

1940 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

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

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



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CHAPTER 9

Villages and Cities

**1109. Villages and boroughs. [Repealed.]**

Repealed by Act Apr. 21, 1939, c. 345, Pt. 12, §1, ante §601-12, effective Aug. 1, 1939.  
Reenacted as §601-11(2).

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Though Laws 1885, c. 145, has been repealed, it remains in full force and effect as to villages organized and continuing to operate thereunder.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.

An outline of municipal bond procedure in Minnesota. 20MinnLawRev583.

**1110. Surrender of charter—Reincorporation.**

Where a 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.

Expenses incident to incorporation of village, such as attorney's fees incurred in preparation of petition, and other election expenses, are legitimate charges against village and may be paid out of village treasury after incorporation. Op. Atty. Gen. (484e-4), March 31, 1939.

Districts which have been platted into lots and blocks contiguous to state line and having population of not less than 50 inhabitants may be incorporated as a village. Op. Atty. Gen. (484e-4), April 13, 1939.

Village of Wykoff incorporated by special laws 1876, c. 5, under the provisions of Laws 1875, c. 139, is now governed by this act. Op. Atty. Gen. (477a), Mar. 2, 1933.

This section repeals provision in Laws 1875, c. 139, §20, requiring a vote of people before expending in excess of \$500. Op. Atty. Gen. (396a-2), July 12, 1939.

Village may employ an attorney who is not a resident on either a per diem, monthly or yearly basis, or to handle specific assignments of work for village. Op. Atty. Gen. (469b-1), Sept. 27, 1935.

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, 244NW553. 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.*

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.

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.*

An outline of municipal bond procedure in Minnesota. 20MinnLawRev583.

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.

Vacancies in village councils are to be filled by appointment and not by special election. Op. Atty. Gen. (471m), Apr. 12, 1935.

The president of a village operating under Laws 1885, c. 145, §18, has no power alone to appoint or remove a marshal. Op. Atty. Gen., Feb. 9, 1929.

Offices of police officer and manager of waterworks of village of Swanville are compatible with elective office of village assessor. Op. Atty. Gen., Apr. 7, 1932.

Office of defeated justice of the peace is vacant where newly elected justice is not qualified and old justice does not hold over. Op. Atty. Gen., Feb. 3, 1933.

Vacancy in office of village justice of peace may be filled by village council. Op. Atty. Gen., Feb. 3, 1933.

Person wishing to get his name on village election ballot need not file 10 days before election, and any voter has right to write in name of any person he wishes on ballot. Op. Atty. Gen., Feb. 10, 1933.

Governor cannot remove village constable. Op. Atty. Gen., Aug. 31, 1933.

Village assessor, clerk and president are not entitled to extra compensation for serving on board of review pursuant to Mason's Stats. §2034. Op. Atty. Gen. (470b), July 5, 1935.

Mason's Stats., §§1222, 1223, do not apply to claims against villages operating under this act, and there is no ten-day waiting period before village orders may be paid. Op. Atty. Gen. (476a-5), Apr. 17, 1936.

Village cannot purchase building without filling office of president. Op. Atty. Gen. (471m), June 5, 1936.

Village is not required to keep a street and pavement fund and a sewer fund separate and apart from general fund, though money may not be diverted from specific purpose for which it was levied and collected. Op. Atty. Gen. (476a-15), May 16, 1939.

20. Laws of 1911, requiring village clerks to publish a detailed financial statement, applies to villages, such as Hopkins, which are still operating under Laws 1885, c. 145, since repeal of Laws 1905, c. 74, by the 1911 act did not revive Laws 1885, c. 145, §20. State v. Elmquist, 276NW735. See Dun. Dig. 6569.

Water and light commission has no power to enter into lease providing for option to buy stokers without advertising for bids. Op. Atty. Gen., Aug. 12, 1933.

There is no law requiring or permitting publication of official proceedings of village council. Op. Atty. Gen. (469a-5), Jan. 27, 1936.

20(4). Village incorporated under Laws of 1885 may not fix compensation of village justice of the peace. Op. Atty. Gen. (266a-13), Sept. 7, 1934.

21. Laws 1885, c. 145, §§21, 50 [Mason's Minn. Stat., 1927, pp. 218-226], 180M407, 231NW14.

Village councils have power and authority to fix compensation of village assessors. Vesely v. V., 190M318, 251NW680. See Dun. Dig. 6575.

Allowance of \$255 as compensation for assessor, held not inadequate. Id.

Village assessor is officer of village. Id.

Salaries of village president, trustees and recorder, discussed. Op. Atty. Gen., Jan. 9, 1933.

Village clerk has right to vote as member of council. Op. Atty. Gen., Feb. 3, 1933.

Soldiers' preference law applies to the office of village marshal. Op. Atty. Gen., Apr. 5, 1933.

President and clerk have right to vote as members of village council. Op. Atty. Gen., Apr. 11, 1933.

President and clerk or recorder are members of village council and have a right to vote same as other members thereof. Op. Atty. Gen., Oct. 31, 1933.

Councilman making application for liquor license cannot vote on the matter. Op. Atty. Gen., Jan. 23, 1934.

Members of council constituting a quorum may appoint president pro tem to act in place of president and minutes of meeting may be signed by such president pro tem. Op. Atty. Gen., Feb. 9, 1934.

A village may lease part of town hall to exclusive use of American Legion Post, if it does not interfere with use of building to the legitimate public needs of village. Op. Atty. Gen., Mar. 17, 1934.

A village may have street work done by day labor and buy materials itself, though cost is in excess of \$500. Op. Atty. Gen. (396c-7), May 31, 1934.

Village cannot require a license by salesman or solicitor taking orders for future delivery, nor can a village limit licenses for hawkers and peddlers to residents of village. Op. Atty. Gen. (290e), Aug. 23, 1934.

Adoption of primary election system pursuant to §§317-1 to 317-6 may not be rescinded by village council. Op. Atty. Gen. (472t), Sept. 28, 1934.

Village may rent village hall or portion thereof when not needed for public purposes, for entertainments, public dances, meetings and the like. Op. Atty. Gen. (469c-6), Mar. 8, 1935.

Village funds may be appropriated for purchase of land for park purposes. Op. Atty. Gen. (476b-10), Mar. 20, 1935.

Village may use funds for leasing land for park and playgrounds purposes. Op. Atty. Gen. (476b-10), Mar. 21, 1935.

Mason's Stat., §1174, applies to villages operating under this act, and such villages have authority only to publish ordinances, by-laws, rules and financial statements, and has no authority to publish minutes of its proceedings in full. Op. Atty. Gen. (469a-5), Mar. 27, 1935.

Village may purchase building for municipal liquor store without vote of people if funds are on hand. Op. Atty. Gen. (476b-1), Mar. 28, 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.

Council does not have authority to retain services of detectives to secure evidence of violations of state or federal intoxicating liquor laws. Op. Atty. Gen. (477b-15), Sept. 26, 1935.

Village may lease land outside its limits for bathing beach but cannot extend money for making permanent improvements thereon, and may employ beach guards. Op. Atty. Gen. (476b-10), Dec. 26, 1935.

There is no law requiring or permitting publication of official proceedings of village council. Op. Atty. Gen. (469a-5), Jan. 27, 1936.

Village council has no power to remove one of its members, such as the recorder, proper procedure being appropriate action in district court. Op. Atty. Gen. (475), Mar. 26, 1936.

Village council has authority to purchase a building in which to house its municipal liquor store without submitting matter to electors. Op. Atty. Gen. (471m), June 5, 1936.

Village may submit to vote of electors proposition of granting 20-year power franchise. Op. Atty. Gen. (624a-5), Aug. 24, 1937.

Where voters of village approved bonds for construction of building, village council could later accept federal grant without further vote of electors. Op. Atty. Gen. (469c-4), Oct. 5, 1937.

Village may purchase 172 acre farm for park and sewer purposes where owner claims overflow from sewage disposal plant creates a private nuisance, and may do so without vote of electors where cost price is less than \$2,000. Op. Atty. Gen. (476b-10), Feb. 10, 1938.

Officers and employees appointed by council for an indefinite time continue to hold office until removed. Op. Atty. Gen. (469b), Mar. 3, 1938.

Village may not certify delinquent water and light accounts to county auditor for collection through county treasurer. Op. Atty. Gen. (624c-4), April 1, 1939.

Village or water, light and power commission may install a filtration system for use in connection with water system without a vote of electors where there is sufficient money on hand obtained from operation of municipal liquor store and lighting plant. Op. Atty. Gen. (707a-15), April 24, 1939.

21(3). Advertisement for bids for purchase of lands for park is not required. Op. Atty. Gen., May 19, 1930.

Villages may construct village hall and proceed to construct sewerage system and pay costs obtained by levying assessment against property benefited, where funds are available or taxes have been levied and are in process of collection, without vote of electors. Op. Atty. Gen. (387g-1), Sept. 15, 1936.

Real estate to be used for a particular purpose, such as city dump, may be purchased without advertising for bids. Op. Atty. Gen. (469a-12), Nov. 12, 1936.

Village may take over a memorial hall constructed by American Legion Post, and use such building as a combined memorial hall, city hall, councilroom, and rest room, and may rent the premises for public purposes, for entertainment, public dances or other gatherings, providing such renting does not interfere with public use of property, and does not tie the hands of succeeding governing bodies of the village, but cannot assume a mortgage thereon, payment of purchase price in cash or bonds being necessary. Op. Atty. Gen. (476b-8), Mar. 2, 1937.

Village may purchase property outside corporate limits for use as dumping grounds. Op. Atty. Gen. (469a-12), Apr. 6, 1937.

Village operating under Laws 1885 is bound by 25 year franchise granted to a power company in 1916, and cannot lower rates by ordinance. Op. Atty. Gen. (624c-6), Sept. 16, 1937.

County or village may purchase land at sales held pursuant to Laws 1935, c. 386 (§2139-15). Op. Atty. Gen. (425c-10), May 4, 1938.

Village may purchase land for street widening purposes direct from owners. Op. Atty. Gen. (396c-6), June 29, 1939.

Village council may change the salary of the deputy recorder at any time. Op. Atty. Gen., Jan. 16, 1930.

21(4). Village council has no authority to fix compensation of treasurer serving under prior council, though such council fixed no compensation for such past service. Op. Atty. Gen., Jan. 25, 1933.

Village council has authority to fix compensation of village treasurer, and law governing township treasurers with reference to salary has no application to villages under this act. Op. Atty. Gen., Dec. 22, 1933.

Compensation of village assessor may be fixed by village council. Op. Atty. Gen. (12b-1), Jan. 25, 1935.

Council may fix compensation of assessor. Op. Atty. Gen. (12b-1), Jan. 17, 1936.

Where salaries of president and trustees were fixed pursuant to Mason's Stats., §1163-1(6), that subdivision still governed after amendments. Op. Atty. Gen. (469a-13), Feb. 24, 1936.

Council has power to fix salaries of both clerk and treasurer. Op. Atty. Gen. (469b-5), Dec. 1, 1936.

This section in so far as it relates to holding an election, terms of offices, and filling of vacancy in village has been superseded by Laws 1929, c. 413, in so far as latter is in conflict. Op. Atty. Gen. (470), Nov. 9, 1937.

Laws 1929, c. 413 (§1152-9 to 1152-15), relating to appointment to fill vacancies, applies to villages operating under this act. Op. Atty. Gen. (471m), May 17, 1938.

Although village council, unaware of its authority to fix salary of treasurer, cannot be deprived of that right, long course of conduct and acquiescence in salary of certain monthly sum on part of both treasurer and council would create a tacit fixing of salary at that amount for remainder of term. Op. Atty. Gen., (456f-2), August 4, 1939.

21(10). Village operating under this act has authority to construct and install a new well and pumping equipment without submitting authorization to vote of electors. Op. Atty. Gen., Dec. 5, 1933.

Village may purchase a fire truck without submitting question to vote of people. Op. Atty. Gen. (688c-1), Mar. 28, 1936.

Where village establishes a limited water system extending its watermain along main street, and permits owners on side streets to install a two-inch private water line connecting with main street, village has no author-

ity to permit another private owner on the same side street to connect with private pipe, in absence of a provision in ordinance granting owners right to construct private main. Op. Atty. Gen. (624d-11), Mar. 30, 1936.

Zoning ordinance for gasoline filling stations held unreasonable and invalid. Op. Atty. Gen. (477b-10), May 25, 1936.

Village operating under Laws 1885 may extend water main pursuant to Laws 1885, Chap. 145, §21(10) or §1918-17, or §1918-1 et seq. Op. Atty. Gen. (624d-11), Aug. 28, 1936.

Council in a village operating under Laws 1885, ch. 145, may purchase a fire truck and a lot and a building to house it without vote of electors, but cannot issue certificates of indebtedness without a vote of people, unless it brings itself within Laws 1895, ch. 257. Op. Atty. Gen. (476a-4), Mar. 10, 1937.

Power of village of Jeffers to issue certificates of indebtedness for purchase of fire apparatus and equipment is derived from laws 1885, c. 145, and power of erecting a building to house the equipment is derived from §1942, but procedure for issuing certificates of indebtedness and bonds is restricted by general bonding statute, §§1938-3 to 1938-12. Op. Atty. Gen., (688c), June 27, 1938.

Village may not enter into conditional sales contract for purchase of a fire truck, but may issue certificates of indebtedness under Laws 1895, c. 257. Op. Atty. Gen., (476b-7), Nov. 22, 1938.

Where voters authorized construction of pump house, council could determine to enlarge pump house so as to provide storage space for a fire truck without further vote of electors if there was money on hand that could be used for that purpose. Op. Atty. Gen., (471G), August 19, 1939.

21(11).

Under Laws 1885, c. 145, §21(11), the village of Hibbing may condemn land within the village for park purposes. Op. Atty. Gen., Dec. 26, 1929.

Improvement in drainage system may be made by day labor. Op. Atty. Gen., Oct. 16, 1933.

Sewer and water system could be voted upon as a single question. Op. Atty. Gen., Nov. 27, 1933.

Village may purchase out of available funds vacant lot to be used for park purposes without vote of electors. Op. Atty. Gen. (469a-12), Apr. 6, 1937.

Cost of surfacing of street with oil or tarvia may be paid for out of road and bridge fund or general fund. Op. Atty. Gen. (396c-6), June 14, 1937.

Village may issue general obligation bonds for purpose of making street wide improvements, including curbs, gutters, sidewalks, street lighting, grading, widening, and surfacing. Op. Atty. Gen. (396c-6), June 9, 1939.

Village of Heron Lake may treat streets with tarvia upon action of council alone and with use of general funds, and without a vote of the people even though cost is over \$500. Op. Atty. Gen. (396a-2), July 12, 1939.

Village may construct storm sewer or drain without petition of property owners affected. Op. Atty. Gen. (387B-10), July 27, 1939.

Tar surfacing of a number of unconnected streets may be had in one proceeding on initiation by village council without petitions of property owners. Op. Atty. Gen., (396g-10), August 14, 1939.

21(13).

A municipality may prescribe reasonable conditions as to time when, places where, and manner in which right of farmer to sell produce may be exercised, so long as no license is required, and conditions are reasonable. Op. Atty. Gen. (477b-21), Oct. 16, 1935.

21(14).

A village organized under Laws 1885, c. 145, with a board of park commissioners organized under Mason's Stat. 1927, §1255, et seq., may pay out of its general fund for improvements on park property. Op. Atty. Gen., (330a-5), Oct. 11, 1938.

Village may acquire a lesser interest than fee simple, such as a leasehold in a cemetery in village owned by a private corporation. Op. Atty. Gen. (870J), May 3, 1939.

21(15).

A village has no authority to pass ordinance requiring payment of license fee for boxing exhibition. Op. Atty. Gen., Apr. 17, 1933.

Village may regulate transient merchants, paupers and peddlers, but cannot, under guise of licensing, adopt an ordinance which is prohibitive and unreasonable. Op. Atty. Gen., May 18, 1933.

An ordinance imposing a license fee of \$5 a day upon transient dry cleaners for soliciting business is of doubtful validity. Op. Atty. Gen. (477a-8), May 16, 1939.

21(20).

Soldiers' Preference Law is applicable to chief of police of Nashwauk. Op. Atty. Gen., Aug. 3, 1933.

21(23).

Keeping of cows within village limits is not a nuisance per se. Op. Atty. Gen. (477b-20), July 31, 1936.

City council rather than local board of health is vested with authority to declare what shall constitute a nuisance, and it is questionable whether village council may by ordinance delegate any of police powers to board of health. Op. Atty. Gen. (477b-20), Apr. 14, 1938.

21(25).

Council may make annual tax levy without submission to voters. Op. Atty. Gen., Mar. 11, 1930.

Conditional sales contract of electric equipment to a village to be paid out of net earnings of sale of elec-

tricity after all other charges have been paid, is permissible. Op. Atty. Gen., Oct. 20, 1932.

One village council may bind subsequent councils to either grant extension of electric franchise or pay portion of cost of white way constructed by a private utility. Op. Atty. Gen. (707b-14), Oct. 31, 1936.

21(26).

A village has no authority to regulate the operation of boating, bathing, etc., in a public lake. Op. Atty. Gen. (273d-1), Aug. 25, 1934.

21(27).

Villages operating under Laws 1885, c. 145, and those operating under general statutes are authorized to issue refunding obligations without submitting proposition to a vote of electors to refund matured bond issued in connection with purchase of power plant, and payable out of earnings of such plant. Op. Atty. Gen. (476a-12), July 9, 1935.

22.

Mason's Stats., §1223, does not apply to villages organized under this act so that recorder must wait 10 days after allowance of claim before issuing warrant. Op. Atty. Gen., May 22, 1933.

In determining indebtedness of village obligation mentioned under §1935, subdivisions 1, 3, 4, 5, may be deducted. Op. Atty. Gen. (59a-51), Nov. 20, 1936.

Village has no authority to borrow money from a private institution. Op. Atty. Gen. (476a-4), Mar. 10, 1937.

Council may purchase a fire truck and a lot and a building to house it without a vote of electors, but cannot issue certificates of indebtedness without a vote of people, unless it brings itself within Laws 1895, ch. 257. Id.

Neither village council nor board of park commissioners may issue warrants where there is no money immediately available in treasury for their payment, unless in anticipation of current tax levy sufficient to cover, and anticipation warrants may not be discounted under any circumstances. Op. Atty. Gen. (476c-2), Apr. 19, 1937.

Justice of the peace may not deduct costs in dismissed cases from fines collected in other cases, but should remit full amount and make a separate claim for any sum due him. Op. Atty. Gen. (199b-5), Jan. 13, 1938.

Power of village of Jeffers to issue certificates of indebtedness for purchase of fire apparatus and equipment is derived from laws 1885, c. 145, and power of erecting a building to house the equipment is derived from §1942, but procedure for issuing certificates of indebtedness and bonds is restricted by general bonding statute, §§1938-3 to 1938-12. Op. Atty. Gen. (688c), June 27, 1938.

24.

Village of North St. Paul is authorized to install a new well and pumping equipment. Op. Atty. Gen., Sept. 13, 1933.

27.

Balance of fund remaining after payment of bonds for which it was created may be transferred to general fund. Op. Atty. Gen. (476a-15), Apr. 3, 1935.

On change from township to county system of poor relief, money in poor fund of village may be transferred to general revenue fund of village by resolution. Op. Atty. Gen. (476b-11), Aug. 12, 1937.

29.

Villages organized under this act are governed by this section and not Mason's Stats., §1201, as respects vacation of streets. Op. Atty. Gen. (817a), Aug. 21, 1935.

Village council may vacate street or alley under Mason's Stat. 1927, §1201. Op. Atty. Gen., (396g-16), Nov. 17, 1938.

30.

Power to construct and maintain village sewerage system is vested in council and not in Water, Light, Power and Building Commission. Op. Atty. Gen. (387g-5), July 20, 1936.

Filing of petition is not necessary before village council may construct, maintain or repair sewers. Op. Atty. Gen. (387g-5), July 30, 1936.

District sewers are to be assessed against property benefited and cannot be paid for out of general fund. Id.

As to villages organized and operating under Laws 1885, ch. 145, provisions of Laws 1901, ch. 167 (§1918-35 et seq.) and Laws 1903, ch. 382, are still in full force and effect. Op. Atty. Gen. (396g-7), May 21, 1937.

A village operating under Laws 1885, ch. 145, has option of proceeding under that act or under Laws 1919, ch. 65, (§1815 et seq.) or under Laws 1925, ch. 382 (1918-15 et seq.), in making improvements referred to in each of such acts. Id.

Village council may pay up to one-half of cost of lateral sewer out of general fund. Op. Atty. Gen. (387b-1), Aug. 27, 1937.

Village organized under this act may construct a lateral sewer under either §1880, et seq., §1918-15, et seq., or §1918-35, et seq., but cost of improvement must be paid or assessed in accordance with particular statute under which improvement is being made. Id.

