unless a different term or mode is now provided by law; and such election shall be had at the next election that shall be held in such places.

(1873, c. 8, § 4; G. S. 1878, c. 10, § 120.)

1463

01 - 235

§ 1463. Duties of board of health relative to scarlet fever, diphtheria, and small-pox.

It shall be the duty of any and every member of all boards of health within this state, whenever they are informed that there is a case of scarlet fever, diphtheria, or small-pox within the territory over which the board of health of which he is a member has jurisdiction, to notify a majority of such supposed facts within six hours after such information is received by said member of said board, and they shall immediately examine into the facts of the case, and if the disease appears to be scarlet fever, diphtheria, or small-pox, they shall adopt such quarantine and sanitary measures as may in their judgment tend to prevent the spread of said disease in its locality.

(1877, c. 137, § 1; G. S. 1878, c. 10, § 121; as amended 1883, c. 31, § 1.)

1464

01 - 230

§ 1464. Same—Precautions—Penalties.

And said board of health shall have power to forbid, by notices posted upon the entrances to premises where there may be a patient sick with scarlatina, diphtheria, or small-pox, any person, except the medical attendant and his advisers, from going to or leaving said premises without their permission, or carrying or causing to be carried any material whereby said disease may be conveyed, until said disease has abated, and the premises, dwelling, and clothing have been rendered free from disease by such disinfecting means as the board may direct; and if said board shall be informed that the above, or any reasonable and sanitary measures which they have adopted and made public, is or has been violated, then the said board may cause said offenders against this act to be apprehended and brought before an officer having jurisdiction; and said offenders shall, upon conviction, be liable to a fine in the sum of not less than five dollars nor more than twenty-five dollars for any violation under this act. Any member of any board of health who shall neglect his duties under the provisions of this act shall be liable, upon conviction in a court having competent jurisdiction, to be fined in a sum not less than twenty-five dollars nor more than one hundred dollars for the first offense, and for conviction for violation of this act the second time, shall, in addition to the fines already provided, become disqualified from holding the office of, or to which is attached the duties of, a member of a board of health.

(1877, c. 137, § 2; G. S. 1878, c. 10, § 122; as amended 1883, c. 31, § 1.)

§ 1465. Same—Disposition of fines.

All fines collected under this act shall be placed to the credit of the general fund of the city, village or town in which the offence is committed.

(1877, c. 137, § 3; G. S. 1878, c. 10, § 123.)

1466

97 - 47

§ 1466. Same—Isolation of infected animals.

The local board of health of towns, villages, and cities, in case of existence in this state of the disease called pleuro-pneumonia among cattle, or farcy or

(392)

glanders among horses, or any other contagious or infectious disease among domestic animals, shall cause the animals in their respective towns, villages, or cities, which are infected, or which have been exposed to infection, to be secured or collected in some suitable place or places within their respective towns, villages, or cities, and kept isolated; and when taken from the possession of their owners one-fifth of the expense of their maintenance shall be paid by the town, village, or city wherein the animal is kept, and four-fifths by the state; such isolation to continue as long as the existence of such disease or other circumstances may render it necessary.

(1885, c. 200, § 1; ³⁷ G. S. 1878, v. 2, c. 10, § 274.)

§ 1467. Same—May be killed, when.

The said local boards of health, when any such animal is adjudged by a veterinary surgeon or physician, by them selected, to be infected with any contagious or infectious disease, may, in their discretion, order such diseased animal to be forthwith killed and buried at the expense of such town, village, or city.

(1885, c. 200, § 2; G. S. 1878, v. 2, c. 10, § 275.)

§ 1468. Same—Appraisal—Payment of award.

The said local boards of health may cause all such animals that have been within the state for six months next preceding the adjudication mentioned in section two to be appraised by three competent and disinterested men under oath, at the value thereof at the time of the appraisement, and in making such appraisement the appraisers shall take into consideration the fact of the existence of such disease in such animals, and the amount of the appraisement shall be paid as provided in section one, except as provided in section fifteen of this act.

(1885, c. 200, § 3; G. S. 1878, v. 2, c. 10, § 276.)

§ 1469. Infected animals—Prohibiting departure, etc.

