

1936 Supplement
To
Mason's Minnesota Statutes
1927

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

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



Edited by

WILLIAM H. MASON, Editor-in-Chief
W. H. MASON, JR. }
R. O. MASON } Assistant Editors
J. S. O'BRIEN }

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

Act. Apr. 17, 1933, c. 318, makes appropriation of \$15,000 for each of two years, payable July 1, 1933, and

July 1, 1934, to counties in which more than 35% of area is school, swamp, and university land. It is omitted as temporary.

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

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

CHAPTER 8

Towns and Town Officers

POWERS—DUTIES—LIABILITIES

999. Corporate powers.

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

Fact that township owned telephone system is also operated in part for governmental purposes, for protection from forest and prairie fires, promoting public welfare, public health, and public safety, and facilitating work of public improvements, does not exempt town from liability for negligence in operating a public utility. *Id.*

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

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

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

(2).

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

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

(3).

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

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

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

(4).

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

1002. Powers of town meetings.

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

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

Subd. 3

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

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

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

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

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

Subd. 6.

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

Subd. 8.

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

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

Subd. 9.

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

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

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

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

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

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

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

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

Subd. 11.

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

Subd. 12.

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

1002-1. Townships may be dissolved, when.—Whenever the voters residing within a duly organized civil township in this state have failed to elect any township officials for more than ten years continuously immediately prior to the taking effect of this Act, or said township has failed and omitted for a period of ten years to exercise any of the powers and functions of an organized civil township as provided by law, or whenever the assessed valuation of any duly organized civil township drops to less than \$40,000.00, or whenever the tax delinquency of any such township, exclusive of taxes that are delinquent or unpaid by reason of taxes being contested in proceedings for the enforcement of taxes amounts to 50 per cent of its assessed valuation, or where the state or federal government has acquired title to 50 per cent of the real estate of such township, which facts or any of them may be found and determined by the resolution of the county board of the county in which said township is located, according to the official records in the office of the county auditor of said county, the county board by resolution shall declare any such township, naming the same, duly dissolved and no longer entitled to exercise any of the powers or functions of an organized township.

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

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

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

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

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

On dissolution of township, county board has implied authority to operate and maintain a town telephone and also to discontinue operation and dispose of property if operation appears impracticable. Id.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1002-12. Payment of indebtedness.—In the event that the outstanding bonds, warrants and judgments shall exceed the maximum amount which may be raised by one year's levy as provided for herein, the county board may issue funding or refunding bonds in the manner provided by law for the issuance of county funding or refunding bonds to take up such warrants, judgments or bonds without first submitting the question of such issue to the electors residing in said territory or in said county. Provided, that any bonds so issued shall not be an obligation of the county but shall be an obligation of the territory formerly included in such town, and shall be payable out of levies made against the property in such territory as herein provided, and such restriction shall be printed upon the face of such bonds. Except as herein otherwise provided such bonds shall be issued pursuant to the provisions of Laws 1927, Chapter 131, [§§1933-3 to 1933-13] and the tax levy required by Laws 1927, Chapter 131, Section 5, [§1938-7] shall be made against the property of the territory formerly included in such town at the time of the issuance of such bonds. (Act Mar. 27, 1931, c. 96, §4; Apr. 15, 1935, c. 189.)

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

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

County board on dissolving township may continue to maintain township telephone line established by township under §5312, et seq, depending upon the utility thereof, but it cannot levy special assessments for maintenance of such a line. Op. Atty. Gen. (98c-3), July 28, 1934.

1003. Certain towns to have certain powers of villages.

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

1006. Taxes in certain towns.

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

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

1007. Sale of realty.

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

1016. Same—May accept gifts.

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

1027-1. Fire protection and apparatus, etc.

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

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

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

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

Town board may not employ fire wardens and pay their salaries out of general town funds, but fire protection must be provided only under provisions of §1027-1, §4031-11. Op. Atty. Gen. (442a-17), Oct. 13, 1934.