Village may construct storm sewer or drain without petition of property owners affected. Op. Atty. Gen., (387B-10), July 27, 1939.

34.

If levy of taxes exceeds 2% of assessed valuation of property in a village, county auditor must reduce the levy, unless more than 2% is necessary to meet maturing bond obligations and absolutely necessary governmental function. Op. Atty. Gen. (481a-4), Dec. 5, 1935.

On dissolution of village, council may levy only tax for one year, as limited by this section, and any further necessary amounts to pay obligation may be added by county auditor. Op. Atty. Gen. (469a-4), Aug. 20, 1936.

Village may levy an amount for corporate taxes which shall not exceed 2% of assessed valuation of property taxable in village, but not to exceed per capita limit prescribed by §2061. Op. Atty. Gen. (519q), Oct. 10, 1936.

Per capita village operating under Laws 1885, ch. 145, on cash basis may not levy taxes in excess of mill limitations contained in Laws 1933, ch. 72. Op. Atty. Gen. (519q), May 11, 1937.

35. One charged with violation of city ordinance is not entitled to a jury trial. Op. Atty. Gen. (477a), Mar. 2, 1938.

37. Two dollars appeal fee applies only to civil actions and not to criminal appeals from justice court to district court. Op. Atty. Gen. (266b-1), May 29, 1934.

It is duty of one appealing from conviction of violation of village ordinance to proceed in same manner as from judgment from justices of the peace in civil actions and not in manner provided in §9129 and it is his duty to serve notice of appeal upon village or its attorney and not upon county attorney. Op. Atty. Gen. (779a-5), Nov. 20, 1935.

38. Justice of the peace may not deduct costs in dismissed cases from fines collected in other cases, but should remit full amount and make a separate claim for any sum due him. Op. Atty. Gen. (199b-5), Jan. 13, 1938.

41. Laws 1885, c. 145, §41, governed a village operating under such act with respect to justice of the peace rather than Mason's Stat., 1927, §1181, if the village was not organized pursuant to Rev. Laws 1905. Op. Atty. Gen.

Offices of village marshal and village constable are not incompatible. Op. Atty. Gen., Nov. 29, 1933.

Village incorporated under Laws of 1885 may not fix compensation of village justice of the peace. Op. Atty. Gen. (266a-13), Sept. 7, 1934.

Constables are required to give bonds. Op. Atty. Gen. (472q), Jan. 17, 1935.

There should have been elected in December, 1929, in St. Louis Park two justices and two constables, the justices to hold only for two years under the constitution and the constables to hold office for two years and until election and qualification of successors, and any vacancy in office must be filled by council and there can be no election in even-numbered years to fill vacancy. Id.

Compensation of village constable is payable on a fee basis rather than on an hourly or salary basis. Op. Atty. Gen. (471l), Jan. 21, 1935.

No one but the state may question the jurisdiction of a village justice of the peace because he has filed his bond with the village clerk instead of the clerk of court, and his acts are valid as those of a de facto officer and convictions before him are valid. Op. Atty. Gen. (266a-2), June 3, 1935.

42. Village council may appoint constable to fill vacancy. Op. Atty. Gen., Feb. 10, 1933.

Provisions with reference to filling of vacancies in village offices have been superseded by Laws 1929, c. 413, §2 [§1152-10]. Op. Atty. Gen., Apr. 11, 1933.

Vacancies in village councils are to be filled by appointment and not by special election. Op. Atty. Gen. (471m), Apr. 12, 1935.

45. Per capita village operating under Laws 1885, ch. 145, on cash basis may not levy taxes in excess of mill limitations contained in Laws 1933, ch. 72. Op. Atty. Gen. (519q), May 11, 1937.

46. The compensation of the recorder of a village incorporated under Laws 1885, c. 145, as amended by Laws 1899, c. 115, is limited to the salary he receives and he is not entitled to collect fees from the village for filing papers. Op. Atty. Gen., Apr. 3, 1933.

Council may increase salary of clerk at beginning of second year of his term. Op. Atty. Gen. (470b), Jan. 28, 1938.

46(S). The compensation of the recorder is regulated by this section as amended in 1899, unaffected by Mason's Minn. Stat., §1178, which applies to villages operating under the 1905 act, and the salary fixed is for one year, and may be changed each year, notwithstanding Laws 1929, c. 413, extending the term of the recorder to two years. Op. Atty. Gen., Jan. 16, 1930.

Office of members of village council and village assessor are incompatible if the village is organized and operating under the 1885 Law, since the council is authorized to fix the compensation of officers and agents of the village. Op. Atty. Gen., Mar. 12, 1931.

A village organized under Laws 1885, c. 145, in making certain improvements may proceed either under the 1885 Laws or under Laws 1925, c. 382 [§§1918-15 to 1918-32], or Laws 1919, c. 65, [§§1815 to 1823]. Op. Atty. Gen., May 26, 1931.

Council has power to fix salaries of both clerk and treasurer. Op. Atty. Gen. (469b-5), Dec. 1, 1936.

40. Ordinance or resolution respecting intoxicating liquors must be published. Op. Atty. Gen., Mar. 14, 1934.

A single ordinance may be enacted for purpose of numbering old village ordinances which may be obsolete or superseded by other later ordinances, and it is not necessary to republish old ordinances. Op. Atty. Gen., Mar. 21, 1934.

An ordinance could not be repealed by adoption of a motion and its publication in minutes of meeting signed by president and recorder. Op. Atty. Gen. (477a), Mar. 14, 1935.

Word "rule" is synonymous with "ordinances, regulations and by-laws," and rules and regulations or by-laws must be passed with same formalities required for an ordinance proper. Op. Atty. Gen. (469a-5), Mar. 27, 1935.

Resolution establishing water, light, power and building commission need not be published. Op. Atty. Gen. (469b-6), Mar. 1, 1937.

Ordinances may be repealed by another ordinance or resolution or by some legislative act of similar formality. Op. Atty. Gen. (477a-1), Feb. 23, 1939.

51. A village organized under his act, but having a Water, Light, Power and Building Commission under §§1852 to 1860, may purchase a Diesel engine from another village without advertising for bids. Op. Atty. Gen. (624a-3), May 26, 1936.

Fire hose does not come within "village improvements." Op. Atty. Gen. (707a-15), Jan. 30, 1937.

Village may purchase fire truck without a call for bids. Op. Atty. Gen., (476b-7), Nov. 22, 1938.

Village council may not reimburse member of council for extra amount of work done in connection with street improvements and other public work. Op. Atty. Gen. (90a-1), Jan. 19, 1939.

This section has no application to contracts of a water, power, light and building commission. Op. Atty. Gen. (707a-15), April 24, 1939.

Water, light, and power commissions in villages operating under Laws 1885, should advertise for bids when constructing a filtration system at a cost of \$4,000. Id.

55. Statute prohibiting letting of contract where amount involved is more than a certain sum have no application to day labor work. Op. Atty. Gen. (707d), Oct. 16, 1933.

56. Dissolution of villages under this act is governed by §§56 and 57 of this act and not by Mason's Code 1927, §1227. Op. Atty. Gen. (469a-4), Aug. 20, 1936.

Contract right under franchise to annual installments for lighting streets terminates on dissolution of village. Id.

57. If there are not sufficient village funds from which to pay outstanding indebtedness, council may levy a tax to cover such deficiency, but such levy may not exceed maximum levy permitted by law for one year, and any further necessary amount may be added by county auditor. Op. Atty. Gen. (469a-4), Aug. 20, 1936.

#### 1112. Petition for election.

County board has no discretion and should grant petition if it is in due form. Op. Atty. Gen. (484e-4), April 21, 1939.

#### 1113. Notice of election.

Laws 1935, c. 162. Villages having population of more than 10,000 and valuation in excess of \$50,000,000 may hold elections at time of state elections, etc.

#### 1114. Inspectors—Return.

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

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

#### 1115. Incorporation, when effected.

Second petition may be presented within year if there is a substantial change in the territory covered. Op. Atty. Gen., July 18, 1931.

Tie vote is not an adverse vote so as to preclude filing of new petition within one year. Op. Atty. Gen. (472i), Oct. 26, 1937.

#### 1117. General powers and duties.

Counties and other municipalities can legally sell bonds to federal government under National Industrial Recovery Act. Op. Atty. Gen., Aug. 15, 1933.

Village is without authority to pay claim for damages to automobile rented to council committee and injured through negligence of member of council driving it. Op. Atty. Gen., Mar. 17, 1934.

Village council may sell real estate when no longer needed for village purposes without a vote of the people. Op. Atty. Gen. (469a-15), Apr. 26, 1934.

A village does not have power to levy a special act for maintenance of its streets. Op. Atty. Gen. (481b-7), Jan. 5, 1935.

Village has no power to levy a special tax for fire equipment except as authorized by §4031-11. *Id.*  
 Village which has no water, light and building commission may not levy a special tax for water and light purposes. *Id.*

Where village voted bonds to erect village auditorium and fire hall, to be used partly as village hall, and discovered that \$5,000 was insufficient, village council could issue warrants of indebtedness for the completion of the building without a vote of electors, provided village has funds on hand sufficient for that purpose or will have such funds when taxes levied have been collected. *Op. Atty. Gen. (476b-8), Jan. 26, 1935.*

A village council has power to construct a village hall without vote of electors, unless bond issue is necessary, or to erect a building as a memorial to war veterans with vote of electors, but has no authority direct to erect a community building with or without vote of electors. *Op. Atty. Gen. (476b-8), Feb. 11, 1935.*

Village council may sell land no longer needed without vote of people. *Op. Atty. Gen. (469a-15), Sept. 23, 1935.*

Real estate to be used for a particular purpose, such as city dump, may be purchased without advertising for bids. *Op. Atty. Gen. (469a-12), Nov. 12, 1936.*

Village may purchase property outside corporate limits for use as dumping grounds. *Op. Atty. Gen. (469a-12), Apr. 6, 1937.*

County or village may purchase land at sales held pursuant to Laws, 1935, c. 386 (§2139-15). *Op. Atty. Gen. (425c-10), May 4, 1938.*

Village may acquire land outside corporate limits to be used as dumping ground and may prescribe kind of refuse to be dumped there. *Op. Atty. Gen., (469c-2), Oct. 20, 1938.*

Village may purchase land for street widening purposes direct from owners. *Op. Atty. Gen., (396c-6), June 29, 1939.*

**1117-1. Villages may be incorporated within other villages.**—Whenever any village now or hereafter existing shall include 9,000 acres or more of land according to the United States government survey, and a portion of the land within such village has been or shall be improved by the construction of sidewalks, pavements, street curbs, street gutters and sewers, such portion so improved and land in such village adjacent or contiguous thereto, in all not exceeding 700 acres, and so conditioned as properly to be subjected to village government, if such area has a population of 500 or more, may become incorporated as a village separate and distinct from the existing village, provided the population of the remaining area shall not thereby be reduced below the limit fixed by law for the incorporation of a village. (Act Apr. 15, 1929, c. 184, §1.)

Annexation of platted lands from adjacent village. *Op. Atty. Gen. (469a-3), Jan. 21, 1936.*

**1117-2. Petition to County Board.**—100 or more of the voters, residing within the territory authorized to become incorporated as a village under this act, may petition the county board of the county in which the whole or larger part of said lands are situated to call an election for the determination of such proposed incorporation. They shall first cause to be taken a census of the resident population, and if such resident population be found to be 500 or more the petition aforesaid shall be presented within eight weeks thereafter. It shall set forth the boundaries of the territory proposed to be incorporated under this act, the quantity of land embraced therein, the number of actual residents thereon, and the name of the proposed village. It shall be verified by the oaths of at least three of the petitioners declaring that such census was accurately taken within the dates specified and that the statements made in the petition are true. (Act Apr. 15, 1929, c. 184, §2.)

**1117-3. Notice of hearing—Posting—Publication—Election.**—Upon the filing of a petition complying with the provisions of Section 2 hereof [§1117-2], the county board shall cause a copy thereof, with a notice attached fixing a time and place for holding such election, to be posted in three public places within the boundaries described and also three public places within the existing village outside of the territory proposed to be incorporated under this act. The time shall be not less than 20 nor more than 30 days after such posting, and the place shall be the usual and customary place for holding elections within the already existing

village. If there be a qualified newspaper published within said limits, there shall also be two weeks' published notice of such election. (Act Apr. 15, 1929, c. 184, §2A.)

**1117-4. Judges of election—Ballots.**—The board shall also appoint three inspectors, residents of said existing village, who shall act as judges of said election, and conduct the same, so far as practicable, in accordance with the laws regulating the election of town officers. Only voters residing within said existing village shall be entitled to vote. The ballot shall bear the words, "For incorporation—Yes—No," with a square after each of the last two words, in one of which the voter shall make a cross to express his choice. The inspectors shall at once make and file with the county auditor a certificate declaring the time and place of holding said election, that they have canvassed the ballots cast thereat, and the number cast both for and against said proposition. The certificate shall be signed and verified by at least two of said inspectors to the effect that the statements thereof are true. (Act Apr. 15, 1929, c. 184, §2B.)

**1117-5. County Auditor to certify to Secretary of State.**—The auditor shall attach said certificate to the original petition, with a copy of the resolution appointing said inspectors, and the original proof of the posting and also publication, if any, of the election notice, and file the whole, as one document, in his office. If the certificate show that the majority of the votes cast were in the affirmative, he shall forthwith make the transmit to the secretary of state a certified copy of said document to be there filed as a public record, and thereupon the incorporation shall be deemed complete. If territory in more than one county is embraced within such corporate limits, he shall also forthwith make and transmit to the auditor of each county in which such incorporated territory will be situated a certified copy of such document to be there filed as a public record, and thereupon the incorporation shall be deemed complete. If the vote be adverse, no subsequent petition shall be entertained within one year next after said election. (Act Apr. 15, 1929, c. 184, §2C.)

**1117-6. Election of officers.**—Upon the filing of said copy with the secretary of state the county board shall appoint three inspectors residing within the newly incorporated village and said inspectors of election shall give notice of a meeting of the resident voters for the organization of such village and the election of its officers, fixing therein the date and hour of the meeting, which shall be at least ten days, and not more than 20 days, thereafter. Such notice shall be posted and published as in case of the original election. The voters present at the appointed hour and place, by a majority vote taken viva voce, shall appoint two judges and one clerk of the election, who shall take the oath, and be governed in the conduct of the election, so far as practicable, by the laws regulating the choice of town officers. They shall open the polls by proclamation, and receive all lawful votes offered by resident voters during a period of at least six hours, and until 7 o'clock P. M. They shall give to each officer chosen a certificate of his election, and such officers having qualified according to law, shall forthwith assume their official duties. All proper expenses of the incorporation, organization, and election shall be a charge upon said village. (Act Apr. 15, 1929, c. 184, §2D.)

**1117-7. Villages to have all rights under general law.**—Villages incorporated under this act shall be vested with the rights, privileges and powers and subjected to the duties as set forth under the general village law of this state found in Sections 1117 to 1263, each inclusive, General Statutes 1923, as amended. The administration of the affairs of villages incorporated under this act shall be governed and controlled by said Sections 1117 to 1263, each inclusive, General Statutes 1923, as amended, so far as applicable. When

the context so requires the word "town" wherever used in said Sections 1117 to 1263, each inclusive, shall mean previously existing village. (Act Apr. 15, 1929, c. 184, § 3.)

**1117-8. Not to affect existing village.**—The territory of an existing village remaining after the incorporation of a village under this act shall continue to be and remain a village municipal corporation with its rights, privileges, powers and duties unchanged by the incorporation of a village under this act. (Act Apr. 15, 1929, c. 184, § 4.)

**1117-9. Vacancies in certain cases.**—In the event that an officer of an existing village resides within the territory incorporated under this act, the completion of the incorporation of a village under this act shall forthwith create a vacancy in the office held by the person who is a resident of the territory incorporated under this act. (Act Apr. 15, 1929, c. 184, § 5.)

**1117-10. Drawing of warrants unlawful in certain cases.**—That from and after January 1, 1930, no village now or hereafter having a population of more than 5,000 and less than 10,000, and an assessed valuation (exclusive of moneys and credits) of more than \$10,000,000 and less than \$20,000,000, shall draw any order or warrant on any fund until there is sufficient money in such fund to pay the same, together with all orders previously issued against said fund. (Act Apr. 23, 1929, c. 303, § 1.)

Act is constitutional. 178M342, 227NW202.

**1117-11. Officers may not incur indebtedness.**—Whenever from and after January 1, 1930, the expense and obligations incurred chargeable to any particular fund of such village 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 any prior year or years, no officer, board or official body of such village 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 village, but such additional indebtedness attempted to be created shall be a personal claim against the officer or members of the municipal board or body voting for or attempting to create the same; and in no event shall any officer, board or official body of such village have the power, and no power shall exist, to create any indebtedness which shall be a charge against the village in excess of the tax levy payable in that year for the use of the particular department, board or official body, less the amount required to be paid each year therefrom on bonds herein authorized and interest accruing thereon. (Act Apr. 23, 1929, c. 303, § 2.)

**1117-12. May sell certificate 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 village may for the purpose 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 certificates 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, and 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 the proceeds of said certificate shall be used, the total

amount of said certificates so issued, and the whole amount embraced in said tax levy for that particular purpose. They shall be numbered consecutively and be in the denominations of \$100.00 or a multiple thereof and may have interest coupons attached and shall be otherwise of such form and terms and be made payable at such place as will best aid in their negotiation, and the proceeds of the tax assessed and collected as aforesaid on account of said fund, and the faith and credit of such village 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. 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 certificates for any one year may, if necessary, be used to redeem unpaid certificates issued in a prior year. (Act Apr. 23, 1929, c. 303, § 3.)

Certificates of indebtedness issued during the year 1934 cannot be indirectly extended by renewal and combining two tax levies for years 1934 and 1935. Op. Atty. Gen. (59a-61), Feb. 26, 1935.

**1117-13. Village to be on cash basis.**—From and after January 1, 1930, such village shall be deemed for all purposes to be on a cash basis and shall thereafter remain on a cash basis. All taxes levied in 1929 shall be considered as the tax revenues for the year 1930, and thereafter in any such village taxes shall be levied as now provided by law not later than October of each year, but for the succeeding year. (Act Apr. 23, 1929, c. 303, § 4.)

**1117-14. May issue bonds in certain cases.**—If any such village prior to January 1st, 1929, has incurred by proper authority a valid indebtedness, excluding bonds, in excess of its cash on hand, such village 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, except that such bonds may be issued on a vote of the Council thereof, without a vote of the electors. (Act Apr. 23, 1929, c. 303, § 5.)

**1117-15. Tax levy.**—The Village Council of any village issuing bonds pursuant to the authority of this act shall, before the issuance thereof, by a resolution provide for a levy, for each year until the principal and interest 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 irrevocable until all of such bonds are paid. Said annual tax for the payment of said bonds and interest shall be derived from two sources: (1) 30 per cent of the amount necessary to pay said bonds and interest, and no more, shall be levied as a special tax in addition to the annual tax levy for general corporation purposes, water, light and building commission purposes, and library purposes for each year; and (2) 70 per cent of the amount necessary to pay said bonds and interest, shall be raised and obtained from each of the annual tax levies made by said village for general corporation purposes, water, light and building commission purposes, and library purposes for each year until all of said bonds are paid, in the same ratio as the tax levy for paying 70 per cent of the bonds and interest payable in any one year bears to the total annual maximum tax levy that could be made for general corporation purposes, water, light and building commission purposes, and library purposes for said year. (Act Apr. 23, 1929, c. 303, § 6.)

**1117-16. Limitation of tax levy.**—The amount which may be included by any such village in its annual tax levy in each year hereafter made for the following purposes shall not exceed these limitations:

(1) for general corporation purposes, 20 mills on the dollar of the taxable valuation of the village, less the amount hereinafter required to be set aside for the same year to pay principal and interest on bonds herein authorized; (2) for water and light and building commission purposes, 5 mills on the dollar of the taxable valuation of the village, less the amount hereinbefore required to be set aside for the same year to pay principal and interest on bonds herein authorized; (3) for library purposes, 3 mills on the dollar of the taxable valuation of the village, less the amount hereinbefore required to be set aside for the same year to pay principal and interest on bonds herein authorized. (Act Apr. 23, 1929, c. 303, §7.)

**1117-17. May not contract indebtedness.**—Whenever any department, board or commission of such village having the power to expend money which shall not have been provided by law with a special tax levy, such department, board or commission shall not during any year contract any indebtedness, or incur any pecuniary liability, which shall be in excess of the sum that may be allotted to its department for said year by the Village Council. The Village Council shall by resolution prior to February 1, each year, set aside for each such department, board or commission such sum as it deems necessary and adequate for the proper operation thereof. The amount to be so set aside by the Village Council for the Park Department from the general corporation tax of the village, within the limits now provided by law, shall in no case exceed the amount that 8/10th of one mill will yield on the dollar of the taxable valuation of said village. (Act Apr. 23, 1929, c. 303, §8.)