The said local boards of health may, within their respective towns, villages, and cities, prohibit the departure of animals from any inclosure, or exclude animals therefrom.

(1885, c. 200, § 4; G. S. 1878, v. 2, c. 10, § 277.)

§ 1470. Same—Powers of local board of health.

The said local boards of health may make regulations in writing to regulate or prohibit the passage from, to, or through their respective towns, villages, or cities, or from place to place within the same, of any cattle or other domestic animals, and may arrest and detain, at the cost of the owners thereof, all animals found passing in violation of such regulations, and may take all necessary measures for the enforcement of such prohibition, and also for preventing the spread of any disease among the animals to their respective town, village, or city, and the immediate vicinity thereof.

(1885, c. 200, § 5; G. S. 1878, v. 2, c. 10, § 278.)

§ 1471. Local regulations—Recording—Publication.

Such regulations shall be recorded upon the records of their respective towns, villages, and cities, and shall be published in such towns, villages, and cities in such manner as may be provided in such regulations.

(1885, c. 200, § 6; G. S. 1878, v. 2, c. 10, § 279.)

§ 1472. Penalty for violation.

Any person disobeying the orders of said local boards of health, made in conformity with the preceding provisions, or driving or transporting any animals contrary to the regulations made, recorded, and published as aforesaid, shall be punished by a fine of not less than one hundred dollars, nor exceed-

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³⁷ An act for an act to prevent the spread of contagious or infectious diseases among cattle, horses, and other domestic animals. Approved March 7, 1885.

§§ 1472-1479

TOWNSHIP ORGANIZATION.

[Ch. 10

ing five hundred dollars, or by imprisonment of not less than thirty days, nor exceeding one year.

(1885, c. 200, § 7; G. S. 1878, v. 2, c. 10, § 280.)

§ 1473. Notice of infection to be given—Penalty for failure.

Whoever knows or has reason to suspect the existence of any such disease among the animals in his possession, or under his care, shall forthwith give notice thereof to the said local boards of health of the town, village, or city where such animals are kept, and for failure so to do shall be punished by a fine of not less than fifty dollars, nor exceeding five hundred dollars, or by imprisonment of not less than thirty days, nor more than one year.

(1885, c. 200, § 8; G. S. 1878, v. 2, c. 10, § 281.)

§ 1474. Local board of health—Penalty for neglect of duty.

Any member of any local board of health, who neglect or refuse to carry into effect the preceding provisions, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, for each day's neglect.

(1885, c. 200, § 9; G. S. 1878, v. 2, c. 10, § 282.)

§ 1475. Regulations of state board shall supersede local regulations.

When the state board of health make and publish any regulations concerning the extirpation, care, or treatment of animals infected with, or which have been exposed to, any contagious disease, such regulations shall supersede those made by the local boards of health; and said local boards of health shall carry out and enforce all orders and directions of the state board of health to them directed.

(1885, c. 200, § 10; G. S. 1878, v. 2, c. 10, § 283.)

§ 1476. Powers of state board of health.

The state board of health shall have all the power and authority herein conferred upon local boards of health.

(1885, c. 200, § 11; G. S. 1878, v. 2, c. 10, § 284.)

§ 1477. Local boards to notify state board.

The local boards of health, within twenty-four hours after they have notice that any domestic animals in their respective towns, villages, and cities are infected with or have been exposed to any such disease, shall give notice thereof in writing to the state board of health.

(1885, c. 200, § 12; G. S. 1878, v. 2, c. 10, § 285.)

§ 1478. State board—Regulations—Penalty for violation by local board.

The state board of health may make all necessary regulations for the quarantine of such animals and extirpation of such disease, and may direct local boards of health to enforce and carry into effect all such regulations as may from time to time be made for that end; and any member of any local board of health who refuses or neglects to enforce or carry out any regulation of the state board of health, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, for every offense.

(1885, c. 200, § 13; G. S. 1878, v. 2, c. 10, § 286.)

§ 1479. Same—May order animals killed—Damages.

The state board of health, when, in their judgment, the public requires it, may cause to be killed and buried any domestic animals which are infected with or have been exposed to such disease; and except, as provided in the

MINNESOTA STATUTES 1894

Tit. 5]

MISCELLANEOUS PROVISIONS.