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

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

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

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

1027-6. Fire protection, police protection, and use of roads, streets, and grounds for water mains in certain towns—Authority to provide for.—The electors of any town in which the assessed valuation of the platted lands thereon equals or exceeds 50 per cent of the total assessed valuation of all the lands of such towns, exclusive of mineral valuations, shall have power at a special election called for such purpose or at the regular annual meeting to authorize the town board (1) to provide for fire protection and apparatus therefor, (2) to provide for police protection and (3) to allow, permit, prohibit and limit the use of its roads, streets and public grounds for water mains, with all the necessary pipe, hydrants and other appliances and means and (4) to empower the town board to build and construct water mains with all the necessary pipe, hydrants, and other appliances for the purpose of providing water for the inhabitants thereof upon such terms and conditions as may be imposed by such town board and upon the condition that the water rates charged to the inhabitants of such town and the public shall be just and reasonable and not exceeding a fair return upon the fair value of the property used for such purpose, for a period of not more than 20 years. ('27, c. 219, §1; Apr. 24, 1935, c. 249.)

TOWN MEETINGS

1028. First meeting—Proceedings.

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

1029. Notice of annual town meetings.—There shall be an annual town meeting held in each town on the second Tuesday of March at the place of holding the last town meeting, or at such other place in the town, or in a city or village within or adjoining the same, designated by the annual town meeting. The clerk shall give ten days' published notice in a qualified newspaper having general circulation within the township, or by posted notice, or both, as the voters at the annual town meeting may direct, specifying the time and place, but if the town meeting shall fail to direct the manner of giving such notice, the town board shall direct the manner of giving notice and all town officers required by law to be elected shall be chosen thereat, and such other business done as is by law required or permitted. (R. L. '05, §633; G. S. '13, §1123; Apr. 11, 1935, c. 156.)

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

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

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

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

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

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

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

1030. Place for holding annual town meeting, etc.

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

1031. Special meetings.

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

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

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

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

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

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

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

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

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

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

1032. Notice.

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

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

1033. Compensation of moderator at town meetings.—The voters present at any time between 9 and 10 o'clock a. m. on the day of the annual or any special town meeting shall be called to order by the town clerk, if present; if not, the voters present may elect a chairman by acclamation. They shall then in the same manner choose a moderator of such town meeting. The moderator may be paid \$2.50 for such work. (R. L. '05, §636; G. S. '13, §1126; Apr. 11, 1935, c. 147, §1.)

Annual meeting cannot be held between 8:00 and 9:00 o'clock A. M. Op. Atty. Gen., Feb. 13, 1929.

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

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

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

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

1034. Clerk of meeting.

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

1036. Qualification of voters.

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

1037. Judges of election.

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

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

1038. Polls opened and closed.

Op. Atty. Gen., Feb. 18, 1929; note under §1033. Town election was not illegal because town meeting was had at 2:00 P. M. where no one was deprived of opportunity of voting. Op. Atty. Gen., May 27, 1933.

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

1039. Officers, how elected.

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

1040. Ballots.

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

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

1043. Manner of canvassing.

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

1046. Votes on other questions.

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

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

1047. Adjournments.

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

1048. Failure to elect officers.

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

TOWN BOARD

1049. How constituted—Duties.—The supervisors of each town shall constitute a board to be designated "The Town Board of _____," and any two shall constitute a quorum except when otherwise provided. They shall have charge of all the affairs of the town not by law committed to other officers. They shall draw orders on the treasurer for the disbursement of money to pay the town expenses, and for all moneys raised by the town to be disbursed for any other purpose. They may prohibit or license and regulate the keeping of billiard, pool, and pigeonhole tables, bowling alleys, and may license and regulate public dancing places, fix the price and time of continuance of such license, and, whenever in their opinion the public interest requires it, revoke the same. They may appropriate out of the general fund of the town and draw orders on the treasurer for the disbursement of money to pay the annual dues in the National Association of Town Officers, the actual and necessary expenses of such delegates as the town board may designate to attend meetings of such Association; provided that the aggregate amount for such purposes so expended by any such town in any one year shall not exceed the sum of \$25.00, provided, however, that such expenditures to pay actual and necessary expenses of delegates and annual dues in the National Association of Town Officers can only be appropriated out of the general fund of the town when such appropriation has been duly authorized by the annual town meeting, and that notice of such proposed appropriation be given at the same time and in the same manner as is now provided for notice of the annual town meeting. They may select and designate a bank as the depository of town moneys for a time not extending beyond their official term, on the execution by such bank of a sufficient bond to the town, in double the sum deposited, to be approved by the board and filed in the office of the town clerk, and thereupon may require the treasurer to deposit all or any part of the town moneys in such bank. Such designation shall be in writing, and shall set forth all the terms and conditions upon which the depositors are made, be signed by the chairman and clerk, and filed with the clerk. The town treasurer shall not be liable for the loss of money while so deposited, and all interest thereon shall belong to the town. (R. L. '05, §651; G. S. '13, §1142; '19, c. 343; '21, c. 478; Apr. 9, 1929, c. 143; Apr. 5, 1935, c. 120.)