**1117-18. Village recorder to keep record.**—The Village Recorder shall keep a record showing accurately the amount allotted to each board or governing body for the calendar year, and the amounts incurred and expended from time to time by the Village Council and each department of such village. A record of expenditures for the Village Council and all its departments shall be presented to and examined at a regular meeting once each month by the Village Council and shall show the true condition of affairs at the date of such meeting. (Act Apr. 23, 1929, c. 303, §9.)

**1117-19. Violation a misdemeanor.**—Any member of the village council or other governing board or body, or other village officer or employee, knowingly participating in, and authorizing any violation of this act shall be guilty of a misdemeanor punishable by a fine not exceeding \$100.00 or by imprisonment in the county jail not exceeding three months for each offense; and every 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 village, and no claim therefor shall be allowed by the village council nor any governing board; nor shall the village recorder or any other village or department officer or employee issue or execute, nor shall the village treasurer pay any warrant or certificate of indebtedness issued on account thereof. Each member of the village council or of any village board or other village officer or employee so participating in, or authorizing, any violation of this act shall be individually liable to the village 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 village or any such other person for such damages until all claims by reason thereof have been fully paid. Each member of the village council or village board present at a meeting of the board or council when any action is taken with reference to paying money or incurring indebtedness or entering into any contract shall be deemed to have participated

and authorized the same unless he shall have caused his dissent therefrom to be entered upon the minutes of the meeting. (Act Apr. 23, 1929, c. 303, §10.)

**1117-20. Members violating provisions may be suspended.**—Any member of the village council or governing 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. 23, 1929, c. 303, §11.)

**1117-21. Last federal census to govern.**—For the purpose of this act, the last Federal census of population taken prior to the calendar year in which any levy may be made shall govern and shall be conclusive in determining hereunder the population of any such village. (Act Apr. 23, 1929, c. 303, §12.)

**1117-22. Provision severable.**—When a village 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. 23, 1929, c. 303, §13.)

**1117-23. Inconsistent acts repealed.**—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. 23, 1929, c. 303, §14.)

**1117-24. This act shall take effect and be in force from and after its passage and all acts and parts of acts inconsistent herewith are hereby repealed and declared of no effect in so far as they may be inconsistent with this act.** (Act Apr. 23, 1929, c. 303, §15.)

**1120. Extending boundaries.**

Upon annexation of territory from a township by a village, apportionment of indebtedness is wholly statutory, and legislature may provide for a division, or it may provide for no division at all, and remedy in any particular case is with legislature. Op. Atty. Gen. (440a), Mar. 25, 1937.

A village operating under Laws 1885, ch. 145, may annex land pursuant to procedure provided in this section. Op. Atty. Gen. (484e-1), June 26, 1937.

Provision that ordinance be filed with secretary of state is mandatory. Id.

**1120½. Territory may be detached from villages in certain cases.**—The owner or owners of any unplatted tract or tracts of land constituting a compact and contiguous tract of not less than 30 acres, situated within the corporate limits of any village in this state, occupied and used solely for agricultural purposes or the owner of any platted lands occupied and used solely for agricultural purposes constituting a compact and contiguous tract of not less than 10 acres not within 20 rods of the platted portion of such village and situated within its limits, may petition singly, or if there be more than one such owner, jointly, the board of county commissioners of the county in which said tract or tracts of land is situated, for an order detaching said tract or tracts from said village. Upon filing of the said petition in the office of the county auditor of said county the board of county commissioners thereof shall, at their next meeting thereafter, fix a time and place for the hearing of such petition, which time shall be not less than 30 days thereafter, and shall direct a notice of such hearing to be issued and signed by the county auditor of said county on behalf of such board, which said notice shall state the name of such petitioner, or petitioners, describe the tract or tracts of land sought to be detached and the time and place of such hearing, which said notice said petitioner, or petitioners, shall cause to be served upon the president of the village council of such village, or the recorder thereof, at least 20 days before the day of hearing, and by posting three copies of such notice in three of the most public places in said village, or in lieu of such posting said notice shall be published in the official paper of such village for two successive weeks, once in each week, in case there shall be a legal newspaper printed and published in said village. Upon the hearing of



said petition at the time and place so fixed, if the board of county commissioners shall find that said land is owned by the petitioner, or petitioners, and is used solely for agricultural purposes and that the same may be so detached from said village without unreasonably affecting the symmetry of the settled portion thereof, and that the same is so conditioned as not properly to be subjected to village government or is not necessary for the reasonable exercise of the police powers or other powers or functions of such villages, such board of county commissioners shall make an order detaching such land from said village, and thereupon said tract or tracts of land shall become detached therefrom, and shall thereafter form a part of the township in which they were originally situated, or, if such township has ceased entirely to exist or has ceased to function as a town or township for a period of 15 years next preceding the passage of this Act, the land so detached shall become a part of the township adjoining thereto, and if such land join two or more townships, the county board shall decide to which of such adjoining townships such detached tract or tracts shall be attached, or the land so detached therefrom may be by such board of county commissioners formed into and established as a new town, the name of which new town shall be determined and designated by such board of county commissioners, provided, however, that such new town shall have not less than 36 square miles of territory. If such village were organized prior to the time when the territory of Minnesota became a state and before the organization of the township in which such land was originally situated, the land so detached shall become a part of the township adjoining thereto, and if such land adjoin two or more townships the county board shall decide to which of such adjoining town or townships such detached tract or tracts shall be attached, and shall in all things be subject to the town government of such township, and not in any manner under the jurisdiction of such village, and such order shall be filed in the office of the county auditor of such county and a duplicate thereof shall be filed in the office of the village recorder of such village within five days after the same shall have been made.

This Act shall apply only to the following villages, namely:

1. Villages having a population of 350 or less persons and containing more than 160 acres of land.
2. Villages having a population of more than 350 and less than 700 persons and containing more than 320 acres of land.
3. Villages having a population of more than 700 persons and containing more than 640 acres of land.

Any person or party aggrieved may appeal from such order to the district court of the county upon the following grounds:

1. That the county board has no jurisdiction to act.
2. That it has exceeded its jurisdiction.
3. That its action is against the best interests of the territory affected.

Such appeal shall be taken by serving upon the county auditor within thirty days from the making of the order a notice of appeal, specifying the grounds thereof. The appellant shall also execute and deliver to the auditor a bond to the county in the sum of one hundred dollars, to be approved by the county auditor, conditioned for the payments of all costs taxed against the appellant on such appeal. Such further proceedings shall be had upon such appeal as upon other appeals from the county board.

The provisions of this Act relating to appeals shall not apply to any action or proceeding now pending involving the separation of land from any village. ('09, c. 138, §1; '17, c. 477; '19, c. 421; '21, c. 451; '23, c. 177; Apr. 21, 1933, c. 433; Apr. 1, 1935, c. 90; Apr. 12, 1937, c. 195, §1; Apr. 14, 1939, c. 250.)

Certain lands may be separated from certain villages in certain counties in certain cases. Laws 1939, c. 326.

Detachment of island in county of over 450,000 population, from certain villages and towns and attaching it to other villages and towns. Laws 1939, c. 414.

Sec. 2 of Laws 1909, c. 138, omitted from 1927 compilation, is amended by Laws 1931, c. 95. See post, §1120 ½ a.

Statute makes severance from a municipality of agricultural lands mandatory if stated conditions precedent are found to exist. *Vaubel v. V.*, 194M621, 261NW869. See *Dun. Dig.*, 6521.

On appeal from order of county board denying a petition to sever agricultural land from a village, trial in district court is de novo within field of inquiry limited by statute. *Id.*

Landowner may proceed under this section for detachment of land from village incorporated under special law. *Op. Atty. Gen.*, Feb. 14, 1933.

Twenty rod requirement has no application to unplatted tracts of land of not less than forty acres but only to platted lands of not less than 10 acres. *Op. Atty. Gen.* (469a-3), Dec. 18, 1936.

Subsection 3 refers to acreage of village at time petition for detachment is presented to county board. *Id.*

Petition to detach land from village should not be denied because village will thereafter consist of less than 160 acres. *Op. Atty. Gen.* (469a-3), March 2, 1939.

**1120 ½ a. Tax levy on detached land.**—Such separation from said village shall not release any such tract of land from liability on account of any outstanding indebtedness of such village existing at the time of its separation therefrom. The county auditor of the county in which such detached lands are situated shall spread against the territory so detached such levies of taxes as are necessary to enforce the liability for indebtedness herein provided. Such levies shall be made each year at a rate equal to the rate which is levied by the village upon the property remaining within the village for the purpose of paying off such indebtedness. The county auditor may require the village clerk to certify to him statements of the amount of indebtedness outstanding at the time of such separation and such other information as may be necessary to spread such levy and may also require that the village separate in its tax levies the moneys levied for the purpose of paying off such indebtedness. The moneys raised from such levies, both upon territory within such village and upon the territory detached therefrom, shall be paid to the village to be held in a special fund available only for the purpose of paying off such indebtedness. (Laws 1909, c. 138, §2; Mar. 27, 1931, c. 95, §1.)

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.

This section is not repealed. The word "Indebtedness" refers to outstanding orders as well as bonds, without distinction as to whether it is funded or floating. The apportionment is to be made by the county auditor. *Op. Atty. Gen.*, Mar. 20, 1930.

**1120 ½ b. Same—application.**—This act shall apply where the detachment of such territory has taken place prior to the enactment hereof but where any portion of such indebtedness remains unpaid, as well as where proceedings for such separation are taken hereafter. (Laws 1909, c. 138, §3; added Mar. 27, 1931, c. 95.)

**1120 ½ c. Apportionment of taxes.**—Whenever, pursuant to Laws 1935, Chapter 90 [§1120 ½], land shall have been heretofore or within six months after the passage of this act detached from any village by order of the board of county commissioners of the county in which such land is situated and such land shall have become a part of the township in which it was originally situated or has become a part of a township adjoining thereto, such board of county commissioners is hereby authorized to apportion between the village from which such land has been detached and the town of which it has become a part, the taxes levied and assessed against such land prior to, and collected subsequent to the effective date of such detachment. (Jan. 18, 1936, Ex. Ses., c. 49.)

**1120 ½ d. Rehearing in detachment proceedings.**—Whenever, pursuant to proceedings had under Chapter 90, Laws of 1935 [1120 ½], and Section 789, Mason's Minnesota Statutes of 1927, the county board of any county shall have undertaken within one year

prior to the passage of this Act to detach territory from a village and attach the same to an adjoining town and thereafter to set the same up as a separate town, a majority of the owners of land in such town so attempted to be established may petition the county board to reconsider the entire proceedings leading up to the order establishing the town, and if the establishment of the town be approved as hereinafter provided to determine and fix the boundaries thereof to be as set forth in the petition and to apportion as between the village from which such land was detached and the new town any taxes levied and assessed against such land prior to and collected subsequent to the date of the first order of the board establishing such town. Upon the filing of such petition in the office of the county auditor of said county, the county board thereof at their next meeting thereafter shall fix a time and place for the hearing of such petition, which time shall not be less than 30 days thereafter and shall direct the notice of such hearing to be issued and signed by the county auditor of said county on behalf of such board, which said notice shall state the names of such petitioners, describe the boundaries of the territory to be included in the new town, and state the time and place of such hearing, which notice the county auditor shall cause to be served upon the president of the council of such village or the recorder thereof, and the clerk of such town, at least 20 days before the day of hearing, and by posting three copies of such notice in three of the most public places of said village and town. Upon the hearing of said petition at the time and place so fixed, the county board shall review all prior proceedings theretofore had in the premises, and if it finds that it is for the best interests of the territory affected that the establishment of the new town be confirmed, it shall so order and fix the boundaries thereof, or it may vacate the entire proceedings and order the territory to be reattached to the village.

If the organization of the town be confirmed, the county board shall have power to apportion as between the village and the town all taxes levied and assessed prior to and collected subsequent to the effective date of the original order establishing the town. (Apr. 5, 1937, c. 152, §1.)

Sec. 2 of Act Apr. 5, 1937, cited, provides that the Act shall take effect from its passage.

#### 1122-1. Detachment of unplatted lands from certain villages and attachment thereof to contiguous villages.

Annexation of platted lands from adjacent village. Op. Atty. Gen. (469a-3), Jan. 21, 1936.

#### 1124. Agreement—Petition—Submission to voters.

Annexation of platted lands from adjacent village. Op. Atty. Gen. (469a-3), Jan. 21, 1936.

#### 1126. Separate election and assessment district.

If village has not been separated from town, then the valuation of all property in the township, including the property in the village, is to be taken into consideration for determining the taxable value of the property of the township. Op. Atty. Gen., Mar. 10, 1931.

Unless village has been separated from the town, a resident of village is entitled to participate in the affairs of the town and to hold office. Op. Atty. Gen., Mar. 27, 1931.

The mere organization of the village does not of itself operate to separate the village from the town for election and assessment purposes and does not require an apportionment of the debts or funds. Op. Atty. Gen., May 19, 1931.

On separation of village from town, all village officers who do not reside in the village are disqualified and successors must be appointed by the village council. Op. Atty. Gen., Feb. 15, 1932.

Question of separation of village from town is not determined at a town meeting by the electors of the town, but by the electors of the village at a special or regular village election. Op. Atty. Gen., Feb. 15, 1932.

When town wishes to separate from village there must be a petition by voters living within or without village and residents of both town and village vote on the question, but if village wishes to separate from town residents of village may vote on the question without notice to the town, and without vote of persons outside village. Op. Atty. Gen. (440e), March 30, 1933.

#### 1127. Joint property, etc.

When village is organized personal property such as fire equipment and road equipment remains the property of the town. Op. Atty. Gen., May 19, 1931.

#### 1128. Apportionment of money and debt.

On separation village is not charged with any part of floating indebtedness of town, but is chargeable with support of paupers and tubercular persons resident in village. Op. Atty. Gen., Nov. 23, 1929.

Where bonds for roads and bridges were issued by a town before organization of a village, the bonds should be apportioned. Op. Atty. Gen., May 19, 1931.

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.

Where village was originally carved out of township, and a bonded indebtedness of township was apportioned there could be no further apportionment of indebtedness where village subsequently annexed additional territory from the town. Op. Atty. Gen. (484e-1), Apr. 17, 1934.

A village incorporated but not yet having voted to become a separate election and assessment district is not entitled to any money collected for real estate taxes. Op. Atty. Gen. (440h), June 22, 1936.

Word "collected" is used in broad sense of not yet distributed by county offices. Id.

There should be no division made of personal property tax money. Id.

Separation of village from township as affecting liability for hospitalization of injured persons. Op. Atty. Gen. (339o-5), Mar. 4, 1937.

If floating indebtedness of town was not an obligation of territory embraced within village at time of its incorporation, and separation as a taxing district, it is not liable therefor, but in other cases village remains liable for its share of outstanding orders. Op. Atty. Gen. (440-a), April 13, 1939.

#### 1134. Elections—Officers—Terms—Vacancies.

See §§1152-23 to 1152-30.

Repealed by Act Apr. 27, 1929, c. 413, §6, so far as inconsistent with repealing act, set forth, post, as §§1152-9 to 1152-15.

Vacancies created in office of justice of the peace by Laws 1929, c. 413. Op. Atty. Gen., Dec. 20, 1929.

Officers elected Mar. 12, 1929, took office the first Tuesday in April in a village operating under Laws 1885, c. 145, §41. Op. Atty. Gen.

There is no provision for compensation of treasurers in villages operating under the 1905 law, §1073, applicable to towns probably not applying. Op. Atty. Gen., Apr. 15, 1930.

Where village treasurer resigns, vacancy must be filled by appointment by the village council for the remainder of the term, and not by a special election. Op. Atty. Gen., Dec. 18, 1931.

Where clerk permitted village constable to sign oath 8 days after election, mayor was without authority to stop bondsmen from signing two months after election, no steps being taken to fill vacancy. Op. Atty. Gen., Feb. 10, 1933.

In case of vacancy in village office, incumbent holds over until appointment by village council. Op. Atty. Gen., Dec. 1, 1933.

Person receiving next highest number of votes for justice of the peace is not elected to the office because person who did receive highest number failed to qualify. Op. Atty. Gen. (266a-5), Dec. 10, 1935.

Village council should fix salary of treasurer at any sum up to \$100 if amount of money paid in exceeds \$5,000. Op. Atty. Gen. (456f-3), Dec. 31, 1935.

There is no specific time limit within which village officers must qualify, but a vacancy occurs if they do not qualify within a reasonable time. Op. Atty. Gen. (471h), Jan. 7, 1936.

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

Residence was in village where house builder thought he was constructing his dwelling, and where he intended to vote, though boundary line between two villages passed through his dwelling. Op. Atty. Gen. (490j-1), Feb. 14, 1936.

Council of village of Graceville consists of president, recorder and three trustees, and vote of any three is sufficient, president and recorder having right to vote. Op. Atty. Gen. (471o), Feb. 18, 1936.

Where one justice resigned and no successor was ever appointed or elected to fill vacancy for a number of years, and village clerk prepared ballot intended for election of one justice only, and electors cast ballot for only one justice, there was election of only one justice and a vacancy existed as to the other justice, though several persons received votes. Op. Atty. Gen. (266b-6), Apr. 28, 1938.

Office of village justice becomes vacant on his removal from village, unless his new residence is in town in which village is located and town and village are not separated for election purposes. Op. Atty. Gen., (266a-9), Oct. 1, 1938.

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

Provision that vacancies in office may be filled for remainder of the year by the village council has been superseded by Laws 1939, c. 346, part 11, c. 2, §7, providing that vacancy shall be filled for remainder of term. Op. Atty. Gen., (471i), August 8, 1939.

**1135. Hours for opening and closing polls in villages.**

See §401-1.

**1136 to 1152-15. [Repealed Apr. 21, 1939, c. 345, Pt. 12, §1, ante §601-12, effective Aug. 1, 1939.]**

**ANNOTATIONS UNDER REPEALED SECTIONS  
1136 TO 1152-15**

**1136. Hours for opening and closing polls in villages.** Reenacted as §601-11(2)b. Corrupt Practices Act [§§538 to 579] does not apply to elections in townships of less than 5,000 population. 174 M333, 219NW284.

**1137. Affidavit of candidate, etc.** Reenacted as §601-11(2)c. This section is mandatory upon all towns of over 5000 and controls as to time of filing for town offices. Op. Atty. Gen., Feb. 26, 1934.

Time of filing for office in town of Stuntz, having population of over 5,000 persons, is governed by §1137 and not §1140. Op. Atty. Gen. (266a-12), Oct. 23, 1936.

**1138. Offenses and penalties.** Reenacted as §601-11(2)d.

**1139. Village or township officers may be elected under Australian ballot system.**

In villages operating under caucus system more than one ballot may be used. Op. Atty. Gen., Dec. 22, 1933.

Section 1806 applies to time for filing of affidavits of candidacy in city of Chatfield. Op. Atty. Gen. (359a-21), Apr. 19, 1938.

**1140. Filing by candidates for village or town offices, etc.**

Reenacted as §601-11(2)c. If no one files for village mayor at annual election, voters may write in names of candidates for such office. Op. Atty. Gen., Dec. 1, 1933.

Section 1137 controls in all towns of over 5000 population as to time for filing for town office. Op. Atty. Gen., Feb. 26, 1934.

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.

Election will not be set aside because of irregularity on part of town clerk in permitting names to be placed on ballot. Op. Atty. Gen. (434b-4), Mar. 20, 1935.

In village election, ballots should be initialed and the judge, rather than the voter, should deposit ballots in ballot box. Op. Atty. Gen. (28a-6), Dec. 11, 1935.

Section 1146 applies only to villages having a population of 8,000 or more and in other villages candidates for office may file affidavits of candidacy 10 days before election pursuant to §1140. Op. Atty. Gen. (184i), Dec. 12, 1935.

Time of filing for office in town of Stuntz, having population of over 5,000 persons, is governed by §1137 and not §1140. Op. Atty. Gen. (266a-12), Oct. 23, 1936.

Section 1806 applies to time for filing of affidavits of candidacy in city of Chatfield. Op. Atty. Gen. (359a-21), Apr. 19, 1938.

**1146. Affidavit of candidate.** Amended Apr. 16, 1931, c. 177.

A village or city clerk is not required to accept filings for office after the usual hour of closing, but may legally accept any filing any time up to midnight. Op. Atty. Gen., Dec. 10, 1931.

Section 1146 applies only to villages having a population of 8,000 or more and in other villages, candidates for office may file affidavits of candidacy 10 days before election pursuant to §1140. Op. Atty. Gen. (184i), Dec. 12, 1935.

**1149. Polls open from 8 A. M. to 8 P. M.** See Laws 1929, c. 198, ante, §401-1, fixing time of opening and closing polls and repealing inconsistent acts.

**1152-1.** Sections 1152-1 to 1152-8 were repealed by Act Apr. 27, 1929, c. 413, §6, so far as inconsistent with repealing act, set forth, post, as §§1152-9 to 1152-15.