§§ 1479-1486

following section, shall cause such animals to be appraised in the manner provided above, and the appraised value of such animals shall be paid, one-fifth by the town, village, or city in which such animals were kept, and the remainder by the state.

(1885, c. 200, § 14; G. S. 1878, v. 2, c. 10, § 287.)

§ 1480. Same—In case of glanders.

In all cases of farcy or glanders, the state board of health, having condemned the animal infected therewith, shall cause such animal to be killed, without an appraisal or compensation to the owner thereof, but may pay the owner an equitable sum for the killing and burial thereof.

(1885, c. 200, § 15; G. S. 1878, v. 2, c. 10, § 288.)

§ 1481. Penalty for violation of orders, etc., of state board.

Any person who fails to comply with the regulation made, or an order given by the state board of health, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

(1885, c. 200, § 16; G. S. 1878, v. 2, c. 10, § 289.)

§ 1482. Appraisals, how made.

All appraisements made shall be in writing, and signed by the appraisers, and certified by the local boards of health or state board of health, respectively, to the governor and to the treasurer of the several towns, villages, and cities wherein the cattle appraised were kept.

(1885, c. 200, § 17; G. S. 1878, v. 2, c. 10, § 290.)

§ 1483. Investigations by state board—Powers—Expenses.

The state board of health may examine, under oath, all persons believed to possess knowledge of material facts concerning the existence or dissemination or danger of dissemination of disease among domestic animals; and for this purpose shall have all the power vested in justices of the peace to take depositions, and to compel witnesses to attend and testify. All costs and expenses incurred in producing the attendance of such witnesses shall be certified by the state board of health, and paid from the treasury of the state, upon being certified to and approved by the governor.

(1885, c. 200, § 18; G. S. 1878, v. 2, c. 10, § 291.)

§ 1484. Slaughtered animals to be sold, when.

Whenever animals are exposed to contagious diseases, or killed by an order of the state board of health, and upon a *post mortem* examination are found to have been entirely free from disease, the state board of health shall cause the same to be sold under their direction, first giving to the purchaser notice of the facts, and if said purchaser, or any other person, shall sell said slaughtered animals, or any part thereof, he shall, in like manner, give notice to the parties to whom such sales are made, and the proceeds of the sales, made by order of the state board of health, shall be applied in payment of the appraised value of said animals.

(1885, c. 200, § 19; G. S. 1878, v. 2, c. 10, § 292.)

§ 1485. Violating last section—Penalty.

Whoever violates any of the provisions of the preceding section shall be punished by fine not exceeding one hundred dollars, and the cost of prosecution.

(1885, c. 200, § 20; G. S. 1878, v. 2, c. 10, § 293.)

§ 1486. State board—Proceedings—Report.

The state board of health shall keep a full record of their doings, and report the same to the legislature, unless sooner required by the governor.

(1885, c. 200, § 21; G. S. 1878, v. 2, c. 10, § 294.)

§ 1487. May order joint action by local boards.

The state board of health may, by order, require any two or more local boards of health to act together for the purposes of this act.

(1885, c. 200, § 22; G. S. 1878, v. 2, c. 10, § 295.)

§ 1488. Appropriation.

The sum of three thousand dollars, or so much thereof as necessary, is hereby annually appropriated for the payment of expenses incurred by the state in enforcing this act; said expenses to be approved by the state board of health and by the governor.

(1885, c. 200, § 23; G. S. 1878, v. 2, c. 10, § 296.)

§ 1489. Offensive trades—Assigning locality.

The board of health of each town, village, or city in this state shall, from time to time, assign certain places within such town for the exercise of any trade or employment which is a nuisance, or hurtful to the inhabitants, or dangerous to the public health, or the exercise of which is attended by noisome or injurious odors, or is otherwise injurious to the estates of such inhabitants; and may prohibit the exercise of such trade or employment in places not so assigned. Said board may also forbid such exercise within the limits of the town or particular locality thereof. All such assignments shall be entered in the records of the town, and may be revoked when said board shall think proper.

(1885, c. 222, § 1;³⁸ G. S. 1878, v. 2, c. 10, § 265.)