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

Op. Atty. Gen., Mar. 5, 1929; note under §1973-1.

Where town has prohibited roller skating rinks, owner of rink cannot rent or lease it to individual groups of people. Op. Atty. Gen., May 28, 1929.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1049-3. Treasurer not liable—when.—The town or village treasurer, in the absence of negligence, shall not be liable for the loss of moneys while so deposited, within the limits above specified, occasioned by the closing or insolvency of a designated depository. (Act Apr. 20, 1931, c. 216, §3; Mar. 7, 1933, c. 62, §3.)

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

1053. May transfer funds.

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

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

A town has authority to spend money from township road and bridge fund for fire fighting where a road would be endangered by spreading of fire. Op. Atty. Gen., Oct. 3, 1932.

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

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

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

Town funds may be transferred from the road and bridge funds to the poor funds when no tax is voted if

there is a surplus beyond the needs of the current year in the fund from which the transfer is to be made. Op. Atty. Gen., Apr. 3, 1933.

1054. Town boards authorized to fix hour for opening polls.

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

BOARD OF AUDIT

1056. Duties.

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

1057. Report posted and read.

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

1060. Not to be issued until affidavit filed.

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

TOWN CLERK

1062. Bond and oath.

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

1064. Duties.

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

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

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

(1).

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

(4).

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

TOWN TREASURER

1067. Bond.

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

Expense of recording a town treasurer's bond should be paid by county. Op. Atty. Gen., May 1, 1933.

1070. To pay audited accounts.

Assignee of a town order given in place of preceding orders was equitable owner of such preceding orders. 181M510, 233NW236. See Dun. Dig. 7855, 9656.

Four town orders issued by clerk signing his own name and also the chairman's name by the clerk, pursuant to custom, were valid. 181M510, 233NW236. See Dun. Dig. 9656.

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

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

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

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

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

1071. Order of payment—Interest.

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

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

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

Where warrants have been issued for salaries of township officers in excess of a maximum salary authorized by law, they are to be paid in order of registration, but only to extent they are below maximum salaries authorized. Op. Atty. Gen. (442b-10), June 28, 1935.

1073. Fees.

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

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

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

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

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

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

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

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

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

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

GENERAL PROVISIONS**1074. Officers elected.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1074-1. Town board may establish voting districts.—The board of supervisors in any town in this state having a population, including the residents of all villages which are a part of such town for election and assessment purposes, of 10,000 or more, may, by

resolution adopted thirty days in advance of the annual town meeting, provide for the division of such township into not more than eight voting districts for the purpose of electing town officers, and in such resolution shall designate a polling place for each voting district established and fix the hours of voting for candidates for town offices at such election and shall appoint two judges and as many clerks as may be required to serve in each voting district as a board of registration and election board. Such division shall be only for the purpose of electing candidates for town office and shall not change the manner of transacting other business at town meetings. The notice of the annual meeting in such case shall describe the different voting districts and the polling places in each and shall state that candidates for town office will be voted on only at such polling places and that all other business of the annual meeting will be transacted at the usual place of meeting, the time and place of which shall be specified in such notice.

Such resolution shall also provide for the registration of voters on the first Tuesday in March, and only voters duly registered in accordance with the provisions of such resolution shall be permitted to vote for candidates for town office at such election. The laws relating to the registration of voters at general elections shall, so far as practicable, apply to and govern the registration of voters at town elections in such cases. ('23, c. 188, §1; Apr. 15, 1929, c. 196.)