**1152-2. Election of officers in certain villages—Terms—Vacancies.**

Where village councilman resigns it is mandatory that the council appoint to fill the vacancy, and they have no power to call an election for that purpose. Op. Atty. Gen., June 15, 1931.

Office of village treasurer and that of street commissioner are not incompatible. Op. Atty. Gen., Apr. 5, 1932.

Treasurer is not member of village council. Op. Atty. Gen., Apr. 5, 1932.

**1152-4. Same—Date—Terms—Judges of Municipal courts.**

Op. Atty. Gen., Feb. 19, 1934; note under §1089.

Term of one elected to office of judge begins Jan. 1, following election. Op. Atty. Gen. (307a), Dec. 24, 1935.

**1152-9. Application of act.**

Reenacted as §601-11(2)e.

Consisted of Act Apr. 27, 1929, c. 413.

Does not affect township elections. Op. Atty. Gen., June 20, 1929.

This act applies to Janesville, created by Sp. Laws 1877, c. 18. Op. Atty. Gen., Nov. 14, 1929.

Applies to New Trier incorporated under Sp. Laws 1874, c. 10, as amended by Sp. Laws 1875, c. 38. Op. Atty. Gen., Nov. 15, 1929.

Does not apply to Litchfield. Op. Atty. Gen., Nov. 13, 1929.

Does not apply to St. Vincent. Op. Atty. Gen., Nov. 26, 1929.

Officers elected for terms involving fractional parts of years, in the readjustment, are entitled to only fractional parts of their yearly salaries. Op. Atty. Gen., Dec. 12, 1929.

Offices of village justices whose terms expire Apr. 1, 1930, then become vacant and vacancy exists until the December, 1930, election. Offices expiring April 1, 1931, become vacant on that date until the December, 1931, election. The vacancies are to be filled by appointment by the village council and not by the Governor. Op. Atty. Gen., Dec. 20, 1929.

This act repeals Laws 1875, c. 139, §15, and vacancy in office of justice of peace in village of Appleton may be filled by village council. Op. Atty. Gen., Mar. 24, 1933.

This act applies to villages operating under Laws 1885, ch. 145. Op. Atty. Gen. (184i), Dec. 12, 1935.

**1152-10. Officers to be elected.**

Consisted of Act Apr. 20, 1929, c. 413, §2; Apr. 2, 1937, c. 137, §1.

Reenacted as §601-11(2)f.

Laws 1875, c. 139, referred to in this section was repealed by R. L. '05. See Mason's Minn. St. 1927, §10962.

Granting petition for leave to file quo warranto to test appointment is discretionary. State v. Johnson, 201M219, 275NW684.

Council of village may fill vacancy in office of village assessor. Op. Atty. Gen., June 5, 1931.

Where village councilman resigns, it is mandatory that the council appoint to fill the vacancy, and they have no power to call an election for that purpose. Op. Atty. Gen., June 15, 1931.

Vacancy in common council must be filled as provided by this act, as Mason's Stats., §1172, is not applicable to the filing of vacancies. Op. Atty. Gen., June 20, 1931.

Where village treasurer resigns, vacancy must be filled by appointment by the village council for the remainder of the term, and not by a special election. Op. Atty. Gen., Dec. 18, 1931.

Where office of village trustee becomes vacant, the vacancy is to be filled by appointment by the village council, term of appointee to expire at the end of the term at which the elected officer would have been retired. Op. Atty. Gen., Dec. 19, 1931.

When person elected as justice refuses to qualify, there is created a vacancy to be filled by appointment. Op. Atty. Gen., Feb. 23, 1932.

Question whether resignation of president of council of the village of Buhl would become effective immediately without any action on the part of the board discussed. Op. Atty. Gen., Mar. 3, 1932.

Vacancy in office of assessor in village of Litchfield must be filled by special election. Op. Atty. Gen., Apr. 14, 1932.

Clerk of village incorporated under Laws 1885, c. 145, has right to vote as member of council. Op. Atty. Gen., Feb. 3, 1933.

Vacancy in office of village justice of peace may be filled by village council. Op. Atty. Gen., Feb. 3, 1933.

Village recorder has a vote in council meetings. Op. Atty. Gen., Apr. 11, 1933.

This section supersedes provisions in Laws 1885, c. 145, with reference to filling vacancies in village offices. Op. Atty. Gen., Apr. 11, 1933.

Word "may" should be construed as if "shall." Op. Atty. Gen., Apr. 11, 1933.

Village clerk and president are entitled to vote as members of council. Op. Atty. Gen., May 6, 1933.

This act applies to villages organized under Laws 1895, c. 145, and "recorder" has been changed to "clerk." Op. Atty. Gen., May 22, 1933.

Governor cannot remove village constable. Op. Atty. Gen., Aug. 31, 1933.

Offices of village attorney and village treasurer are incompatible. Op. Atty. Gen., Jan. 18, 1934.

One appointed to fill vacancy holds office for remainder of term of former officer and not merely until next annual village election. Op. Atty. Gen. (307L), Sept. 27, 1934.

There should have been elected in December, 1929, in St. Louis Park two justices and two constables, the justices to hold only for two years under the constitution and the constables to hold office for two years and until election and qualification of successors, and any vacancy in office must be filled by council and there can be no election in even-numbered years to fill vacancy. Op. Atty. Gen. (472q), Jan. 17, 1935.

Vacancies in village councils are to be filled by appointment and not by special election. Op. Atty. Gen. (471m), Apr. 12, 1935.

There is no specific time limit within which village officers must qualify, but a vacancy occurs if they do not

qualify within a reasonable time. Op. Atty. Gen. (471h), Jan. 7, 1936.

It is mandatory on village council to appoint a new president to fill vacancy. Op. Atty. Gen. (471m), June 5, 1936.

Village trustee can run for office of village president without resigning as member of council, but if he is elected to that office a vacancy is automatically created when he qualifies, which vacancy should be filled by village council for remainder of term. Op. Atty. Gen. (471h), Nov. 23, 1936.

Where one elected to office of president of a village refuses to qualify within a reasonable time, a vacancy exists, and former officer does not hold over. Op. Atty. Gen. (471m), Jan. 13, 1937.

All villages operating under the general law as well as those operating under Laws 1885, ch. 145, are to be governed by this act, insofar as it relates to elections, terms of office, and filling of vacancy. Id.

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

This section so far as inconsistent supersedes Laws 1885, c. 145, §21. Op. Atty. Gen. (470i), Nov. 9, 1937.

"May" is construed as "shall" and vacancies are to be filled for remainder of term rather than until next election. Id.

This act applies to villages operating under Laws 1885, c. 145. Op. Atty. Gen. (471m), May 17, 1938.

Vacancy in office of president of council is to be filled by council, and any qualified voter is eligible for appointment. Id.

Village justice of the peace must be a resident of the village. Op. Atty. Gen. (266a-8), Aug. 10, 1938.

One appointed to replace a disqualified village trustee is entitled to serve entire unexpired term. Op. Atty. Gen., (471m), Nov. 18, 1938.

Vacancy in office of village assessor is to be filled by appointment by council for remainder of term, and not until next village election. Op. Atty. Gen., (12b-5), Nov. 22, 1938.

On election of village justice to office of president of village council, and his qualification therefor, his office as justice is automatically vacated, and vacancy may be filled by village council. Op. Atty. Gen. (358d-5), Dec. 13, 1938.

#### 1152-11. Date of election.

Consisted of Act Apr. 27, 1929, c. 413, §3.

#### 1152-12. Terms of office.

Consisted of Act Apr. 27, 1929, c. 413, §4; Apr. 10, 1939, c. 185.

Reenacted as §601-11(2)g.

There is no specific time limit within which village officers must qualify, and they may qualify at any time before Jan. 1, and within any reasonable time subsequent thereto. Op. Atty. Gen. (471h), Dec. 26, 1935.

Extension of term of recorder, held not to affect prior law as to annual fixing of compensation. Op. Atty. Gen., Jan. 16, 1930.

A person appointed to fill a vacancy in a village office holds until the expiration of the term. Op. Atty. Gen., Nov. 13, 1931.

Notwithstanding Mason's Stat. 1927, §1075, village assessors should be elected in even numbered years. Op. Atty. Gen., Nov. 13, 1931.

A village assessor elected in December, 1930, should hold office until Dec. 31, 1932, but his successor should have been elected at the December, 1931, election. Op. Atty. Gen., Nov. 30, 1931.

Where through oversight no village assessor was elected in Dec., 1930, the old assessor should hold over for the entire term until Dec. 30, 1932, and his successor should be elected at the Dec., 1932, election. Op. Atty. Gen., Nov. 30, 1931.

Members of newly elected village council who had qualified for office before January 1, took office immediately after midnight on New Years Eve. Op. Atty. Gen. (471i), Jan. 21, 1935.

#### 1152-13. Fiscal year to be calendar year.

Consisted of Act Apr. 27, 1929, c. 413, §5.

#### 1152-14. Laws repealed.

Consisted of Act Apr. 27, 1929, c. 413, §6.

#### 1152-15. Provisions severable.

Consisted of Act Apr. 27, 1929, c. 413, §7.

**1152-16. Villages may provide for election districts.**—That any Village organized and existing under Chapter 145 of the General Laws of Minnesota for 1885, and the amendments thereto [Mason's Minn. St. 1927, pp. 218 to 226], having a population of 10,000 or more, may, by adopting the provisions of this Act, at a special election called therefor, as hereinafter provided, divide such Village into six election districts, provide for the election of two Trustees in and for each election district, the election of the President for two year terms, and the appointment of the Village Recorder by the Council. (Act Apr. 20, 1933, c. 343, §1.)

**1152-17. Terms of officers.**—That at the first annual Village election held after the adoption of the

provisions of this Act in the manner hereinafter set forth the Village President shall be elected for a term of two years; one Trustee shall be elected in each district for a term of one year and one Trustee shall be elected in each district for a term of two years, and at each second annual election thereafter the President shall be elected for a term of two years and at each annual election thereafter one Trustee shall be elected in each district for a term of two years and a majority of the members of the Council shall constitute a quorum. (Act Apr. 20, 1933, c. 343, §2.)

**1152-18. Salaries of officers.**—The salaries of the President and Trustees shall be fixed by the Council and the President's salary shall not exceed Two Hundred (\$200.00) Dollars per month and each Trustee's salary shall not exceed Fifty (\$50.00) Dollars per month, and the Recorder shall be appointed by the Council and may be removed at any time by a majority vote of all members of the Council. The salary of the Recorder shall be determined and allowed by the Council. (Act Apr. 20, 1933, c. 343, §3.)

**1152-19. Submission to vote of people.**—Upon the filing of a petition for an election for the adoption of the provisions of this Act, signed by five per cent of the voters duly registered at the time of the preceding annual Village election, the Village Council shall provide for the submission of the provisions of this Act to the voters at the next annual Village election, and if a majority of those voting on the question shall vote in favor of the adoption of the provisions of this Act, the Council shall declare the same duly adopted, provided, however, that if the provisions of this Act are not adopted at such election, the question may be submitted at a subsequent annual Village election in the manner provided herein for such elections. (Act Apr. 20, 1933, c. 343, §4.)

**1152-20. Judges to appoint commission.**—On the adoption of the provisions of this Act, the Judges of the District Court of the district in which such Village is located, shall, upon receiving due notice thereof, appoint a commission of fifteen free holders of such Village which shall, within thirty days after their appointment, divide such Village into six election districts, each to contain not less than five hundred legal voters, all such districts to have approximately the same number of legal voters, as near as may be, and the certificate describing the election districts established by said commissioners, or a majority of them, shall be forthwith filed with the Village Recorder. The Council shall provide sufficient voting precincts in each election district. (Act Apr. 20, 1933, c. 343, §5.)

**1152-21. Officers to serve unexpired term.**—On the adoption of the provisions of this Act the Village President and the Village Recorder may each serve the unexpired term to which he was elected, and each Trustee, now serving on said Village Council may serve as a Trustee at large during his respective unexpired term at the rate of compensation as then received as by law provided. (Act Apr. 20, 1933, c. 343, §6.)

**1152-22. Application of act.**—This Act shall not be construed as abridging, restricting or in any other manner changing the powers of any such Village which is now organized and operating under Chapter 145 of the General Laws of 1885 or any other Acts supplementary thereto or amendatory thereof. (Act Apr. 20, 1933, c. 343, §7.)

**1152-23. Village elections in certain villages.**—Every village in the State of Minnesota having a population of more than 10,000 and an assessed valuation in excess of \$50,000,000.00 may adopt the provisions of this Act as hereinafter set forth. Any village which may wish to avail itself of the provisions of the Act may do so by a resolution of its Village Council, expressly accepting the provisions hereof, which resolution shall be adopted by a majority vote of its Council. The adoption of such resolution shall be a con-

dition precedent to the exercise of any of the powers herein granted. After the adoption of such resolution, such village, 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 Village Recorder, signed by more than twenty-five per cent of the number of legally qualified or registered voters in said village voting at the last regular village election, demanding that a special election be called of the electors thereof to review the action of the Village Council 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 Village Council of the Village 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 thenceforth control the village, its officers and electors." (Act Apr. 11, 1935, c. 162, §1.)

**1152-24. To be first Tuesday after the first Monday in November.**—The elections in all such villages shall hereafter be held with the general election on the first Tuesday after the first Monday in November in each even numbered year. (Act Apr. 11, 1935, c. 162, §2.)

**1152-25. Elections to be held in November, 1936.**—The successor in office of all such village officers with term of office expiring on or before January 1, 1937, shall be elected at the election to be held on the first Tuesday after the first Monday in November, 1936, and the successor in office of all such village officers with term of office expiring subsequent to January 1, 1937, and on or before January 1, 1939, shall be elected at the election to be held on the first Tuesday after the first Monday in November, 1938. (Act Apr. 11, 1935, c. 162, §3.)

**1152-26. Officials to take office on January 1, following election.**—All officers elected after the passage of this act shall take office on the first day of January following their election and the officers of such villages and their terms of office shall be as follows: one president or mayor for a two year term, one clerk or recorder for a two year term, three trustees for a four year term each, one municipal judge for a four year term, one treasurer for a two year term, and two constables for a two year term each. (Act Apr. 11, 1935, c. 162, §4.)

**1152-27. Terms of certain officers extended.**—All elective officers in such villages in office when this act takes effect shall hold their offices for the terms for which they were elected, and any elective officers whose terms would otherwise expire prior to January 1, 1937, shall continue to hold office until the end of December 31, 1936, and any elective officers whose terms would otherwise expire prior to January 1, 1938, shall continue to hold office until the end of December 31, 1938. (Act Apr. 11, 1935, c. 162, §5.)

**1152-28. Polling places.**—When such village and general elections are held at the same time the polling places in such village precincts shall be the same as those fixed for the general election and the same election judges and clerks of said general election shall serve as judges and clerks of said village election. In any such village, which has not been separated from the town for election purposes, the village shall pay one-third of the expenses of said election. (Act Apr. 11, 1935, c. 162, §6.)

**1152-29. General election laws to apply.**—The election laws now in force in such villages pertaining to

the conduct of village elections shall apply unless otherwise provided for in this act. (Act Apr. 11, 1935, c. 162, §7.)

**1152-30. Inconsistent acts repealed.**—All acts or parts of acts inconsistent herewith are hereby superseded, modified, or amended so far as necessary to give effect to the provisions of this act. (Act Apr. 11, 1935, c. 162, §8.)

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

**1163. President and trustees to receive annual salary.**

Whether absence of village trustee from village for six months for purpose of obtaining employment constitutes abandonment of office and right to compensation is a question of fact. Op. Atty. Gen. (359a-21), Dec. 19, 1935.

**1163-1. Salaries of village officers in certain villages.**—In all villages of this state, except those governed under a charter adopted pursuant to section 36, article 4, state constitution, the salaries of the president and trustees shall be in amounts according to the following classifications of villages, provided that the village council of any village shall have the authority to fix the salaries of its president and its trustees in a lesser amount for the term of office during which the members of such council are elected. The classification and salaries are as follows:

(1) In villages having both a population of not less than 5,000 inhabitants and an assessed valuation of not less than \$10,000,000, the salary of the president is fixed at \$200.00 per month and the salary of each trustee at \$150.00 per month. (As amended Apr. 15, 1939, c. 272, §1; Apr. 17, 1939, c. 300.)

(2) In villages not included in any of the foregoing classifications, having both a population of not less than 1,500 inhabitants and an assessed valuation of not less than \$3,000,000, or having a population of not less than 1,200 inhabitants and an assessed valuation of not less than \$6,000,000, the salary of the president is fixed at \$80.00 per month and the salary of each trustee at \$60.00 per month. (As amended, Mar. 9, 1931, c. 47, §1; Apr. 15, 1939, c. 272, §1; Apr. 17, 1939, c. 300.)

(3) In villages, not included in any of the foregoing classifications, having both a population of not less than 2,000 inhabitants and an assessed valuation of not less than \$1,500,000, the salary of the president is fixed at \$50.00 per month and the salary of each trustee at \$35.00 per month. (As amended Apr. 15, 1939, c. 272, §1; Apr. 17, 1939, c. 300.)

(4) In villages, not included in any of the foregoing classifications, having both a population of not less than 300 inhabitants, and an assessed valuation of not less than \$925,000, the salary of the president is fixed at \$35.00 per month, and the salary of each trustee at \$25.00 per month. (As amended Apr. 25, 1931, c. 362, §1; Mar. 1, 1935, c. 36, §1; Apr. 11, 1935, c. 158; Feb. 14, 1939, c. 13, §1; Apr. 15, 1939, c. 272, §1; Apr. 17, 1939, c. 300.)

(5) In villages, not included in any of the foregoing classifications, either having both a population of not less than 5,000 inhabitants and an assessed valuation of less than \$1,000,000, or having both a population of less than 600 inhabitants and an assessed valuation of not less than \$1,000,000, the salary of the president and each trustee is fixed at \$100.00 per year; provided, further, in villages having an assessed valuation exceeding \$1,500,000, and not over \$3,000,000, the salary of the president and each trustee shall remain \$100.00 per year, and in villages having an assessed valuation exceeding \$1,000,000 and not over \$1,500,000 such salary shall remain ten dollars per year, unless the voters in any such village at a regular or special election therein held shall fix such salaries at a larger amount, within the limitations of this act; provided, further, this act shall in no way apply to villages having an assessed valuation of less than \$1,500,000 and an area of less than 1,300 acres. (As

amended Apr. 15, 1939, c. 272, §1; Apr. 17, 1939, c. 300.)

(6) In villages not included in any of the foregoing classifications, having both a population of less than 5,000 inhabitants and an assessed valuation of less than \$1,500,000 the president shall be entitled to receive as compensation for each day's service necessarily rendered or council meeting attended, the sum of \$2.00 per day or meeting, but no more than \$30.00 shall be paid in any one year to the president; and the trustees shall be entitled to receive as compensation for each day's service necessarily rendered or council meeting attended, the sum of \$1.50 per day or meeting but no more than \$20.00 shall be paid to each trustee in any one year in any such village. (As amended Jan. 24, 1936, Ex. Ses., c. 89; Apr. 15, 1939, c. 272, §1; Apr. 17, 1939, c. 300.)

"Assessed valuation" means assessed valuation as finally fixed by the Minnesota Tax Commission. Op. Atty. Gen. Apr. 26, 1929.

Offices of members of village council and village assessor are incompatible in view of this section, which bases salaries upon assessed valuations of the village. Op. Atty. Gen., Mar. 12, 1931.

Salaries of village president, trustees and recorder, discussed. Op. Atty. Gen., Jan. 9, 1933.

Compensation of members of council of village of Deephaven is governed by this subdivision. Op. Atty. Gen. (471k), July 20, 1934.

This section applies to the village of Grand Rapids which does not operate under a charter adopted pursuant to constitution, art. 4, §36. Op. Atty. Gen. (469b), Oct. 11, 1934.

Salaries of village officers should be fixed at beginning of term and are not subject to modification by council during term. Id.

Salaries of village president and trustees should be fixed as soon as practicable after each member's election for such member's full term, and such salaries are not subject to modification during such member's term after same have been fixed. Op. Atty. Gen. (471k), Jan. 15, 1935.

This subdivision governs compensation of president and trustee but not the recorder. Op. Atty. Gen. (471k), Feb. 20, 1936.

Where salaries of village operating under Laws 1885, ch. 145, were fixed pursuant to this subdivision, such salaries are still governed by this subdivision after amendment thereof. Op. Atty. Gen. (469a-13), Feb. 24, 1936.

Salaries of president and trustees are determined by assessed valuation and population. Op. Atty. Gen. (471k), June 6, 1936.

Increase of salaries of village officers took effect upon date of approval of amendment. Op. Atty. Gen. (469a-13), Dec. 18, 1936.

Section 193(3b), last paragraph, should be considered in determining salaries of officers of village of Ironton. Op. Atty. Gen. (471k), Dec. 21, 1936.