§ 1490. Same—Unlawful without permit—Penalty.

It shall not be lawful for any person or corporation to exercise within any town, village, or city any trade or employment mentioned in section one of this act without having first obtained from the board of health of such town, village, or city permission so to do, and the assignment provided in said section; and any person or corporation violating the provisions of this section shall forfeit and pay the sum of fifty dollars for each and every day that any such trade or employment is exercised or carried on, to be recovered in any court having jurisdiction thereof and sitting within the county where any such trade or employment is exercised or carried on. Such action shall be commenced and prosecuted by such board in its name and for its benefit.

(1885, c. 222, § 2; G. S. 1878, v. 2, c. 10, § 266.)

§ 1491. Same—Revoking assignment.

When any assignment mentioned in section one hereof shall be revoked, said board shall serve upon the occupant, corporation, or person having charge of the premises where such trade or employment is exercised, a written notice of such revocation. If the person or corporation upon whom such order is served, for twenty-four hours after such service, refuses or neglects to obey the same, said board shall take all necessary measures, by injunction or otherwise, to prevent such exercise; and the person or corporation so refusing or neglecting shall forfeit and pay the sum of one hundred dollars for each and every day that such trade or employment shall be exercised after the service of such notice, to be recovered in the manner and by the party and for the benefit as provided in section two hereof.

(1885, c. 222, § 3; G. S. 1878, v. 2, c. 10, § 267.)

§ 1492. Appeal—Procedure—Powers of court.

Any person or corporation aggrieved by any order of such board may appeal therefrom to the district court of the county in which such trade or employment is exercised. Such appeal shall be taken by the filing of such aggrieved person or corporation within five days after the service of such order, in the office of the clerk of said court, of a notice of such appeal, together

³⁸An act to regulate offensive trades and employments. Approved March 7, 1885.

with a bond in the sum of not less than five hundred dollars, with two or more sureties, to be approved by the judge of said court, conditioned for the prosecution of such appeal to judgment, and for the payment of all costs and expenses that may be awarded against such appellant, and by the service of a copy of such notice and bond upon such board. If such appeal be taken within twenty days next before the time appointed for holding a general term of said court within said county, the same shall be heard at such time as other civil causes, and, at the request of either party, shall be tried by jury. If such appeal is taken more than twenty days before any such term, the judge shall, by order, appoint a time and place for the hearing of such appeal, and shall, if the appellant demand a trial by jury, direct the sheriff of such county to summon a jury of twelve persons, having the qualifications of jurors, to appear at the time and place named in said order, to serve as jurors in said cause. Any person so summoned may be challenged as in civil actions. If a sufficient number of such persons so summoned do not appear, the court shall require talesmen to be called as in other cases, and said appeal shall be tried as other civil causes. During the pendency of such appeal such trade or employment shall not be exercised contrary to the order of said board, and upon the violation of any such order the appeal shall forthwith be dismissed. Upon the return of the verdict of the jury the court may either alter or amend the order of the board, or affirm or amend it in full, to conform to such verdict. If the matter be tried by the court it shall have and exercise the same power.

(1885, c. 222, § 4; G. S. 1878, v. 2, c. 10, § 268.)

§ 1493. Private action for nuisance.

Any person injured, either in his comfort or the enjoyment of his estate, by the exercise of any such trade or employment, may have and maintain an action for the damages sustained thereby.

(1885, c. 222, § 5; G. S. 1878, v. 2, c. 10, § 269.)

§ 1494. Revocation of assignment by the court, when.

When it appears on a trial before the district court for the proper county, upon a complaint made by any person, that any place or building assigned as provided in section one of this act has become a nuisance, by reason of offensive smells or exhalations proceeding from the same, or is otherwise hurtful or dangerous to the neighborhood, or to travelers, said court may revoke such assignment, and prohibit the further use of such place or building for the exercise of either of the aforesaid trades or employments; and may cause such nuisance to be removed or prevented.

(1885, c. 222, § 6; G. S. 1878, v. 2, c. 10, § 270.)

§ 1495. State board of health—Powers—Appeal.