1074-3½. Certain Township to Establish Election Districts.—The Board of Supervisors in any Town in this State having within the boundaries thereof, two or more duly incorporated Villages which are a part of such Town for election and assessment purposes, may, by resolution adopted thirty days in advance of the annual town meeting, provide for the division of such township into not more than two voting districts for the purpose of electing town officers, and in such resolution shall designate a polling place for each voting district established and fix the hours of voting for candidates for town offices at such election and shall appoint two judges and one clerk to serve in each voting district as an election board. Such division shall be only for the purpose of electing candidates for town office and shall not change the manner of transacting other business at town meetings. The notice of the annual meeting in such case shall describe the different voting districts and the polling places in each and shall state that candidates for town office will be voted on only at such polling places and that all other business of the annual meeting will be transacted at the usual place of meeting, the time and place of which shall be specified in such notice. (Act Apr. 20, 1931, c. 265, §1.)

1074-3½a. Town Board to Canvass votes.—Each election board shall count the votes cast, proclaim the results and submit returns signed by the members of such board to the town board of supervisors, and within two days after the election the town board of supervisors shall meet as a canvassing board and declare the results appearing from said returns. In case of a tie the election shall be determined by lot under the direction of the town board. (Act Apr. 20, 1931, c. 265, §2.)

1074-3½b. Election Supplies to Be Furnished.—Proper ballots, ballot boxes and election supplies shall be prepared by the town clerk and shall be furnished to the several election boards in advance of the election. All the provisions of the laws now in force relating to the counting, tallying and preserving of ballots at general elections shall apply, except that the town clerk shall be the final custodian of such ballots. (Act Apr. 20, 1931, c. 265, §3.)

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

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

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

“Shall the resolution of the Town Board of
 adopting the provisions of Chapter
 Laws of Minnesota for 1935 be rescinded?

Yes
 No

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

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

1074-8. Terms of certain officers extended.—The terms of office of all officers of such towns whose terms would expire in March, 1936, are hereby continued and extended to the end of December 31, 1936; the terms of office of all officers of such towns whose terms would expire in March, 1937, are extended to the end of December 31, 1937, and the terms of office of all officers of such towns whose terms would expire in March, 1938, are hereby extended to the end of December 31, 1938. All officers so elected at the elections held on the first Tuesday after the first Monday in November, commencing in November, 1936, shall take office on the 1st day of January following their election and the length of the terms of the various officers of such towns so elected shall be the same as is now provided by law. (Act Apr. 11, 1935, c. 137, §3.)

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

1074-10. Clerk to report to auditor.—Immediately after the election of officers the clerk of such town shall report to the auditor of his county the name and post office address of each town officer who was

elected and the term for which he was elected. Supervisors elected after this act comes into force and effect shall hold office for three years and until their successors qualify, and the chairman of the board of supervisors shall be named at the first meeting of the board each year. (Act Apr. 11, 1935, c. 137, §5.)

1074-11. Vacancies.—Whenever a vacancy occurs in any town office, the town board shall fill the same by appointment. The person so appointed shall hold his office until the next town election and until his successor qualifies; provided, that vacancies in the office of supervisor shall be filled by the remaining supervisors and town clerk until the next annual town election, when his successor shall be elected to hold for the unexpired term. (Act Apr. 11, 1935, c. 137, §6.)

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

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

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

1075. Town and village assessors.
 Op. Atty. Gen., Apr. 1, 1933; note under sec. 1048.
 A village assessor once elected to the office and qualified holds over until his successor is elected and qualified. Op. Atty. Gen., June 5, 1931.
 In view of Laws 1929, c. 413, village assessors are now to be elected in even numbered years. Op. Atty. Gen., Nov. 13, 1931.

1077. When to take oath.
 Failure to take office within the time specified by law does not ipso facto create a vacancy which will prevent an officer from qualifying thereafter, if it is done before any steps are taken to declare a vacancy. Op. Atty. Gen., May 11, 1931.
 Failure of town clerk to take his oath of office and to give official bond results in a vacancy. Op. Atty. Gen. (104b-13), Mar. 5, 1935.

1078. Oath and bond, when filed.
 Failure of treasurer to qualify creates vacancy which may be filled by appointment. Op. Atty. Gen., Mar. 21, 1929.
 Offices of town assessor and member of school board in same town are not incompatible. Op. Atty. Gen., Mar. 6, 1933.
 Section 1074 is a later enactment than §1081 and town supervisors do not hold over on failure of new member to qualify and vacancy exists which should be filled by remaining supervisors and town clerks under §§1086 and 6953(6). Op. Atty. Gen. (437a-15), June 21, 1935.