Money and credits are included in term "assessed valuation". Op. Atty. Gen. (471h), Dec. 13, 1937.

(7).

Unless village council fixes salary in a lesser amount, salary of president is \$20. per month, and salary of each trustee \$15 per month in the village of Morningside. Op. Atty. Gen., (471k), July 10, 1939.

#### 1163-2. Same—Population and valuation, how determined.

Salaries of village officers for the entire year 1932 is determined by the population as shown by the last federal census and the valuation as equalized for 1931. Op. Atty. Gen., Dec. 28, 1931.

#### 1164. Assessors in villages separated from towns.

Vacancy in office of assessor in village of Litchfield must be filled by special election. Op. Atty. Gen., Apr. 14, 1932.

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

#### 1167 to 1172 [Repealed Apr. 21, 1939, c. 345, Pt. 12, §1, Ante §601-12, effective Aug. 1, 1939.]

#### ANNOTATIONS UNDER REPEALED SECTIONS

##### 1167. Two justices.

Reenacted as §601-11(2)a.

##### 1169. Hours for polls to be open.

Reenacted as §§601-6(3)b, 601-6(8).

Where village officers failed to give proper notice that assessor would be voted for at election, and several votes were cast for a sticker candidate, there was no election in fact. Op. Atty. Gen. (12b-5), Dec. 16, 1938.

An outline of municipal bond procedure in Minnesota. 20MinnLawRev583.

##### 1170. Returns—Canvassing.

Reenacted as §601-11(2)h.

##### 1171. Town meeting laws applied—Illegal voting.

Reenacted as §601-11(2)j.

##### 1172. Special elections.

Reenacted as §601-11(2)i.

This section is not applicable to the filling of vacancies in the common council. Op. Atty. Gen., June 20, 1931.

Village councils may not hold special elections to submit to the voters, question of whether or not public dances shall be held on Sunday nights. Op. Atty. Gen., June 22, 1931.

Special election may be called for purpose of voting upon who shall be members of village police force. Op. Atty. Gen., Mar. 14, 1933.

Procedure and forms for special election for erection of waterworks system and issuing bonds, discussed. Op. Atty. Gen., Aug. 17, 1935.

Word "may" has a mandatory meaning and special election must be ordered upon petition of voters. Op. Atty. Gen. (476b-15), May 10, 1938.

Application of a village for a loan of state funds was returned without approval where there was only 10 days' published notice of election. Op. Atty. Gen. (295a), March 7, 1939.

Sections 3200-35 and 3200-36 are only means of voting on liquor licenses for villages, and question cannot be brought up at a special election under §1172. Op. Atty. Gen. (218g-11), March 15, 1939.

An outline of municipal bond procedure in Minnesota. 20MinnLawRev583.

##### 1173. Assessor—Town taxes, etc.

Where village lies in two towns and one town separates from village, a separate election board and assessor is required for that part of village in separating town. Op. Atty. Gen. (440d), Apr. 13, 1938.

##### 1174. Treasurer—Duties, bond, accounts, etc.

A city treasurer is guilty of malfeasance by depositing city funds in an undesignated bank of which he is stockholder, director, and assistant cashier, and a surety on his bond is liable for money lost through failure of the bank, notwithstanding stipulation in bond relieving surety from liability for loss caused by failure of any bank or other depository, and there is liability under a bond for funds wrongfully deposited during its term, though bank does not fail until afterwards. City of Marshall v. G., 193M188, 259NW377. See Dun. Dig. 6712.

Village is entitled to dividends on bank liquidation until its claim for deposit is paid in full, and until that time surety on treasurer's bond is not entitled to subrogation. Op. Atty. Gen. June 16, 1930.

Bond of village treasurer containing exceptions to liability of surety, held objectionable. Op. Atty. Gen., Aug. 15, 1930.

A village treasurer and his surety are absolutely liable for funds which come into his possession until such time as he deposits them in a depository duly designated by the council. Op. Atty. Gen., July 31, 1931.

Treasurer of village organized under Laws 1885, c. 145, and his bondsmen, are absolutely liable for funds which come into his possession until he deposits them in a depository duly designated by the council. Op. Atty. Gen., July 31, 1931.

Village treasurer's bond need not be filed or recorded with register of deeds, and county is under no obligation to pay expense of recording. Op. Atty. Gen., May 1, 1933.

Village treasurer has right to pay bonds and interest when due out of funds collected for that purpose, though ordered not to do so by village council. Op. Atty. Gen., July 14, 1933.

Receipts from village liquor store should be turned over to village treasurer and all disbursements made by treasurer and it is improper to permit president and clerk alone to handle funds of liquor store and merely turn surplus over to treasurer. Op. Atty. Gen. (218j-10), Apr. 19, 1934.

All revenue from a municipal exclusive liquor store should be turned over to village treasurer by the manager of the store and should be disbursed in the same manner as other village money. Op. Atty. Gen. (218e), July 25, 1934.

This section applies to villages operating under Laws 1885, c. 145, and a village has authority only to publish ordinances, rules and by-laws and financial statements, and has no authority to publish minutes of its proceedings at meetings. Op. Atty. Gen. (469a-5), Mar. 27, 1935.

All expenditures of exclusive liquor store operated by village should be approved by village council and paid in same manner as other village expenditures. Op. Atty. Gen. (218g-13), Apr. 4, 1935.

Village councilman cannot receive compensation for services in connection with a municipal liquor store, and all employees must be hired by council and all obligations handled as other obligations of village. Op. Atty. Gen. (218g-13), Apr. 16, 1935.

Surety on official bond may not cancel bond during term of office without consent of all parties concerned, and consent may not lawfully be given by governing body until a satisfactory new bond is furnished. Op. Atty. Gen. (469b-5), Feb. 21, 1936.

If amount of treasurer's bond has not been fixed pursuant to an ordinance, it should be fixed by new council at its first meeting in January following preceding December election. Op. Atty. Gen. (456g), Feb. 18, 1937.

Failure of village treasurer to qualify by filing bonds does not ipso facto create vacancy. Id.

Village treasurer unable to write may sign village bonds by making his mark, or his name may be written by some person at his request and in his presence. Op. Atty. Gen. (456a), Nov. 24, 1937.

#### 1175. Financial statement by clerk.

Laws of 1911, requiring village clerks to publish a detailed financial statement applies to villages, such as Hopkins, which are still operating under Laws 1885, Chap. 145, since repeal of Laws 1905, Chap. 74, by the 1911 act did not revive Laws 1885, Chap. 145, §20. State v. Elmquist, 201M403, 276NW735. See Dun. Dig. 6569.

It is necessary to set forth in the financial statement a complete list of outstanding unpaid warrants, and it is not enough to set forth the aggregate amount thereof. Op. Atty. Gen., Jan. 26, 1931.

Village officers failing to publish annual financial statement would be guilty of a gross misdemeanor under §970. Op. Atty. Gen., Sept. 30, 1931.

The villages of Long Lake, Maple Plain and Deephaven are required by law to publish complete detailed annual financial statements. Op. Atty. Gen., Sept. 30, 1931.

Where number of payments have been made to same person for same purpose, it is not necessary to list each separate payment but a grouping is permitted. Op. Atty. Gen., Oct. 30, 1933.

Ordinances, rules and by-laws passed by council and the annual financial statement of the clerk must be published in a newspaper selected by the council, but clerk is not required to publish the minutes of the council proceedings in detail into financial records. Op. Atty. Gen., Feb. 10, 1934.

Financial statement of village must be filed and published prior to annual village election. Op. Atty. Gen. (469a-5), Nov. 14, 1934.

Village is required to publish financial statement at least one week prior to annual election in a newspaper published in the village, but if no newspaper is published therein, statement must be posted in three public places. Op. Atty. Gen. (469a-5), Feb. 3, 1936.

If cost is more than \$100, village must call for bids for publication of financial statement and award printing to lowest responsible bidder, and term "responsible" is not limited to financial responsibility. Op. Atty. Gen. (707a-15), Nov. 13, 1936.

Outstanding warrants may not be grouped together in one amount in financial statement, though payments made to same person for same purpose may be grouped. Op. Atty. Gen. (469a-5), Dec. 20, 1937.

#### 1177. Clerk—Bond—Deputy.

Deputy recorder may hold other compatible salaried position, such as clerk of municipal court. Op. Atty. Gen., Feb. 26, 1929.

Under Mason's Stat., 1927, §1186, subd. 1, village council organized under 1905 law may fix salary of deputy clerk. Op. Atty. Gen., Feb. 26, 1929.

This section does not apply to villages operating under the 1885 act [Mason's Minn. Stat., 1927, pp. 218-226], but Laws 1925, c. 270 [§1111, notes], from which this section was derived in constructing the 1905 village code, is still operative as to villages existing under the 1885 act, and the office of deputy recorder has no fixed term, and the incumbent need not be appointed each year, and his salary is subject to change by the council at any time. Op. Atty. Gen., Jan. 16, 1930.

#### 1178. Same—Duties—Compensation.

Op. Atty. Gen., Feb. 10, 1934; note under §1196. Power of council of village operating under 1885 act to fix salary of recorder yearly where his term has been extended to two years by Laws 1929, c. 413. Op. Atty. Gen., Jan. 16, 1930.

Clerk of village organized under the 1885 Laws receives no fixed compensation, but his salary is determined each year in advance by the council, and such council may require the clerk to perform duties in connection with the reading of electric light meters, collecting money for lights, etc., and allow compensation therefor. Op. Atty. Gen., Feb. 7, 1931.

It would not be proper and lawful to refuse to pay salary of village recorder because he fails to perform the duties of his office. Op. Atty. Gen., Oct. 20, 1931.

A village has no authority to withhold payment of salary of village clerk or an employee to partially reimburse it for failure of such persons to account for village funds in their possession. Op. Atty. Gen., Aug. 22, 1932.

Village clerk has power to vote on resolution increasing his compensation at beginning of his term. Op. Atty. Gen. (470i), June 3, 1936.

#### 1179. Constables—Duties—Compensation.

A village may pay a salary to a constable for police work. Op. Atty. Gen., July 15, 1933.

Office of village constable becomes vacant when he is convicted of any offense involving a violation of his official oath. Op. Atty. Gen., Nov. 15, 1933.

Clerk may perform additional services incidental to collection of electric light and power bills and be compensated therefor. Op. Atty. Gen. (470b), Dec. 14, 1933.

Clerk is not entitled to additional compensation for extra services which council requires him to perform. Op. Atty. Gen. (470b), Dec. 19, 1933.

A village constable is an elective officer and is not removable at pleasure of village council, and as local peace officer stands on same footing as sheriff except that jurisdiction is ordinarily limited to boundaries of village. Op. Atty. Gen. (847a-6), March 28, 1939.

Village clerk may not be paid additional compensation for extra work performed in connection with preparing a special assessment roll. Op. Atty. Gen., (470b), August 3, 1939.

#### 1181. Justices—powers—duties—fees.

**Correction**—The following words were omitted after line 15 of this section: "where a village is situated in more than one county, the justices of the peace and constables of such vil—"

Laws 1885, c. 145, §41 [§1111, notes, Mason's Minn. Stat., 1927], as amended, and not this section, governed a village operating under the former act, as regarded justices of the peace. Op. Atty. Gen.

Village incorporated under Laws of 1885 may not fix compensation of village justice of the peace. Op. Atty. Gen. (266a-13), Sept. 7, 1934.

Municipality cannot be compelled to furnish criminal forms to justice of the peace. Op. Atty. Gen. (266a-3), Oct. 4, 1934.

No one but the state may question the jurisdiction of a village justice of the peace because he has filed his bond with the village clerk instead of the clerk of court, and his acts are valid as those of a de facto officer and convictions before him are valid. Op. Atty. Gen. (266a-2), June 3, 1935.

City of International Falls by adoption of home rule charter without providing for election of justice of the peace abolished that office. Op. Atty. Gen. (306a), Apr. 9, 1936.

County attorney is under no obligation to prosecute misdemeanor cases before justice of the peace except where duty is specifically imposed by law. Op. Atty. Gen. (121b), Aug. 23, 1937.

Village attorney is required to prosecute all violations of village ordinances before a justice of the peace, but is not obligated to prosecute violations of state laws or give aid, counsel and advice to justice of the peace. Id.

Village justice is entitled to his fees in prosecutions for violation of city ordinances, though prosecution is dismissed or sentence suspended. Op. Atty. Gen. (266b-8), July 1, 1938.

While jurisdiction of justice over violation of ordinances is probably exclusive, where violation of ordinance of one village is tried by justice in another village, fine should revert to former village. Op. Atty. Gen. (199b-4), June 23, 1938.

On election of village justice to office of president of village council, and his qualification therefor, his office as justice is automatically vacated, and vacancy may be filled by village council. Op. Atty. Gen. (358d-5), Dec. 13, 1938.

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

#### 1182. Prosecutions by village.

Village justice may not on application for change of venue transfer trial of offense under village ordinance to a town justice. Op. Atty. Gen., Feb. 21, 1933.

**1182-1. Contingent fund for suppression of crime, relief in case of calamity, and welfare.**—The village council of any village now or hereafter having a population of more than 10,000 inhabitants may appropriate from the general fund of the village from time to time, an amount not exceeding \$2,500 in the aggregate in any one year to be known as the Village President's Contingent Fund, from which fund the Village President may pay such sums as he may deem necessary in case of necessity, to secure information and evidence of crime, and to arrest convicts and to relieve distress in the event of public calamity in this state, and for such other purpose for the welfare of the village as he may deem advisable. (Act Apr. 20, 1939, c. 329, §1.)

**1182-2. Same—limit of expenditures.**—All expenditures for the purposes herein set forth shall be within the statutory limits of tax levies in such villages. (Act Apr. 20, 1939, c. 329, §2.)

**1182-3. Same—payments.**—Payments from this fund shall be made in the same manner as in the case of other claims against such villages. (Act Apr. 20, 1939, c. 329, §3.)

#### 1184. Appeals.

Two dollar appeal fee applies only to civil actions and not to criminal appeals from justice court to district court. Op. Atty. Gen. (266b-1), May 29, 1934.

It is duty of one appealing from conviction of violation of village ordinance to proceed in same manner as from judgment from justices of the peace in civil actions and

not in manner provided in §9129 and it is his duty to serve notice of appeal upon village or its attorney and not upon county attorney. Op. Atty. Gen. (779a-5), Nov. 20, 1935.

### 1186. Council—Powers—Ordinances.

Act Apr. 20, 1939, c. 326, limited by its descriptive terms to village of Ashby in Grant County, provides for detachment of land from such village. Probably unconstitutional as local and special.

Op. Atty. Gen., Mar. 2, 1934: note under §1938-3.

General authority of an officer to act for a village may be inferred from previous acts of similar character and so continued as to justify inference that village had knowledge of them and would not have permitted same if unauthorized. *Theisen v. M.*, 200M515, 274NW617. See *Dun*, Dig. 7998.

Recorder and a president of village council may vote at council meetings. Op. Atty. Gen., Apr. 11, 1933.

Recorder and president of village have right to vote on questions to be decided by council. Op. Atty. Gen., Apr. 11, 1933.

Village council may modify contract where right to do so is reserved therein. Op. Atty. Gen., Dec. 16, 1933.

No liability attaches on part of members of council in executing contract where they acted in good faith in performing a governmental function. *Id.*

Village incorporated under Laws of 1885 may not fix compensation of village justice of the peace. Op. Atty. Gen. (266a-13), Sept. 7, 1934.

Village which has no water, light and building commission may not levy a special tax for water and light purposes. Op. Atty. Gen. (481b-7), Jan. 5, 1935.

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.

Village was not authorized to contract for purchase of pump without calling for bids, and could not purchase one under a conditional sales contract with instalments to be paid out of general village fund derived from taxation. Op. Atty. Gen. (707a-15), Dec. 27, 1935.

Village clerk has power to vote on resolution increasing his compensation at beginning of his term. Op. Atty. Gen. (470i), June 3, 1936.

Surplus fund in general fund may be transferred or loaned to road and bridge fund, and although money in a special fund cannot be diverted from specific purpose for which it was levied and collected, council may borrow from one fund for use in another where there is no immediate need for using money in fund borrowed from. Op. Atty. Gen. (476a-15), July 10, 1936.

If village has funds on hand sufficient for purpose, or will have such funds when taxes already levied have been collected, village warrants or orders may be issued in anticipation of collection of taxes for construction of a village community hall without an election, but if such funds are not available, it is necessary to submit to voters proposition of issuing bonds or certificates of indebtedness. Op. Atty. Gen. (476b-8), Aug. 13, 1937.

Village may purchase a building to be used as a village hall. Op. Atty. Gen. (476b-8), Mar. 4, 1938.

Council has right to adopt its own rules and regulations as to procedure and president has right to make or second a motion while occupying chair. Op. Atty. Gen. (124), Mar. 25, 1938.

Village under general law is not authorized to enact ordinance providing for licensing of electricians. Op. Atty. Gen. (477b-37), Mar. 24, 1938.

(1).

Op. Atty. Gen., Feb. 19, 1934; note under §1039.

Village council of village organized under 1905 law may fix compensation of deputy clerk appointed under §1177. Op. Atty. Gen., Feb. 26, 1929.

Council of village incorporated under Laws 1885, c. 145, and electing not to come under the 1905 Revised Laws, has power to fix the compensation of the village assessor on any reasonable basis that it deems proper. Op. Atty. Gen., June 20, 1931.

Where village clerk neglects to make small purchases of stationery, etc., president of council should receive authority from the council before making such purchases. Op. Atty. Gen., Oct. 2, 1931.

The cost of instituting or defending an election contest cannot be paid by a village. Op. Atty. Gen., Dec. 23, 1931.

Exact wording of statute need not be followed verbatim in passing an ordinance. Op. Atty. Gen., Mar. 19, 1932.

Village council may deduct from salary of assessor previous over-payments of compensation. Op. Atty. Gen., Apr. 8, 1932.

A village may pay a salary to a constable for police work. Op. Atty. Gen., July 15, 1933.

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.

Salary of a policeman may be increased or decreased any time during the year. Op. Atty. Gen. (624c-11), June 19, 1935.

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

(2).

Municipality cannot be compelled to furnish criminal forms to justice of the peace. Op. Atty. Gen. (266a-3), Oct. 4, 1934.

(3).

A mining engineer may be employed if absolutely necessary to assist attorney in preparation for tax litigation involving mining properties, but a mining engineer may not be employed on a permanent salary. Op. Atty. Gen. (59a-4), August 30, 1939.

(4).

Under subd. 4, it is discretionary with the village council to demand bond of officers appointed. Op. Atty. Gen., May 1, 1929.

Offices of village marshal and street commissioner are not incompatible. Op. Atty. Gen., Feb. 25, 1931.

It would not be legal for the village council of Sturgeon Lake to employ an attorney to represent the people at a hearing of the railroad and warehouse commission on a petition of a railroad to take away agency service at that point. Op. Atty. Gen., Aug. 17, 1931.

Office of village treasurer and that of street commissioner are not incompatible. Op. Atty. Gen., Apr. 5, 1932.

Non-resident cannot be employed as village marshal. Op. Atty. Gen., June 6, 1932.

Neither village nor city attorneys are under any obligation to prosecute violators of state laws in justice court. Op. Atty. Gen., Sept. 26, 1932.

Council having power of appointing policeman in village has right to remove him by will without cause. Op. Atty. Gen., Jan. 27, 1933.

Offices of village attorney and village treasurer are incompatible. Op. Atty. Gen., Jan. 18, 1934.

Village may employ an attorney on a contingent fee basis. Op. Atty. Gen., Jan. 22, 1934.

Village council is not required to accept the lowest bidder in employing a village marshal. Op. Atty. Gen. (471k), July 20, 1934.

Village may retain an attorney who is not a resident and pay him on a monthly basis. Op. Atty. Gen. (469b-1), Aug. 21, 1935.

Village may employ nonresident attorney. Op. Atty. Gen. (870j), Jan. 3, 1936.

Police officers must furnish bonds before they are qualified as such. Op. Atty. Gen. (785c), July 27, 1936.

Village may pay expenses of policeman incurred in defense of prosecution for assault for acts of policeman performed in good faith in exercise of his official duty. Op. Atty. Gen. (463a-8), Mar. 18, 1937.

Municipality may reimburse police officer for expenses and attorney's fee necessarily incurred in action for false arrest and imprisonment, but may not pay for services of an attorney in defense of bondsman of police officer. Op. Atty. Gen. (476a-5), May 20, 1937.

County attorney is under no obligation to prosecute misdemeanor cases before justice of the peace except where duty is specifically imposed by law. Op. Atty. Gen. (121b), Aug. 23, 1937.

Village attorney is required to prosecute all violations of village ordinances before a justice of the peace, but is not obligated to prosecute violations of state laws or give aid, counsel and advice to justice of the peace. *Id.*

Taxpayers employing an attorney to appeal from allowance of a claim by council were not entitled as a matter of right to reimbursement of attorney fees incurred by them, though they were partially successful. Op. Atty. Gen. (476B-3), August 3, 1939.