When any building or premises within any city, village, or town, are occupied or used for the exercise of any trade or employment aforesaid, the state board of health shall, upon application made to it for that purpose, appoint a time and place for hearing the parties, and give notice of not less than ten days thereof to the complainant and the party against whom such application is made, and after such hearing may, if in its judgment the public health or the public comfort and convenience so require, order any person to desist and cease from further carrying on such trade or occupation in such building or premises; and any person or corporation thereafter continuing to occupy such building or premises shall forfeit and pay the sum of one hundred dollars for every day of such occupancy or use, to be recovered in any court having jurisdiction thereof, by action commenced and prosecuted in the name of the board of health of such city, village, or town, and for its use and benefit. Any person or corporation, aggrieved by any such order, may appeal therefrom, and said appeal shall be taken, prosecuted, and determined in the same manner provided in section four of this act. During the pendency of such ap-

MINNESOTA STATUTES 1894

§§ 1495-1499

TOWNSHIP ORGANIZATION.

[Ch. 10

peal such trade or employment shall not be exercised contrary to the orders of said state board, and upon the violation of [any] such order the appeal shall forthwith be dismissed.

(1885, c. 222, § 7; G. S. 1878, v. 2, c. 10, § 271.)

§ 1496. Enforcing orders of state board.

The district court, or the judge thereof, may issue an injunction, or other proper writ, to enforce the orders of said state board issued under the provisions of this act.

(1885, c. 222, § 8; G. S. 1878, v. 2, c. 10, § 272.)

§ 1497. Other remedies preserved.

Nothing in this act contained shall be so construed as to impair any other remedies which may exist in cases of nuisance.

(1885, c. 222, § 9; G. S. 1878, v. 2, c. 10, § 273.)

(6) PROCESS AND JUDGMENTS.

§ 1498. Service of process, etc., on municipalities.

Every summons, process, and notice whatever, affecting any city or other municipal corporation, shall be served upon the mayor or chief executive officer of such corporation, and in his absence upon the president of the council, and in the absence of both upon the clerk; and if there is no mayor or president of the council in such city or municipal corporation, then by leaving a certified copy at the office of such clerk, if any; and if there is no such clerk, then by posting the same in a conspicuous place within the limits of such municipality: *provided*, that the court in which any complaint may be filed, or any judge thereof, may, in his discretion, direct such other or further notice of the pendency of such action to be given by publication or otherwise, as to the court or any judge thereof may seem meet and proper, and shall, upon the request of five property holders of such corporation, appoint counsel to defend any such action.

(1885, c. 153; ³⁹ G. S. 1878, v. 2, c. 10, § 313.)

Laws 1885, c. 153, held not to apply to a village organized under a special act. *Stabler v. Village of Alexandria*, 42 Fed. Rep. 490.

§ 1499. Judgment against municipality—Provisions for payment.

When a judgment is recovered against any city, village, or borough in this state, no execution shall issue on such judgment, but the same, if for the recovery of money, shall be paid by the treasurer of such city, village, or borough upon demand, and the delivery to him of a certified copy of the docket of such judgment, from any moneys in his hands belonging to such city, village, or borough, and which has not been otherwise appropriated, and if such treasurer shall not have sufficient of such moneys in his hands to pay such judgment, then such treasurer shall pay upon such judgment so much of such moneys as shall be in his hands, and such treasurer shall hereafter retain all such moneys as he may receive, and pay the same to the owner of such judgment on demand, until such judgment be fully paid, and if such treasurer fails so to pay such judgment, he and his bondsmen shall be personally liable for the amounts not so paid, unless the collection of such judgment is stayed on appeal: *provided*, that the treasurer of said city, village, or borough shall retain of the moneys belonging to the same a sum sufficient to pay the necessary current expenses of said city, village, or borough.

(1885, c. 196, § 1; ⁴⁰ G. S. 1878, v. 2, c. 10, § 314.)

³⁹ An act to provide for service of summons or other process upon municipal corporations. Approved February 28, 1885.

⁴⁰ An act relating to the collection of judgments. Approved March 4, 1885.

§ 1500. Same—Levy of tax, when.