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

1081-2. Officers to give bonds.—Before entering upon their duties, such officers shall give bond to the county in such penal sum as the county board shall determine, and which bonds shall be otherwise conditioned as bonds for such officers in organized townships in such county. Such bonds shall be approved

by the county board and filed with the clerk of the district court. (Act Apr. 1, 1935, c. 85, §2.)

1086. Vacancies.

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

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

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

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

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

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

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

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

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

1087. Auditor to appoint assessor.

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

1089. Compensation of certain town officers.—The following town officers shall be entitled to compensation for each day's service necessarily rendered as follows, viz: Assessors, four dollars, and mileage at the rate of five cents per mile for each mile necessarily traveled by him in going and returning from the county seat of the county to attend any meeting of the assessors of the county which may be legally called by the county auditor, and also for each mile necessarily traveled by him in making his return of assessment to the proper county officer; supervisors and clerks, three dollars when the service is rendered within the town, and three dollars when rendered without the town; and mileage at the rate of five cents per mile for each mile necessarily traveled by them on official business out of the town, but not exceeding the sum of \$30.00 for such mileage for any one town officer, in any year; but no supervisor shall receive more than \$90.00 as compensation in any one year except that in counties having a population of 290,000 or more the assessor shall receive five dollars per day; and supervisors and clerks three dollars per day when the service is rendered within the town, but no supervisor shall receive more than \$90.00 as compensation in any one year. For the following services the clerk shall receive fees, and not a per diem, viz: For certifying each notice of election, 25 cents; posting notices, each 25 cents and ten cents for each mile necessarily traveled; filing each paper, ten cents; recording orders and other instruments, ten cents per folio; copying and certifying any record or instrument recorded or filed in his office, ten cents per folio, to be paid by the person applying therefor. The voters at any town meeting, after reading and disposing of the annual report, may by resolution increase or decrease the compensation of town officers, not to exceed 50 per cent. (As amended Apr. 21, 1933, c. 411; Apr. 11, 1935, c. 151; Apr. 29, 1935, c. 375.)

* * * * *

Act Apr. 21, 1933, cited, amends the first paragraph of this section as it appears in Mason's Minn. Stat., 1927. This paragraph constituted §1 of Laws 1927, c. 403. The second paragraph constituted section 2 of Laws 1927, c. 403, and is unaffected by the amendment.

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

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

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

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

Town clerk cannot charge to the town a specified sum for drawing and recording an order and filing the same after it has been cashed, but he is entitled to \$3 per day for services rendered to the town whether rendered at board meetings or not. Op. Atty. Gen., July 29, 1930.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where county emergency relief administration has approved a township project upon condition that town

supervisors at different times, or one of them at all times, act as foreman or supervisor, supervisor may receive compensation therefor but not in a total amount in excess of that permitted by statute. Op. Atty. Gen. (437a-3), Nov. 15, 1934.

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

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

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

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

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

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

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

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

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

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

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

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

1089-6. Supervisors' compensation not to exceed \$60.—In every organized township in this state having an area of forty sections or more the compensation allowed each supervisor shall not exceed the sum of sixty dollars (\$60) in any one year. (Act Apr. 23, 1907, c. 316, §1.)

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

1093. Town charges.

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

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

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

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

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

1096. Officers—Contracts.

No recovery could be had for \$80 worth of work on the wings of a bridge for a township, where the work was never completed so that it could be accepted, and the work was of no value so that a recovery might be had as for a benefit received. 172M259, 214NW888.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1097. Town taxes.

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

1098. Limit of debts, etc.

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

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

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

1099. Separation from village.

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

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

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

1106. Filing claims—Demand.

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

1108-4. Certain towns not to draw orders without funds in treasury.—That from and after January 1st, 1934, no organized town which in the year 1933 had a population (including the population of villages within such town not separated from the town for election

and assessment purposes) exceeding 2,000 and not exceeding 10,000 inhabitants, and an assessed valuation of taxable property, exclusive of moneys and credits, such that a tax levy of 17 mills upon the dollars of such assessed taxable valuation would produce a total levy in excess of an average of \$1,000 per government section of the entire area of such town, according to the government survey thereof, shall draw any order or warrant on any fund until there is sufficient money in such fund to pay the same together with all orders previously issued against said fund. (Act Apr. 17, 1933, c. 293, §1.)

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

There is a cut-off Jan. 1, 1934, thus leaving to town board during year 1934 an entire year's tax levy available for obligations incurred during that year. Op. Atty. Gen., Nov. 28, 1933.