There can be only one marshal. Op. Atty. Gen., (785p), August 7, 1939.

(5).

Village has inherent power to hire a person to take charge of public playgrounds. Op. Atty. Gen., June 10, 1930.

Op. Atty. Gen. (469a-15), Apr. 26, 1934; note under §1117.

Council may construct village hall without vote of the people if village has funds on hand sufficient for purpose, and issue warrants therefor if there be taxes in process of collection which will be available for their payment. Op. Atty. Gen. (476b-8), Apr. 24, 1934.

Where village voted bonds to erect village auditorium and fire hall, to be used partly as village hall, and discovered that \$5,000 was insufficient, village council could issue warrants of indebtedness for the completion of the building without a vote of electors, provided village has funds on hand sufficient for that purpose or will have such funds when taxes levied have been collected. Op. Atty. Gen. (476b-8), Jan. 26, 1935.

(6).

Does not authorize council to employ surveyor to replat village. Op. Atty. Gen., May 14, 1930.

(7).

In villages having more than 3,200 population and valuation of less than \$1,000,100, who afford fire protection to other towns or villages, proceeding for purchase of fire equipment is legalized. Laws 1939, c. 179.

A village may extend its water mains to some fifteen families living about fifteen hundred feet from the platted portion of the village, if the principal purpose is to furnish fire protection, and cost may be paid by a general tax levy, but the town cannot join with the village in making the extension. Op. Atty. Gen., May 13, 1931.

A village cannot enter into a lease of fire apparatus which is in reality a contract of purchase. Op. Atty. Gen., Oct. 6, 1931.



Villages cannot purchase fire apparatus on a conditional sales contract providing for payments extending beyond the period of one year, or beyond the term of office of the village council. Op. Atty. Gen., Oct. 6, 1931.

Village cannot enter into conditional sales contract for purchase of fire apparatus. Op. Atty. Gen., Aug. 23, 1933.

Village has no power to levy a special tax for fire equipment except as authorized by §4031-11. Op. Atty. Gen. (481b-7), Jan. 5, 1935.

Whether an oil station is fireproof within meaning of ordinance is a question of fact. Op. Atty. Gen. (477b-34), Oct. 22, 1935.

It is governmental duty to furnish fire protection to property regardless of whether property or insurer thereof contributes towards cost of such protection. Op. Atty. Gen. (688k), Dec. 4, 1935.

Village may pass ordinance governing kind of material to be used in construction of building, requiring plumbers, plasterers and electricians to have license from village, regulate height of ceilings, so long as regulation tends to protect health, safety and comfort. Op. Atty. Gen. (477b-11), Jan. 22, 1937.

An ordinance regulating gasoline filling station must be reasonable and not discriminatory. Op. Atty. Gen. (477b-10), Apr. 29, 1937.

Village council is authorized to construct village hall without election when village has funds on hand sufficient for purpose. Op. Atty. Gen. (469c-6), June 28, 1937.

Village may pay salary to chief of volunteer fire department rather than payment for meetings and calls made. Op. Atty. Gen. (469a-5), Dec. 20, 1937.

In absence of an ordinance regulating construction of buildings, it is not necessary that one obtain a permit before erecting a building. Op. Atty. Gen. (471e), Apr. 25, 1938.

Village council may adopt ordinance regulating location, size and use of buildings to be erected, and in order to ascertain whether any proposed building complies with ordinance, may require building permits to be obtained from council. Id.

Includes authority to dig well, and council may award a contract for a new well and issue warrants after a tax levy without any affirmative vote of electors. Op. Atty. Gen. (469c-11), March 13, 1939.

Borough of Belle Plaine may by ordinance reasonably regulate establishment and construction of filling station, but this would not include power to suppress or prohibit. Op. Atty. Gen. (477b-10), April 10, 1939.

Village may pay fees for attendance at fires and for regular attendance at meetings of fire department, amount of fees to be fixed by village council. Op. Atty. Gen. (688), June 12, 1939.

Village council may adopt an ordinance prohibiting construction of buildings without securing a permit, but ordinance must prescribe conditions upon which property owner is entitled to a permit. Op. Atty. Gen. (477b-3), August 11, 1939.

(8).

General power granted to a municipality to lay out, open, and extend streets authorizes by implication an extension of a street across a railroad right of way when such extension does not essentially impair it for railroad purposes; and necessity for taking of easement is a legislative question not subject to judicial review. *Village of Lamberton v. C.*, 196M597, 265NW801. See Dun. Dig. 6621.

An ordinance prohibiting the use of village street for distribution of gasoline or other automobile service by hose or other appliances extending over curb is valid, even as to pumps already constructed on the sidewalk. Op. Atty. Gen., May 25, 1931.

A village may remove gasoline pumps and other obstructions from its street. Op. Atty. Gen., May 25, 1931.

A village organized under Laws 1885, c. 145, §21(11) [Mason's Minn. Stat., 1927, pp. 218-226], may improve streets by applying tarvia or oil without a petition of the property owners and without assessing the cost against abutting property. Op. Atty. Gen., May 27, 1931.

This section is not applicable to a village operating under Laws 1885, c. 145, [Mason's Minn. Stat., pp. 218-226]. Op. Atty. Gen., May 27, 1931.

Village council had jurisdiction to vacate a road within its limits though it had been constructed by the town and was being maintained by the town. Op. Atty. Gen., Mar. 22, 1932.

A village does not have power to levy a special act for maintenance of its streets. Op. Atty. Gen. (481b-7), Jan. 5, 1935.

Village council has no legal authority or power to grant privilege to individuals of installing gasoline curb pump on state trunk highway, and a village would be liable for any injuries caused by such an obstruction to one who was in exercise of due care. Op. Atty. Gen. (396g-9), Jan. 8, 1935.

Villages may issue bonds to pay cost of land for park purposes upon approval by electors. Op. Atty. Gen. (44b-10), June 6, 1935.

Village may construct curbing and gutters for trunk highway and pay for the same with certificates of indebtedness, but if it issues bonds there must be vote of electors, and improvement may be paid out of general fund without assessment against abutting owners. Op. Atty. Gen. (476a-4), Aug. 29, 1935.

Whether gasoline curb pump constitutes an unlawful obstruction or nuisance is a matter for governing

body of municipality to determine. Op. Atty. Gen. (396a-1), Mar. 4, 1938.

Villages are not required to levy special assessments to pay cost of constructing sidewalks, and bonds may be issued under §1942 to pay cost by submitting question of issuance to a vote of electors. Op. Atty. Gen. (480b), May 11, 1938.

A village ordinance that no building should be re-rented to nonresidents without having running water, bath room, and sewage or disposal system, violates equal protection clause of constitution. Op. Atty. Gen., (477b-3), Oct. 13, 1938.

(9).

Village ordinance prohibiting the keeping of dog kennels without reference to whether such kennels created a nuisance held invalid. 173M61, 216NW535.

License ordinance for dogs is not invalid because they are also assessed as personal property. Op. Atty. Gen. (146d-4), July 19, 1939.

Ordinance requiring licensing of dogs is valid as against owners of dogs confined to their own premises. Op. Atty. Gen. (146d-4), August 8, 1939.

(11).

A village may prescribe by ordinance reasonable rules and regulations for the management of its cemetery located outside its boundaries. Op. Atty. Gen., Aug. 3, 1931.

Improvement of parks may be paid for out of general funds of village. Op. Atty. Gen. (476b-10), Dec. 31, 1937.

(12).

This paragraph is superseded by Laws 1933, c. 7, as to boxing exhibitions. Op. Atty. Gen., Apr. 17, 1933.

A village has no authority to pass ordinance requiring payment of license fee for boxing exhibition. Op. Atty. Gen., Apr. 17, 1933.

Ordinance declaring the practice of going in and upon private residences by solicitors, peddlers, hawkers, itinerant merchants, and transient vendors of merchandise, when uninvited, to be a nuisance, is valid. Op. Atty. Gen. (477b-21), July 2, 1934.

Ordinances regulating hawkers and peddlers and solicitors must be reasonable and not prohibitory. Op. Atty. Gen. (477b-21), Sept. 30, 1935.

A municipality may ordain that practice of peddlers and solicitors in going upon private premises and homes and soliciting orders without an invitation by occupants thereof is a nuisance. Op. Atty. Gen. (477b-21), Oct. 16, 1935.

A municipality may prescribe reasonable conditions as to time when, places where, and manner in which right of farmer to sell produce may be exercised, so long as no license is required, and conditions are reasonable. Id.

A village may regulate hawkers, peddlers, transient merchants and solicitors, but may not prohibit doing business by them within village, though it is probable that proper ordinances could be passed making it a nuisance to solicit orders upon private premises without invitation or consent of occupants. Op. Atty. Gen. (477b-21), Oct. 15, 1937.

Selling bread from truck at houses is "peddling" and may be licensed or regulated. Id.

Soliciting for dry cleaning is not "peddling." Id. Reason for ordinances licensing transient dealers is based on nuisance feature, and not because transient merchant is underselling local merchants, and restrictions must be reasonable and not prohibitive. Op. Atty. Gen. (290p), April 21, 1939.

Section 1186(12) gives village authority to license and regulate transient dealers in accordance with §7340. Id.

(13).

Council may by ordinance prohibit playing of cards in places where 3.2 beer is sold. Op. Atty. Gen. (733e), March 21, 1939.

Village may not license places for card playing, winner to be paid in chips which will be taken in trade by the house. Op. Atty. Gen. (733e), March 28, 1939.

(15).

Village council cannot by resolution recite facts showing that recorder is failing to perform the duties of his office and declare the office vacant. Op. Atty. Gen., Oct. 20, 1931.

It is ground for removal of member of water, light, power and building commission that he sells supplies to the commission or purchases supplies from other members, but village council has no power to remove the officer, and officer may recover value of supplies to the village. Op. Atty. Gen. (707b-6), Feb. 11, 1936.

(17).

A non-resident veterinarian may be appointed as an inspector under a village local health board. Op. Atty. Gen., Dec. 29, 1931.

Village may regulate buying and selling of junk and storing of hides and wool under this subdivision. Op. Atty. Gen. (477b-20), Sept. 7, 1934.

Prohibiting the keeping of turkey ranches within a small village, but permitting families to have a few chickens or turkeys for their own use, would be valid if turkey ranches were in fact a nuisance. Op. Atty. Gen. (477b-20), Nov. 5, 1936.

Village may enact ordinance prohibiting undertaking establishment in purely residential district. Op. Atty. Gen. (477b-20), June 21, 1937.

A fence erected by an abutting landowner across a platted but ungraded and seldom used street may be declared a nuisance by ordinance and may be abated by

action or removed by council. Op. Atty. Gen. (396g-9), August 18, 1933.

(18).

Village council may extend its water mains and pay for the same by general taxation and the expense could be paid out of the general fund of the village or out of the waterworks fund. Op. Atty. Gen., Apr. 4, 1931.

Subdivisions 18 and 19 are sources of authority of city council in matters of providing for electric lighting of streets and for pumping water. §§1252, 1253 seem to be applicable only to proposed contracts that would include distribution and supplying electric energy to inhabitants. Op. Atty. Gen., Mar. 20, 1933.

(19).

Op. Atty. Gen., Mar. 20, 1933; note under (18).

Conditional sales contract of electric equipment to a village to be paid for out of net earnings of sale of electricity after all other charges have been paid, is permissible. Op. Atty. Gen., Oct. 20, 1932.

Village may not purchase engine under conditional sales contract to be paid for out of general fund, but having purchased an engine under conditional sales contract, it may pay out of general fund reasonable value of lighting street and have such money used to retire payments under the contract. Op. Atty. Gen. (476a-6), Feb. 11, 1936.

One village council may bind subsequent councils to either grant extension of electric franchise or pay portion of cost of white way constructed by a private utility. Op. Atty. Gen. (707b-14), Oct. 31, 1936.

Franchise granted should be such as to protect village and consumers therein. Op. Atty. Gen. (624a-5), Aug. 20, 1938.

Contract of village for purchase of electricity over a period of ten years may not be entered into without first advertising for bids. Op. Atty. Gen. (624c-2), Sept. 10, 1938.

(21).

A village may transfer money from the general fund to the road and bridge fund if outstanding warrants against the general fund have been taken care of and if there is a surplus in that fund over the necessary requirements for the balance of the year, but there can be no transfer from the road and bridge fund to the general fund. Op. Atty. Gen., Sept. 26, 1931.

A village, in making up its budget, may request a certain gross amount for its general fund and take care of road and bridge expenses out of the general fund, providing the total amount raised for all purposes does not exceed twenty mills. Op. Atty. Gen., Sept. 26, 1931.

A village has no power to issue warrants falling due at a particular date in the future. Op. Atty. Gen., Oct. 6, 1931.

Cost of destroying weeds of a character permitting the charging thereof against the land must be paid by the town forthwith. Op. Atty. Gen., Nov. 24, 1931.

Expense incurred by a mayor or president of a village, or borough council, a county commissioner, or a county agent, in inspecting a field for the purpose of determining whether it is necessary to cut down and destroy a crop to eradicate noxious weeds is properly chargeable as an expense to be assessed against the land. Op. Atty. Gen., Nov. 24, 1931.

Village may transfer balance in general fund to poor relief fund. Op. Atty. Gen., Aug. 2, 1932.

Village council was without authority to lend money to a farmers' elevator and take note endorsed by directors, and claim may not be compromised on account of insolvency of directors. Op. Atty. Gen., May 3, 1933.

Village treasurer has right to pay bonds and interest when due out of funds collected for that purpose, though ordered not to do so by village council. Op. Atty. Gen., July 14, 1933.

Counties and other municipalities can legally sell bonds to federal government under National Industrial Recovery Act. Op. Atty. Gen., Aug. 15, 1933.

Village operating under per capita tax law may levy tax for tourist camping grounds, providing entire levy does not exceed the per capita limit. Op. Atty. Gen. (5191), Dec. 15, 1934.

Village may not use public money for erection and operation of a cold storage locker plant. Op. Atty. Gen. (469a-12), March 9, 1939.

Warrants can only be issued in anticipation of collection of a tax levy already made. Op. Atty. Gen. (469c-11), March 13, 1939.

**1186-4. Statements of improvements on lots or parcels of land filed with recorder.**

Op. Atty. Gen. (476b-14), June 12, 1934; note under §1229.

**1186-5. Certain villages to employ public accountants.**—The village council of any village having a population of more than 1,000 and having an assessed valuation of taxable property, exclusive of moneys and credits, of more than \$2,000,000.00, may employ public accountants on a monthly basis or on a yearly basis for the purpose of auditing, examining and reporting upon the books and records of account of such village. (Apr. 14, 1937, c. 215, §1.)

**1186-6. Same—Who are public accountants.**—For the purpose of this act public accountants are herein defined as any individual or individuals, who for a period of five years prior to the date of such employment, have been actively engaged exclusively in the practice of public accounting. (Apr. 14, 1937, c. 215, §2.)

**1186-7. Same—Limit of expenditures.**—All expenditures for the purposes herein set forth shall be within the statutory limits upon tax levies in such villages. (Apr. 14, 1937, c. 215, §3.)

**1186-8. Village councils to regulate and control cemetery grounds.**—The village council of any village of this state shall have power to regulate and control the laying out and establishment of cemetery grounds by any person, association or corporation within the corporate limits of such village. (Apr. 22, 1937, c. 348, §1.)

Sec. 2 of Act Apr. 22, 1937, cited, provides that the Act shall take effect from its passage.

Village is without power to contribute towards maintenance of a private cemetery located within village. Op. Atty. Gen. (870j), April 1, 1939.

**1187. Licensing amusements, peddlers, etc.**

Ordinances regulating hawkers and peddlers and solicitors must be reasonable and not prohibitory. Op. Atty. Gen. (477b-21), Sept. 30, 1935.

A municipality may ordain that practice of peddlers and solicitors in going upon private premises and homes and soliciting orders without any invitation by occupants thereof is a nuisance. Op. Atty. Gen. (477b-21), Oct. 16, 1935.

A municipality may prescribe reasonable conditions as to time when, places where, and manner in which right of farmer to sell produce may be exercised, so long as no license is required, and conditions are reasonable. Id.

A village may regulate hawkers, peddlers, transient merchants and solicitors, but may not prohibit doing business by them within village, though it is probable that proper ordinances could be passed making it a nuisance to solicit orders upon private premises without invitation or consent of occupants. Op. Atty. Gen. (477b-21), Oct. 15, 1937.

**1188. Council to license public dance halls.**

Village councils may not hold special elections to submit to the voters, question of whether or not public dances shall be held on Sunday nights. Op. Atty. Gen., June 22, 1931.

**1189. Sewers and drains—Bonds.**

Village council had power to construct sewers or to permit construction by private party without vote of people. Op. Atty. Gen., Apr. 12, 1932.

This section is controlled by §1933-4 with respect to limit of indebtedness. Op. Atty. Gen. (44a-4), Feb. 23, 1938.

Section has no application to construction of sewers by a village unless cost is to be paid from proceeds of a bond issue. Op. Atty. Gen., (387g-2), June 15, 1938.

**1192. Tax for entertainment.**

Repealed by Laws 1927, c. 79 [§§1933-17 to 1933-22]. Op. Atty. Gen., Oct. 28, 1929.

Villages should furnish musical entertainment in form of band concerts pursuant to §1192 and §1933-17 rather than under Laws 1937, c. 233. Op. Atty. Gen. (469c-1), June 5, 1937.

Section 1192 was not impliedly repealed by §1933-18, and village may levy one mill tax without vote of electors. Op. Atty. Gen. (519h), July 29, 1937.

Appropriation for bands for musical entertainment purposes cannot be made where no tax has been levied for such purpose. Op. Atty. Gen. (469c-1), May 9, 1938.

Village council may levy tax without submitting question to voters. Op. Atty. Gen. (519h), June 27, 1938.

Village may levy a tax to assist in maintenance of American Legion post drum and bugle corps providing public musical entertainment. Id.

**1192-1. Village may establish charity bureau.**—

The village council of any village now or hereafter having a population of more than 8,000 inhabitants may establish and maintain a public charity bureau for the purpose of providing public charitable relief to the poor therein, and to assist ex-service men in securing hospitalization, sick relief, Federal Aid or benefits, and for the relief generally of such persons, and to defray the expense thereof. (Act Mar. 7, 1933, c. 60, §1; Apr. 15, 1935, c. 187.)

**1192-2. May establish recreational department.**—

Such village council may establish and maintain a recreational department for the purpose of establish-

ing and maintaining recreational facilities for the general welfare of the inhabitants of such village. (Act Mar. 7, 1933, c. 60, §2.)

**1192-3. May establish bureau of information and publicity.**—Such village council may establish and maintain a bureau of information and publicity for the purpose of furnishing tourists information and for outdoor advertising and for preparing, publishing and circulating information and facts concerning the recreational facilities and business and industrial conditions of the community. (Act Mar. 7, 1933, c. 60, §3.)

Village of Hibbing may establish and maintain a bureau of information in the offices and in conjunction with the local chamber of commerce using the same secretary and stenographer, providing it does not pay such employees for their services performed for the chamber of commerce. Op. Atty. Gen. (476b-2), July 28, 1934.

A village information bureau has no authority to give the money to Minnesota Arrowhead Association, a semi-public association disseminating news and information pertaining to the Arrowhead country of which the village is a part. Id.

**1192-4. May pay expenses from general fund of village.**—The village council of such villages coming within the classifications of Section 1 of this act are further authorized and empowered to pay from the general fund of such municipalities, the expenses incurred by the governing officers in the performance of their official duties, provided, that this shall not be construed as authorizing trips for lobbying purposes or trips to meetings or conventions not in connection with specific municipal projects pending before the officer making the trip. (Act Mar. 7, 1933, c. 60, §4.)

**1192-5. Limitations on expenditures.**—All expenditures for the purposes herein set forth shall be within the statutory limits upon tax levies in said village. (Act Mar. 7, 1933, c. 60, §5.)

**1195. Meetings of council—Compensation, etc.**

Members of city council forming part of taxpayers' committee to investigate rates of other villages were not entitled to expenses on trip. Op. Atty. Gen., May 4, 1933.

Where all members of village council are present at a special meeting and take part therein, failure to give notice of meeting is immaterial. Op. Atty. Gen. (471e), Apr. 25, 1938.

As a general proposition time for holding regular meetings may be changed by action of council alone, but a meeting held at any other time than that fixed for a regular meeting is legal if all members actually attend and participate. Op. Atty. Gen. (471e), April 11, 1939.

**1196. Ordinances, how enacted.**

Absent charter or statutory requirement, a resolution of a village council for construction of power plant need not be signed, attested and published. *Davies v. V.*, 287NW1. See Dun. Dig. 6669b.