Whenever a judgment against a city, village, or borough remains unpaid at the time required by law for the officers of any city, village, or borough to levy taxes, to be collected in such city, village, or borough for the ensuing year, it shall be the duty of such officers to levy the amount of such judgment, in addition to any other taxes levied by them, and to certify the same and the purpose thereof to the county auditor, who shall extend the amount of such judgment upon the taxable property of such city, village, or borough, and the same shall be collected with the other taxes for that year, and the amount so collected shall not be used or appropriated for any other purpose: *provided*, that if such officers refuse or neglect for the space of thirty days after being requested by the owner of such judgment to set apart and provide sufficient funds so that said judgment shall be paid before the time for the collection of the next tax levy, it shall then and thereupon become the duty of such officers, and they shall levy the amount of such judgment and certify the same and the purpose thereof to the county auditor, and such amount shall be extended in the tax duplicate, and collected as hereinbefore provided.

(1885, c. 196, § 2; G. S. 1878, v. 2, c. 10, § 315.)

§ 1501. Same—Execution to issue, when.

If payment of such judgment is not made within twenty days after the time fixed by law for the county treasurer to pay over to the treasurer of such city, village, or borough of the moneys in his hands belonging to such city, village, or borough, next, after the rendition of such judgment, execution may be issued on such judgment, but only the property of such city, village, or borough shall be liable thereon.

(1885, c. 196, § 3; G. S. 1878, v. 2, c. 10, § 316.)

§ 1502. Application of act.

This act shall apply to any city, village, or borough organized or created under any general or special law of this state, except where the act under which any city, village, or borough is organized and created shall provide some other mode for the collection of judgments.

(1885, c. 196, § 4; G. S. 1878, v. 2, c. 10, § 317.)

§ 1503. Judgments against municipality—Officer to levy tax to be appointed, when.

Whenever a judgment shall be entered in any action against a city or other municipal corporation in any court of record having jurisdiction of such action, and there shall be no officers in such city or municipal corporation authorized by law to levy taxes for the payment of such judgment, it shall be the duty of the governor to appoint suitable persons, residents of the state, who will accept the offices, officers of such city.

(1885, c. 154, § 1; ⁴¹ G. S. 1878, v. 2, c. 10, § 318.)

§ 1504. Authority of appointees.

Such officers so appointed shall be known and designated by the same names, respectively, and have the same powers, rights, and privileges, respectively, as officers duly elected, pursuant to the provisions of the charter of such city or municipal corporation, and it shall be the duty of such officers to assess, levy, and collect such taxes as may be necessary to pay such judgment, and such counsel fees for the defense of the action in which judgment is rendered as may be allowed by the court in which said judgment is rendered.

(1885, c. 154, § 2; G. S. 1878, v. 2, c. 10, § 319.)

⁴¹ An act to provide for the collection of judgments against municipal corporations. Approved February 28, 1885.

§ 1505. Special assessments by villages and cities legalized.

That the assessments heretofore made by any of the cities or villages of this state upon private property for the purpose of paying for local improvements in such cities or villages are hereby legalized and declared to be as valid and binding a lien against the property assessed as they would have been if the laws and statutes authorizing and providing for such assessments had been fully and strictly complied with. Provided, that the provisions of this act shall not be construed to apply to cases where an action or other proceeding is now pending to test the validity of the assessments heretofore made against any particular piece of property.

(1893, c. 201, § 1.42)

§ 1506. Annexed territory—Unfinished business.

That whenever any village or city of this state has been within three years prior to the passage of this act or shall be at any time hereafter annexed to or consolidated with any other city, by act of the legislature or otherwise, then such consolidated city shall have full power and authority to complete the unfinished business of the city or village so annexed, in the manner and form as prescribed and provided by the laws under which such unfinished business was commenced. The authority hereby granted shall extend particularly to the making and completion of assessments for public improvements and the issuance and sale of bonds therefor.

(1893, c. 209, § 1.43)

§ 1507. Same.

All proceedings or acts of such consolidated city under the authority hereby given shall have the same force and effect as though such proceedings and acts had been done and performed by the city or village so annexed.

(Id. § 2.)

⁴² An act to legalize special assessments heretofore made by cities and villages, upon private property, to pay for local improvements. Approved March 13, 1893.

⁴³ An act to provide for the completion of unfinished business of cities and villages annexed to other cities. Approved March 24, 1893.

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