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

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

1108-7. May issue certificates of indebtedness.—At any time after the annual tax levy has been certified to the county auditor, and not earlier than October 10th in any year, the governing body of such town may, for the purpose of meeting the obligations of the succeeding year, by resolution issue and sell as many certificates of indebtedness as may be needed in anticipation of the collection of taxes so levied for any fund named in said tax levy for the purpose of raising money for any such fund, but no certificate shall be issued for any of said separate funds exceeding 50 per cent of the amount named in said tax levy as spread by the county auditor, to be collected for the use and benefit of said fund, and no certificate shall be issued to become due and payable later than December 31st of the year succeeding the year in which said tax levy, certified to the county auditor as aforesaid, was made. The said certificates shall not be sold for less than par and accrued interest and shall not bear a greater rate of interest than 6 per cent per annum. Each certificate shall state upon its face for which fund proceeds of said certificate shall be used, the total amount of said certificates so issued, the whole amount embraced in said tax levy for that particular purpose. They shall be numbered consecutively and be in the denominations of \$100 or a multiple thereof and may have interest coupons attached, and shall be otherwise of such form and terms and be made payable at such place as will best aid in their negotiation. The proceeds of the tax assessed and collected, as aforesaid on account of said fund, and the faith and credit of such town shall be irrevocably pledged for the redemption of the certificates so issued. Such certificates shall be paid from the moneys derived from the levy for the year against which such certificates were issued, or if they be not sufficient for such purpose, from other funds of the town. The money derived from the sale of said

certificates shall be credited to such fund or funds for the calendar year immediately succeeding the making of such levy and shall not be used or spent until such succeeding year. No certificates for any year shall be issued until all certificates for prior years have been paid, nor shall any certificate be extended; provided that money derived from the sale of the certificates for any one year may, if necessary, be used to redeem unpaid certificates issued in a prior year. (Act Apr. 17, 1933, c. 293, §4.)

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

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

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

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

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

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

1108-11. Violation a misdemeanor.—Any member of the town board of such town or any other town officer or employee knowingly participating in or authorizing any violation of this Act shall be guilty of a misdemeanor, punishable by a fine not exceeding \$100, or by imprisonment in the county jail not exceeding three months, for each offense; and each contract attempted to be entered into or indebtedness or pecuniary liability attempted to be incurred in violation of the provisions of this Act shall be null and void in regard to any obligation thereby sought to be imposed upon the town, and no claim therefor shall be allowed by the town board of said town; nor shall the claim of said town or any other town officer or employee issue or execute, nor shall the town treasurer pay, any warrant or certificate of indebtedness issued on account thereof. Each member of the town board

and each other town officer or employee participating in or authorizing any violation of this Act shall be individually liable to the town or to any other person for any damages caused thereby and for the purpose of enforcing such liability without impairing any other remedy, one-fourth of the salary of each such officer and employee shall be withheld from him and applied towards reimbursing the town or any such other person for such damages until all claims by reason thereof have been fully paid. Every member of the town board present at a meeting of the board when any action is taken with reference to paying money or incurring indebtedness or entering into any contract shall be deemed to have participated in and authorized the same, unless he shall have caused his dissent therefrom to be entered upon the minutes of the meeting. (Act Apr. 17, 1933, c. 293, §8.)

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

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

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

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

CHAPTER 9

Villages and Cities

Laws 1935, c. 125. "The Municipalities Emergency Act of 1935."

1109. Villages and boroughs.

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

New York Life Ins. Co. v. V., 187M119, 244NW553; note under §1111.

Though Laws 1885, c. 145, has been repealed, it remains in full force and effect as to villages organized and continuing to operate thereunder. Vesely v. V., 190 M318, 251NW680. See Dun. Dig. 6526.

Villages may be held to be governed by certain applicable provisions of general statutes relating to townships, when not otherwise provided in general laws relating to villages or in statute constituting charters of such villages. Id. See Dun. Dig. 6526.

This section serves to keep alive Laws 1885, §145 [Mason's Minn. Stat., 1927, pp. 218-226], as to villages organized and operating thereunder, and all subsequent acts of the legislature, whether directly amendatory of the 1885 act or not, are still operative in such villages, if they constitute a part of the 1885 village code. Applying this rule Laws 1895, c. 270 [set forth herein in notes under §1111], not expressly amending the 1885 code, is still operative in such villages. Op. Atty. Gen., Jan. 16, 1930.