Ordinances, rules and by-laws passed by council and the annual financial statement of the clerk must be published in a newspaper selected by the council, but clerk is not required to publish the minutes of the council proceedings in detail into financial records. Op. Atty. Gen., Feb. 10, 1934.

Village council may publish minutes of all of its regular meetings and pay therefor out of general funds of village. Op. Atty. Gen. (218j-8), Jan. 14, 1936.

**1197. Publication—Effect.**

*Davies v. V.*, 287NW1; note under §1196.

Publication of ordinances only in minutes of council proceedings is sufficient. Op. Atty. Gen., June 6, 1933.

If there is newspaper anywhere in county ordinance posted in three places in village is not valid. Op. Atty. Gen., Oct. 11, 1933.

A single ordinance may be enacted for purpose of numbering old village ordinances which may be obsolete or superseded by other later ordinances, and it is not necessary to republish old ordinances. Op. Atty. Gen., Mar. 21, 1934.

**1197-1. Publication of village proceedings.**—The councils of all villages may cause to be published once, in some newspaper published in such village the official proceedings of such village, and such publication shall be made as soon as may be, and not later than thirty (30) days after the meeting at which such proceedings were had (Apr. 26, 1937, c. 472, §1.)

*Davies v. V.*, 287NW1; note under §1196.

Publication in newspaper is not mandatory. Op. Atty. Gen. (59a-17), Jan. 8, 1938.

**1197-2. Same—What are included in village proceedings.**—The term "proceedings" as used in this act shall include a statement of all motions and/or resolutions passed by such council, and a brief itemized statement of claims allowed or disallowed giving the name of the claimant and amount and general purpose of the claim.

Nothing in this act shall abrogate the publication of ordinances, rules and by-laws as now required by statute. (Apr. 26, 1937, c. 472, §2.)

**1198. Execution of instruments.**

Op. Atty. Gen. (469a-15), Apr. 26, 1934; note under §1117.

Mayor of village must sign intoxicating liquor licenses. Op. Atty. Gen. (218g-11), Feb. 25, 1935.

**1199. Contracts—Members of council excluded, when—Bids.**—No member of a village council shall be directly or indirectly interested in any contract made by such council, and every violation hereof shall be a misdemeanor: Provided, however, that any village council, otherwise having authority, may purchase merchandise or materials in which a member of such village council is interested by four-fifths vote of such council, when the consideration for such purchase of such merchandise or materials does not exceed \$50.00 in any year. All contracts for the purchase of merchandise, materials or equipment or for any kind of construction work undertaken by the village which requires an expenditure of \$100.00 or more, if not to be paid from road or poll tax, shall be let to the lowest responsible bidder, after public notice of the time and place of receiving bids. (R. L. '05, §731; G. S. '13, §1279; Apr. 29, 1935, c. 344, §1; Apr. 4, 1939, c. 139.)

Sec. 2 of Act Apr. 29, 1935, cited, repeals inconsistent acts.

Interest of officials in general in public contracts, see c. 5B-end.

Bid for equipment for municipal power plant was not vitiated by a condition therein that ouster proceedings would be instituted by village to remove competition within the immediate future, franchise of private utility being due to expire within a short time and bidders in any event having right to have competition removed. *Interstate Power Co. v. F.*, 194M110, 259NW691. See Dun. Dig. 6707(96).

That matter of granting a certain franchise for electricity was under public discussion for some time before council acted did not excuse failure to call for bids. *Casey v. C.*, 202M510, 279NW263. See Dun. Dig. 6707.

Village should have called for bids before granting a proposed franchise for distribution and sale of electric current. Id. See Dun. Dig. 6707.

A city accepting water from well for six years was liable for contract price, though contract was let without a proper call for bids and contained terms not included in call and purported to bind city to abandonment of a certain mine. *Chisholm Water Supply Co. v. C.*, 285NW895. See Dun. Dig. 6707.

Village is not required to advertise for bids in purchasing automobile to be used on road work and to be paid for out of road or poll tax. Op. Atty. Gen., Apr. 5, 1929.

A village cannot lease personal property under a contract permitting it to pay \$1 at the expiration of the lease and retain the property. Op. Atty. Gen., May 5, 1931.

It is illegal for members of village council, members of water and light commission, and street commissioners to purchase their coal through the village, even though the village is reimbursed in full for the cost. Op. Atty. Gen., Oct. 7, 1931.

A city council purchasing electrical energy may comply with this section and receive bids, but this is not a necessary prerequisite. Op. Atty. Gen., Feb. 3, 1932.

Village treasurer is not member of village council so as to preclude him from being interested in contract with village. Op. Atty. Gen., Apr. 5, 1932.

This section does not apply to village, such as Litchfield, that existed at time of enactment. Op. Atty. Gen., July 28, 1932.

Village council may pay for repair of sidewalk out of road fund. Op. Atty. Gen., June 9, 1933.

Water and light commission has no power to enter into lease providing for option to buy stokers without advertising for bids. Op. Atty. Gen., Aug. 12, 1933.

Position of contractor and engineer's supervisor are incompatible but contractor who has prepared plans may bid on contract. Op. Atty. Gen., Oct. 4, 1933.

This section does not apply to city operating under Sp. Laws 1891, c. 46, respecting right of water, light, power and building commission to purchase machines without bids. Op. Atty. Gen., Mar. 1, 1934.

Member of village council may enter into contract with water, light, power and building commission, hav-

ing full charge of construction work. Op. Atty. Gen., Mar. 19, 1934.

Village officer is not entitled to contract with village so as to be paid for trucking flour for the Red Cross. Op. Atty. Gen. (90a), Apr. 27, 1934.

Village officer is not entitled to receive mileage for use of automobile on trips made in interest of village. Op. Atty. Gen. (90a), Apr. 27, 1934.

Licenses may be granted to councilman or clerk of a village. Op. Atty. Gen. (217b-6), Aug. 3, 1934.

It is not necessary to advertise for bids in connection with premiums for compensation insurance. Op. Atty. Gen. (517j), Aug. 20, 1934.

Village may insure property in company in which member of village council is an employee on a straight salary and has no pecuniary interest in the contract of insurance. Op. Atty. Gen. (471k), July 20, 1934.

Village council is not required to accept the lowest bidder in employing a village marshal. Id.

Statute prohibiting letting of contract where amount involved is more than a certain sum have no application to day labor work. Op. Atty. Gen. (707d), Oct. 16, 1934.

Authority of villages to purchase personal property under conditional sales contract and necessity for bids, discussed. Op. Atty. Gen. (707a-15), Dec. 4, 1934.

Where village of North St. Paul desires to enter into contract with Ramsey County for purchase of water, temporarily pending the digging of a new well, the contract is to be entered into by the water, light, power and building commission and not the village council, and such commission may require bids or not as it shall determine. Op. Atty. Gen. (469b-6), Dec. 11, 1934.

Where president of village council is a mere employee of an elevator company, working on a salary basis and not a stockholder or an officer and has no direct or indirect financial interest in elevator company's business, except as a salaried manager, and receives no commission or bonus or other remuneration except such monthly salary, elevator may sell coal to village. Op. Atty. Gen. (707b-6), Feb. 13, 1935.

A license is not a contract and an alderman of a city may receive a license to sell intoxicating liquors, except that he cannot vote on his own application. Op. Atty. Gen. (218g), Feb. 16, 1935.

Village councilman cannot be employed in exclusive liquor store operated by village. Op. Atty. Gen. (218g-13), Apr. 4, 1935.

Village councilman cannot receive compensation for services in connection with a municipal liquor store, and all employees must be hired by council and all obligations handled as other obligations of village. Op. Atty. Gen. (218g-13), Apr. 16, 1935.

Village was not authorized to contract for purchase of pump without calling for bids, and could not purchase one under a conditional sales contract with installments to be paid out of general village fund derived from taxation. Op. Atty. Gen. (707a-15), Dec. 27, 1935.

Village operating municipal liquor store cannot lease a building owned by a member of the council. Op. Atty. Gen. (217b-8), Jan. 21, 1936.

Village council may not award printing contract to newspaper of which member of council is part owner and publisher, even though such member takes no part in the vote, except where law requires printing to be done in village and such member owns the only qualified newspaper therein. Op. Atty. Gen. (707b-6), Jan. 18, 1936.

It is ground for removal of member of water, light, power and building commission that he sells supplies to the commission or purchases supplies from other members, but village council has no power to remove the officer, and officer may recover value of supplies to the village. Op. Atty. Gen. (707b-6), Feb. 11, 1936.

There is no charter or statutory provision requiring that Lake City advertise for bids before purchasing personal property, such as a truck. Op. Atty. Gen. (59a-38), May 7, 1936.

This section originated as a part of General Village Act of 1885 and applies only to villages organized thereunder. Id.

Real estate to be used for a particular purpose, such as city dump, may be purchased without advertising for bids. Op. Atty. Gen. (469a-12), Nov. 12, 1936.

If cost is more than \$100, village must call for bids for publication of financial statement and award printing to lowest responsible bidder, and term "responsible" is not limited to financial responsibility. Op. Atty. Gen. (707a-15), Nov. 13, 1936.

Village of Litchfield operating under special charter may purchase Diesel engines without advertising for bids. Op. Atty. Gen. (707a-15), Nov. 17, 1936.

This section does not apply to villages organized under Laws 1885, c. 145. Op. Atty. Gen. (707a-15), Jan. 30, 1937.

An officer of a village or city may not insure property of municipality in company he represents as an agent. Op. Atty. Gen. (476b-9), May 24, 1937.

If labor in connection with improvement of parks is furnished by WPA authority and village is to furnish materials used, village must advertise for bids for such materials if amount of purchase exceeds \$100. Op. Atty. Gen. (476b-10), Dec. 31, 1937.

Employee of lumber company working on a salary basis and having no direct or indirect financial interest in company's business does not have the "interest" re-

ferred to in this section. Op. Atty. Gen. (707a-15), Jan. 21, 1938.

Village must advertise for bids for materials to be used in rebuilding village hall, though it involves a WPA project and a federal grant. Op. Atty. Gen. (707a-15), Jan. 21, 1938.

Village treasurer, not being a member of the village council, is not precluded from being interested in a contract with village. Op. Atty. Gen. (707a-15), Jan. 21, 1938.

Any official publication which must be published by a village pursuant to a statute requiring publication to be made in newspaper published in village may be given to a member of village council, if his newspaper is the only one in the village which meets statutory requirements, but where statutes do not require publications in village, publication may not be made in newspaper owned by member of council, unless contract comes within provisions of this section. Op. Atty. Gen. (90a-1), Apr. 25, 1938.

County or village may purchase land at sales held pursuant to Laws 1935, c. 386 (§2139-15). Op. Atty. Gen. (425c-10), May 4, 1938.

Contract of village for purchase of electricity over a period of ten years may not be entered into without first advertising for bids. Op. Atty. Gen. (624c-2), Sept. 10, 1938.

Members of water, light, power and building commission of a village may enter into contract with village to furnish material for construction of a new sewer system if commission has no voice in making of contract. Op. Atty. Gen., (469a-2), Oct. 22, 1938.

This section does not apply to a village operating under Laws 1885, c. 145. Op. Atty. Gen., (476b-7), Nov. 22, 1938.

City clerk cannot accept employment for compensation to make investigations of poor relief cases. Op. Atty. Gen. (470b), Dec. 19, 1938.

Section does not apply to such villages as Heron Lake. Op. Atty. Gen. (12b-1), Jan. 25, 1939.

"Public notice" means whatever is reasonable under circumstances, and though in a normal situation both posted and public notice should be given, a contract for a new well may be let without advertising for bids where water supply has become dangerously inadequate. Op. Atty. Gen. (469c-11), March 13, 1939.

Fact that engineers recommend site for disposal plant which is owned by mayor does not alter rule that a village officer may not contract with village, but this would not prevent condemnation of property. Op. Atty. Gen. (90e-6), March 27, 1939.

Renewal of insurance after a councilman has qualified and assumed office would violate statute. Op. Atty. Gen. (90B-4), April 1, 1939.

Section does not apply to villages operating under Laws of 1885. Op. Atty. Gen. (707a-15), April 24, 1939.

Section does not apply to villages other than those organized under village act of 1905, and it does not apply to St. Peter which is organized under special Laws 1891, c. 5. Op. Atty. Gen. (707a-4), May 3, 1939.

Statutory directions as to time and manner of opening bids are intended for protection of public and are mandatory, but after bids have been opened officers are entitled to a reasonable time for comparison and calculation necessary to enable them to ascertain who is lowest or most favorable bidder. Op. Atty. Gen. (707a), June 7, 1939.

#### 1200. Control of streets.

Town board is without jurisdiction to vacate part of a town road which runs through the unplatted portion of a village organized under Revised Laws 1905, c. 9, and such highway may be vacated only by action of the village council. Op. Atty. Gen., Apr. 6, 1931.

World War veterans are not exempt from poll tax. Op. Atty. Gen. (422b), May 22, 1934.

Village may not lease an unused street for private purposes, proper procedure being to vacate street and sell it. Op. Atty. Gen. (396g-16), Apr. 29, 1936.

Where town and village are not separated for purposes of election and assessments, town tax for road and bridge purposes may not be levied against property in village. Op. Atty. Gen. (519o), Dec. 20, 1938.

#### 1201. Vacating streets.

Vacated portion of village street reverts to the owner of abutting property. Op. Atty. Gen., Mar. 13, 1931.

Village council may not vacate a street with a condition that if it should be needed at any time in the future, it may be opened again for public use. Op. Atty. Gen., Oct. 6, 1931.

A city with a one hundred foot street could vacate fifty feet thereof which would revert to the abutting owners unless the village owned the street in fee. Op. Atty. Gen., Feb. 23, 1932.

Vacation of streets and villages organized under Laws 1885, c. 145, is governed by §29 of that act, and not by this section. Op. Atty. Gen. (817o), Aug. 21, 1935.

Village must follow procedure set forth in this section for vacation of streets, and whether village may sell vacated street to adjoining property owners after vacation depends upon nature of title held by village, since land would revert to owner of fee if village only had an easement in trust for public. Op. Atty. Gen. (396g-16), Jan. 13, 1938.

Village operating under Laws 1885, c. 145, may vacate streets and alleys under this section. Op. Atty. Gen., (396g-16), Nov. 17, 1938.

**1203. Benefit assessments—Cost of land, etc.**

Lands forfeited to state are not subject to special assessments for local improvements. Op. Atty. Gen. (700a-8), Apr. 5, 1938.

**1205. Street improvements—Assessments.**

Act July 14, 1937, Sp. Sess., c. 36, validates assessments by villages for sewers and water mains.

Village is under no obligation to place culverts and fill in between village street and adjoining lot so as to afford access to it. Op. Atty. Gen., Apr. 30, 1931.

If entire width of street is taken over as a state trunk highway, village is under no obligation to fill in cut in front of property and install a culvert so that property owner can get access to highway, especially where such property is a filling station which will necessitate extensive filling. Op. Atty. Gen., Apr. 27, 1931.

Village council may pay for repair of sidewalk out of road fund. Op. Atty. Gen., June 9, 1933.

Village council may not make improvements and then start proceedings to levy special assessment. Op. Atty. Gen. (59a-4), March 14, 1939.

Liability of county for sidewalk and curb work done on property owned by county in connection with village WPA project. Op. Atty. Gen. (480a), March 31, 1939.

**1207. Mode of assessment of benefit and cost of street improvements—Collection.**

City council should not proceed with repair and oiling of streets until this section is complied with. Op. Atty. Gen., (396g-7), Sept. 12, 1939.

**1214. Same—Assessments, how made.**

Act Apr. 13, 1939, c. 234, authorizes villages in Pope County to levy assessments for sanitary sewers previously constructed. Probably unconstitutional as local and special.

**1215-1. Road taxes in villages—Assessment.—All**

road taxes, except poll taxes, may be required to be paid in cash in any village in this state whenever a majority of the voters of such village voting by ballot upon the question shall so determine. Such question shall not be voted upon unless a petition signed by at least ten voting taxpayers of such village, praying for the payment in cash of all road taxes, is filed with the clerk or recorder of such village ten days before the annual election in such village, in which case the clerk or recorder shall specify in the notice of such annual election that such question will be voted upon. If such question is decided in the affirmative, all taxes thereafter assessed for the maintenance and repair of roads and bridges in such village shall be paid in money and disbursed by the village council or governing board of such village as other village taxes. The village council or governing board of such village may assess all the property of such village not to exceed six mills on the dollar on the last assessed valuation thereof, and if they so assess, they shall certify the same to the county auditor for extension and collection, the same as other village taxes, and before such taxes are collected, such village council or governing board of such village may pledge the credit of the village by issuing village orders not to exceed the taxes so assessed, to the expense of road and bridge work. Provided, however, that for the year 1909, upon a petition as above provided for, being filed with the village clerk or recorder on or before the last Tuesday in March of said year, the village council may cause a special election to be held for the purpose of voting upon said question, by giving the notice required in the case of special elections in villages. ('09, c. 435, §1.)

The publisher has inserted the above act as having been inadvertently omitted from the statutes, but the attorney general rules that this section is no longer in force. Op. Atty. Gen., Nov. 5, 1930.

**1222. Claims, how audited and paid.**

Does not apply to the compensation of officials fixed by law or order of city council. Naeseth v. V., 185M526, 242NW6. See Dun. Dig. 6741.

Village cannot take care of payment of wages of laborers by a pay roll system. Op. Atty. Gen., May 5, 1930.

Village warrants may not be reissued with interest coupons attached. Op. Atty. Gen., July 26, 1932.

Village warrants may not be split up by reissuing smaller warrants. Op. Atty. Gen., July 26, 1932.

It is not necessary to give notice to holders of village warrants that funds are available for their payment in order to stop running of interest. Op. Atty. Gen., Sept. 8, 1932.

City warrants or orders should be paid in order of their presentation and not in order of issuance. Op. Atty. Gen., May 27, 1933.

Op. Atty. Gen. (218j-10), Apr. 19, 1934; note under §1174.

All revenue from a municipal exclusive liquor store should be turned over to village treasurer by the manager of the store and should be disbursed in the same manner as other village money. Op. Atty. Gen. (218e), July 25, 1934.

Regularly and continuously employed village employees or officers whose compensation has already been fixed by law or order of common council need not file verified itemized claim. Op. Atty. Gen. (59a-12), Dec. 31, 1934.

Village labor payroll sheet may not be in form of a multisignature claim, but each claim must be separately itemized, verified and filed. Op. Atty. Gen. (469a-8), Jan. 10, 1935.

All expenditures of exclusive liquor store operated by village should be approved by village council and paid in same manner as other village expenditures. Op. Atty. Gen. (218g-13), Apr. 4, 1935.

Village councilman cannot receive compensation for services in connection with a municipal liquor store, and all employees must be hired by council and all obligations handled as other obligations of village. Op. Atty. Gen. (218g-13), Apr. 16, 1935.

Payment of judgment need not be authorized by mayor or council to authorize payment under §1834. Op. Atty. Gen. (63b-10), Nov. 29, 1935.

This section does not relate to villages operating under Laws 1885, c. 145. Op. Atty. Gen. (476a-5), Apr. 17, 1936.

Member of council cannot work in municipal liquor store, and expenses of store and purchase price of liquor must be paid in same manner as other village expenses. Op. Atty. Gen. (218l-2), Mar. 1, 1937.

Money expended in financing or conducting municipal liquor store must be spent in same manner as other village funds, upon audit and allowance by council and by order on treasurer. Op. Atty. Gen. (218g-13), Jan. 27, 1938.

**1223. Taxpayer's appeal.**

Where by one resolution a village council allows three claims of same claimant which might have been combined in one claim or joined in one action, a single notice of appeal by requisite number of taxpayers is sufficient. Maki v. L., 188M78, 246NW531. See Dun. Dig. 6745.

This section does not apply to a village organized under Laws 1885, c. 145. Op. Atty. Gen., May 22, 1933.

Waiting period of 10 days applies to claim for merchandise sold to municipal liquor stores. Op. Atty. Gen. (476a-5), Jan. 10, 1936.

This section does not relate to villages operating under Laws 1885, c. 145. Op. Atty. Gen. (476a-5), Apr. 17, 1936.

**1224. Financial report.**

Annual report need not be published in newspaper, posting being sufficient. Op. Atty. Gen. (469a-5), Feb. 3, 1936.

**1225. Tax levy.**

Villages having population of over 10,000 may appropriate a President's Contingent Fund of \$2,500. Laws 1939, c. 329.

Section 1933-9 places a limitation on expenditure of taxes for tourist camp purposes and is not a grant of power to levy a special tax in addition to general taxes. International Harvester Co. v. S., 200M242, 274NW217. See Dun. Dig. 6689.

Tax for band purposes authorized by Mason's Stat. 1927, §1933-17, may be levied in excess of 2% limit fixed by this section. Op. Atty. Gen., July 5, 1929.