1110. Surrender of charter—Reincorporation.

Where village voted on question of reincorporating village under this section, and vote was in favor of reincorporation, but village council did not pass resolution declaring result, nor file certified copies with county auditor and secretary of state, a later council should call a new election rather than adopt the resolution and file copies. Op. Atty. Gen. (484e-5), July 10, 1935.

VILLAGES

1111. What territory may be incorporated.

Laws 1895, c. 270, is still operative in villages organized and operating under the village code of 1885. (Op. Atty. Gen., Jan. 16, 1930.) The text of the act is as follows.

"Sec. 1. The clerk or recorder of any incorporated village in this state may appoint under his hand and seal by and with the consent of the village council, a deputy for whose acts he shall be responsible, and whom he may remove at pleasure."

"Sec. 2. Such deputy shall before entering upon his official duties, take the oath required by law which oath and appointment shall be filed in the office of the clerk of the district court of the proper county."

"Sec. 3. Such deputy shall possess all the powers and may perform all the duties of the village clerk or recorder except he shall not be a member of the village council."

"Sec. 4. This act shall take effect and be in force from and after its passage."

Decisions relating to villages in general.

A village may grant a permit or franchise to a gas company for a period in excess of twenty years. Op. Atty. Gen., Feb. 3, 1932.

An attorney who is a partner in law firm of one of members of village council of Hibbing may be appointed city attorney, if member of council will have no interest,

directly or indirectly, in fees received. Op. Atty. Gen., Aug. 20, 1932.

Construction and application of Laws 1885, c. 145.

Officers elected Mar. 12, 1929, in a village operating under the 1885 act, took office on the first Tuesday in April, in view of Mason's Stat., 1927, §1134. Op. Atty. Gen.

Under 1885 law, the village of Kenyon has authority to contribute to the support of a skating rink on school-house grounds. Op. Atty. Gen., Feb. 27, 1929.

Under the 1895 law bonds cannot be issued without vote of the electors, even for refunding warrants. Op. Atty. Gen., Mar. 25, 1929.

Village council under Laws 1885, c. 145, may sell or lease telephone exchange without consent of electors. Op. Atty. Gen., Apr. 16, 1929.

A village operating under Laws 1885, c. 145, on sale of its gas plant, after providing for payment of obligations of the gas plant, may transfer the surplus to the general fund. Op. Atty. Gen., Aug. 14, 1929.

Villages organized under Laws 1885, c. 145, having population of 10,000 may divide into six election districts, etc. Laws 1933, c. 343.

An existing village cannot legally be separated into separate villages. Op. Atty. Gen., Jan. 23, 1933.

Village of Dalton is incorporated under this act. Op. Atty. Gen., Feb. 3, 1933.

Mayor of village has no right to discharge a councilman. Op. Atty. Gen., Feb. 10, 1933.

9.

Village may issue bonds to pay for power house and distributing system, and enter into valid conditional sales contract for purchase of generating equipment to be paid for solely from remains of net profits after paying interest and bond installments. Williams v. V., 187M161, 244NW558. See Dun. Dig. 6723.

Village operating its only own utility may only sell surplus electricity to consumers outside corporate limits or inside corporate limits. Op. Atty. Gen. (624c-12), May 24, 1935.

A city may supply electricity to a nearby village with the consent of latter. Op. Atty. Gen. (59a-36), May 25, 1935.

A village cannot avoid electric franchise for irregularities in the granting thereof where it has accepted the benefits thereof for a number of years, but the granting of one franchise does not prevent the granting of another franchise to other parties or the purchase of electricity from another city, unless the first utility has been expressly given exclusive right. Id.

12.

Agricultural land may be detached from village either under general law or under special acts under which village was organized. New York Life Ins. Co v. V., 187 M119, 244NW553. See Dun. Dig. 85a, 87.

16.

Offices of village attorney and president of village council are incompatible. Op. Atty. Gen., Nov. 29, 1933.

Offices of village marshal and village constable are not incompatible. Id.

17.

Notice of special election called to authorize building of new village hall and issuance of bonds held to comply with statutory provisions. Op. Atty. Gen. (476b-8), Apr. 24, 1934.