Existing shortage on account of failure of county auditor to extend amount certified in previous years for village corporation taxes cannot be replaced by levying of an amount in excess of legal maximum by village council. Op. Atty. Gen. (481a-2), Oct. 23, 1935.

Time within which levy may be made by village for band or other purposes is directory and not mandatory. Op. Atty. Gen. (519h), Dec. 23, 1935.

Under §1933-9 a village has authority to levy taxes for public tourist camping grounds in addition to 2% limitation contained in this section. Id.

Village may levy an amount for corporate taxes which shall not exceed 2% of assessed valuation of property taxable in village, but not to exceed per capita limit prescribed by §2061. Op. Atty. Gen. (519q), Oct. 10, 1936.

A tax for payment of that which is chargeable to village of Grand Rapids in making street improvement is to be deemed part of general corporation tax, and is subject to statutory limitation of 2% of assessed valuation of taxable property. Op. Atty. Gen. (396g-7), May 21, 1937.

**1225-1. Villages not to draw orders.—**That from and after January 1, 1932, no village now or hereafter having a population of more than 250 inhabitants, and less than 500 inhabitants, and an assessed valuation of more than \$300,000, and less than \$600,000, shall draw any order or warrant on any fund until there is sufficient money in such fund to pay the same, together with all orders previously issued against said fund. (Act Apr. 25, 1931, c. 397, §1.)

**1225-2. Not to create indebtedness.**—Whenever from and after January 1, 1932, the expense and obligations incurred chargeable to any particular fund of such village 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 any prior year or years, no officers, board or official body of such village 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 village, but such additional indebtedness attempted to be created shall be a personal claim against the officer or members of the municipal board or body voting for or attempting to create the same; and in no event shall any officer, board or official body of such village have the power, and no power shall exist, to create any indebtedness, which shall be a charge against the village, in excess of the tax levy payable in that year for the use of the particular department, board or official body, less the amount required to be paid each year therefrom on bonds herein authorized and interest accruing thereon. (Act Apr. 25, 1931, c. 397, §2.)

**1225-3. May issue certificates of indebtedness.**—At any time after the annual tax levy has been certified to the county auditor, but not earlier than October 10 of the year preceding the year for which the tax levy is made, the governing body of such village may, by resolution, issue and sell as many certificates of indebtedness as may be needed in anticipation of the collection of taxes levied for any fund named in the tax levy for the purpose of raising the money for any such fund, but the certificates outstanding for any such separate funds shall not at any time exceed 50 per cent of the amount of taxes previously levied for such fund remaining uncollected and no certificate shall be issued to become due and payable later than December 31 of the year succeeding the year in which said tax levy, certified to the county auditor as aforesaid, was made, and said certificates shall not be sold for less than par and accrued interest and shall not bear a greater rate of interest than six per cent per annum. Each certificate shall state upon its face for which fund the proceeds of said certificate shall be used, and the total amount of said certificates so issued, and the whole amount embraced in said tax levy for that particular purpose. They shall be numbered consecutively and be in the denomination of \$100.00, or a multiple thereof, and may have interest coupons attached and shall be otherwise of such form and terms and may be made payable at such place as will best aid in their negotiation, and proceeds of the tax assessed and collected, as aforesaid, on account of said fund, and the faith and credit of such village 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. 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 certificate 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 certificates for any one year may, if necessary, be used to redeem unpaid certificates issued in a prior year. (Act Apr. 25, 1931, c. 397, §3.)

**1225-4. Tax revenues for 1932.**—All taxes levied in 1931 shall be considered as the tax revenues for the year 1932, and thereafter in any such village, taxes shall be levied as now provided by law not later than October of each year, but for the succeeding year. (Act Apr. 25, 1931, c. 397, §4.)

**1225-5. May issue bonds.**—If any such village prior to January 1, 1931, has incurred by proper authority a valid indebtedness, excluding bonds, in excess of its cash on hand, such village 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, except that such bonds may be issued on a vote of the council thereof, without a vote of the electors; provided that if any moneys received from taxes levied in 1930 and payable in 1931, or income from local sources received since January 1, 1931, have been used prior to the issuance of bonds authorized by this act for the retirement of indebtedness existing January 1, 1931, and interest thereon, such bond issue may include the amount of such payments for the purpose of reimbursing the funds from which such moneys were paid. (Act Apr. 25, 1931, c. 397, §5.)

**1225-6. Tax levy to retire bonds.**—The village council of any village issuing bonds pursuant to the authority of this act shall, before the issuance thereof, by a resolution, provide for a levy for each year until the principal and interest 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, and sufficient to pay the cost of operating said village subject to the limitations herein fixed. Such tax levy shall be irrevocable until all of such bonds are paid. Said annual tax for the payment of said bonds and interest shall be derived from two sources: (1) 50 per cent of the amount necessary to pay said bonds and interest, and no more shall be levied as a special tax in addition to the annual tax levy for general corporation purposes, park and park board, library and water, light, power and building commission purposes, and other special taxes which may be levied annually as provided by law; and (2) 50 per cent of the amount necessary to pay said bonds and interest shall be raised and obtained from each of the annual tax levies made by said village for general corporation purposes, water, light, power and building commission purposes, park and park board and library purposes for each year until all of said bonds are paid, in the same ratio as the tax levy for paying 50 per cent of the bonds and interest payable in any one year bears to the total annual maximum tax levy that could be made for general corporation purposes, water, light, power and building commission purposes, park and board and library purposes for said year. Funds designed to pay and retire any bonds of such village outstanding and unpaid at the time this act takes effect shall likewise be added to the annual levy and shall be held not to be subject to any limitations of law now imposed upon tax levies of villages. (Act Apr. 25, 1931, c. 397, §6.)

**1225-7. Boards of departments not to incur indebtedness.**—Whenever any department, board or commission of such village has the power to expend money such department, board or commission shall not during any year contract any indebtedness, or incur any pecuniary liability, which shall be in excess of the sum that may be allotted to its department for said year by the village council or to pay maturing bonds outstanding at the time this Act takes effect. The village council shall by resolution, prior to February 1, each year, set aside for each such department, board or commission, such sums as it deems necessary and adequate for the proper operation thereof, subject, however, to amendments of such resolution thereafter as necessity may require. (Act Apr. 25, 1931, c. 397, §7.)

**1225-8. Village recorders to keep record of allotment.**—The village recorder shall keep a record showing accurately the amount allotted to each board or governing body for the calendar year, and the amounts incurred and expended from time to time by the village council and each department of such village. A

record of expenditures for the village council and all its departments shall be presented to and examined at a regular meeting once each month by the village council and shall show the true condition of affairs at the date of such meeting. (Act Apr. 25, 1931, c. 397, §8.)

**1225-9. Federal census shall govern.**—For the purpose of this act, the last federal census of population taken prior to the calendar year in which any levy may be made shall govern and shall be conclusive in determining hereunder the population of any such village. (Act Apr. 25, 1931, c. 397, §9.)

**1225-10. Change in valuation or population not to change status.**—When a village has once come under the provisions of this act, it shall continue under its provisions, notwithstanding any subsequent change in assessed valuation or population. (Act Apr. 25, 1931, c. 397, §10.)

**1225-11. 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. 25, 1931, c. 397, §11.)

**1225-12. Inconsistent acts repealed.**—This act shall take effect and be in force from and after its passage 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. 25, 1931, c. 397, §12.)

**1225-12 1/2. Application.**—This act shall apply to all villages in the state which have a population of more than 500 and less than 1,000, and an assessed valuation of taxable property (exclusive of moneys and credit) of more than \$4,000,000.00, more than 70% of which assessed valuation consists of iron ore. For the purposes of this Act, the population shall be determined by the last Federal census taken prior to the passage hereof, and the valuation shall be that used as a basis for spreading the 1932 taxes. (Act Apr. 10, 1933, c. 211, §1.)

**1225-12 1/2 a. Not to draw orders until there is money available.**—From and after January 1, 1934, no such village shall draw or issue any order or warrant on any fund until there is sufficient money in such fund to pay the same, together with all warrants and orders previously issued against such fund. (Act Apr. 10, 1933, c. 211, §2.)

**1225-12 1/2 b. Not to create additional indebtedness.**—Whenever from and after January 1, 1934, the expenses and obligations incurred chargeable to any particular fund of such village in any calendar year are sufficient to absorb 90% of the entire amount of the tax levy for such fund payable in that year, including such amount as may remain in the fund from the levy of the prior year or years, neither the village council nor any officer, board or employee of such village shall have power and no power shall exist to create any additional indebtedness (save as the remaining 10% of such tax levy is collected) which shall be a charge against that particular fund or shall be in any manner a valid claim against such village; but such additional indebtedness, if attempted to be created, shall be a personal claim against the officer or members of the municipal board voting for or attempting to create the same; and in no event shall the village council or any officer, board or employee of the village have the power and no power shall exist to create any indebtedness which shall be a charge against the village in excess of the local income and the tax levy payable in that year for the use of a particular department, board or official body, less the amount required to be paid each year therefrom on bonds herein authorized and interest accruing thereon. At any time after the annual tax levy has been certified to the county auditor and not earlier than October 10 in any year, the governing body of

such village may, for the purpose of meeting the obligations of the ensuing year, by resolution issue and sell as many certificates of indebtedness as may be needed in anticipation of the collection of the taxes so levied for any fund named in said tax levy, for the purpose of raising money for such fund. No certificate shall be issued and outstanding for any separate fund exceeding 50% of the amount named in the tax levy for that fund as spread by the county auditor, and in no event exceeding the uncollected portion of said levy. No certificate shall be issued or become due and payable later than December 31 of the year succeeding the year in which such tax levy, certified to the county auditor as aforesaid, was made. Such certificate shall not be sold for less than par and accrued interest and shall not bear a greater rate of interest than six per cent per annum. Each certificate shall state upon its face for which funds proceeds of the certificate shall be used, the total amount of the certificates issued and outstanding against such fund, and the whole amount embraced in the tax levy for that particular purpose. They shall be numbered consecutively and be in denominations of \$25 or multiples thereof and may have interest coupons attached, and shall be otherwise of such terms and form and be made payable at such place as will best aid in their negotiation. The certificates of indebtedness issued hereunder shall be negotiable instruments. The proceeds of the tax assessed and collected as aforesaid on account of such fund, and the full faith and credit of such village shall be irrevocably pledged for the redemption of the certificates so issued. Such certificates shall be paid from the moneys derived from the levy against which such certificates were issued, or if they be not sufficient for such purpose, from other funds of the village. The money derived from the sale of such 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 except during 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 certificates for any one year may, if necessary, be used to redeem unpaid certificates issued in a prior year. (Act Apr. 10, 1933, c. 211, §3.)

**1225-12 1/2 c. May issue and sell tax levy certificates.**—In the event the village is unable to sell such certificates of indebtedness in the manner prescribed, it may issue said certificates of indebtedness to the village treasurer or his order and deposit the same with him. Certificates so issued shall be held by the treasurer until they may be sold and shall bear interest at six per cent per annum. The village may thereupon, as long as such certificates are on deposit with the treasurer, issue warrants upon the funds against which such certificates were issued, the total principal amount of such warrants not to exceed the total principal amount of the certificates so held by the treasurer. Such warrants shall bear interest at six per cent per annum from and after the date they are presented to the treasurer and stamped "Not paid for want of funds, but protected by certificates of indebtedness now held by me." Such certificates may be sold by the village council and the proceeds of such sale shall be used to take up such warrants in the order presented for payment. Interest upon such warrants shall stop upon the date they are called by the treasurer for payment. Such certificates of indebtedness so held by the treasurer shall be paid at the same time and in the same manner as if they had been issued to a purchaser thereof. All warrants attempted to be issued and all obligations or indebtedness attempted to be incurred under authority of this section in excess of the principal amount of the certificates of indebtedness so held by such treasurer shall be void. (Act Apr. 10, 1933, c. 211, §4.)

**1225-12 ½ d.** To be on cash basis after January 1, 1934.—From and after January 1, 1934, such village 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 revenue for the year 1934, and thereafter in any such village taxes shall be levied as now provided by law, but for the succeeding year. (Act Apr. 10, 1933, c. 5, §5.)

**1225-12 ½ e.** May issue bonds to pay floating indebtedness.—If any such village prior to January 1, 1933, has incurred by proper authority a valid indebtedness, excluding bonds, in excess of its cash on hand not specifically set aside for the retirement of bonds and interest thereon, such village may for the purpose only of paying and discharging such valid indebtedness and interest thereon, issue its bonds in the manner now provided by law, except that such bonds may be issued on a vote of the village council without a vote of the electors; provided that the purchaser of such bonds shall not be charged with notice of the invalidity of any indebtedness funded by such bonds, and bonds issued hereunder in the total amount of such indebtedness as determined by the resolution of the village council, in the hands of any purchaser, shall be valid obligations of the village, notwithstanding any claim of invalidity of any such indebtedness funded thereby. If any moneys received from taxes levied in 1932 and payable in 1933, or income from local sources received since January 1, 1933, have been used prior to the issuance of bonds authorized by this Act for the retirement of indebtedness existing January 1, 1933, or interest thereon, such bond issue may include the amount of such payments for the purpose of reimbursing the funds from which such moneys were paid. (Act Apr. 10, 1933, c. 211, §6.)

**1225-12 ½ f.** Tax levy.—The village council of any village 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 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 irrevocable until all of such bonds are paid. Such annual tax for the payment of such bonds shall be derived from two sources: (a) 40% of the amount necessary to pay said bonds and interest and no more shall be levied as a special tax in excess of the per capita limitations of Laws 1929, Chapter 206, but within the limitations of Laws 1921, Chapter 417; and (b) at least 60% of the amount necessary to pay said bonds and interest shall be raised and obtained from the annual tax levy made by said village within the per capita limitations of Laws 1929, Chapter 206, for general corporation, library, water, light, power and building commission purposes, in such proportion as may be determined by the village council. (Act Apr. 10, 1933, c. 211, §7.)

**1225-12 ½ g.** Disposition of bonds.—Such bonds may be issued and sold to the State of Minnesota pursuant to existing laws at the time of the issuance thereof (except as herein modified), or to private purchasers, or to both, or exchange for outstanding orders at par with accrued interest. (Act Apr. 10, 1933, c. 211, §8.)

**1225-12 ½ h.** Limitation of expenditures.—No department, board or commission of such village shall during any year contract any indebtedness or incur any pecuniary liability which shall be in excess of the sum that may be levied and collected for said department, board or commission or allotted to it for said year by the village council, plus local income accruing to such department, board or commission. A record of expenditures of the village shall be presented to and examined at a regular meeting of the village council once each month and shall show the true

condition of the affairs of the village at the date of such meeting. (Act Apr. 10, 1933, c. 211, §9.)

**1225-12 ½ i.** District Court may limit expenditures.—If at any time during any year a village operating hereunder is incurring obligations at a rate or upon a scale which would make it probable, if such rate or scale be continued, after allowing for variations in seasonal requirements, that the total expenditures for said year would exceed the moneys to be received therein, after allowance for probable tax delinquencies, the District Court, in an action brought by any taxpayer, may require such village to limit its expenditures to a rate and scale which will assure that the total obligations incurred in such year will not exceed the moneys available therein. (Act Apr. 10, 1933, c. 211, §10.)

**1225-12 ½ j.** Contracts in violation of Act to be null and void.—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 obligations thereby sought to be imposed upon the village, and no claim therefor shall be allowed by the council of the village nor any board thereof; nor shall the clerk or recorder of such village or any other officer or employee issue or execute, nor shall the village treasurer pay any check, warrant or certificate of indebtedness issued on account thereof. Each member of the village council and each other village officer or employee participating in or authorizing any violation of this Act shall be individually liable to the village or to any other person for any damages caused thereby. Each member of the village council or any board of such village present at a meeting of the board or council when any action is taken with reference to paying money or incurring indebtedness or entering into any contract in violation of the provisions of this Act, 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. 10, 1933, c. 211, §11.)

**1225-12 ½ k.** Change in population not to affect status.—When a village 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. 10, 1933, c. 211, §12.)

**1225-12 ½ l.** May be continued for one year in certain cases.—The funding of the indebtedness of the village is necessary to the functioning of this law and if any such village shall find it impossible to sell bonds herein provided for prior to January 1, 1934, but can sell such bonds during the year 1934, the operation of this Act shall be postponed for one year. In that event the indebtedness authorized to be funded hereunder shall be the valid indebtedness, excluding bonds, in excess of cash on hand not specifically set aside for the retirement of bonds and interest thereon, incurred prior to January 1, 1934, and the provisions of Sections 2, 3, 4, 5, 7, 8, 9, 10 and 11 shall not take effect until and after January 1, 1935. (Act Apr. 10, 1933, c. 211, §13.)

**1225-12 ½ m.** Provisions separable.—If any provision hereof is found unconstitutional, such determination shall not affect the validity of the remaining provisions not clearly dependent thereon. (Act Apr. 10, 1933, c. 211, §14.)

**1225-13.** Villages may not issue orders without funds.—That from and after January 1, 1932, no village now or hereafter having a population of more than 600 inhabitants, and less than 900 inhabitants, and an assessed valuation of more than \$1,000,000 and less than \$1,500,000, shall draw any order or warrant on any fund until there is sufficient money in such fund to pay the same, together with all orders previously issued against said fund. (Act Apr. 20, 1931, c. 277, §1.)



**1225-14. Shall not incur indebtedness.**—Whenever from and after January 1, 1932, the expense and obligations incurred chargeable to any particular fund of such village 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 any prior year or years, no officer, board or official body of such village 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 village, but such additional indebtedness attempted to be created shall be a personal claim against the officer or members of the municipal board or body voting for or attempting to create the same; and in no event shall any officer, board or official body of such village have the power, and no power shall exist, to create any indebtedness which shall be a charge against the village, in excess of the tax levy payable in that year for the use of the particular department, board or official body, less the amount required to be paid each year therefrom on bonds herein authorized and interest accruing thereon. (Act Apr. 20, 1931, c. 277, §2.)

**1225-15. May issue certificates.**—At any time after the annual tax levy has been certified to the county auditor, but not earlier than October 10th of the year preceding the year for which the tax levy is made, the governing body of such village may, by resolution, issue and sell as many certificates of indebtedness as may be needed in anticipation of the collection of taxes levied for any fund named in the tax levy for the purpose of raising money for any such fund, but the certificates outstanding for any of such separate funds shall not at any time exceed 50 per cent of the amount of taxes previously levied for such fund remaining uncollected, 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, and said certificates shall not be sold for less than par and accrued interest and shall not bear a greater rate of interest than six per cent per annum. Each certificate shall state upon its face for which fund the proceeds of said certificates shall be used, the total amount of said certificates so issued, and the whole amount embraced in said tax levy for that particular purpose. They shall be numbered consecutively and be in the denominations of \$100.00, or a multiple thereof, and may have interest coupons attached and shall be otherwise of such form and terms and may be made payable at such place as will best aid in their negotiations, and the proceeds of the tax assessed and collected, as aforesaid, on account of said fund, and the faith and credit of such village 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, except as herein provided. 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 certificates for any one year may, if necessary, be used to redeem unpaid certificates issued in a prior year. (Act Apr. 20, 1931, c. 277, §3.)

Certificates of indebtedness of certain villages such as the village of Kinney issued in anticipation of unpaid taxes cannot exceed 50% of uncollected taxes levied in previous year. Op. Atty. Gen. (476a-4), June 15, 1934.

Certificates must be paid from the taxes in anticipation of the collection of which they are issued. Op. Atty. Gen. (469b-6), July 3, 1934.

Warrants issued under §1946-51 are not included as part of net debt of municipality within meaning of §1938-3. Op. Atty. Gen. (476a-4), Apr. 5, 1938.

**1225-16. Revenues for 1931.**—All taxes levied in 1930 shall be considered as the tax revenues for the year 1931, provided the outstanding indebtedness is funded and paid by the issuance of bonds as herein authorized, and thereafter in any such village, taxes shall be levied as now provided by law not later than October of each year, but for the succeeding year. (Act Apr. 20, 1931, c. 277, §4.)

**1225-17. May issue bonds.**—If any such village prior to January 1, 1931, has incurred by proper authority a valid indebtedness, excluding bonds, in excess of its cash on hand, such village 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, except that such bonds may be issued on a vote of the council thereof, without a vote of the electors; provided that if any moneys received from taxes levied in 1930 and payable in 1931, or income from local sources received since January 1, 1931, have been used prior to the issuance of bonds authorized by this Act for the retirement of indebtedness existing January 1, 1931, and interest thereon, such bond issue may include the amount of such payments for the purpose of reimbursing the funds from which such moneys were so paid; and provided further, that such bond issue may also include the amount of attorneys' fees and incidental expenses reasonably incurred in connection with placing such village on a cash basis and the issuance of such refunding bonds. (Act Apr. 20, 1931, c. 277, §5.)

**1225-18. Tax levy to pay bonds.**—The village council of any village issuing bonds pursuant to the authority of this Act shall, before the issuance thereof, by a resolution, provide for a levy for each year until the principal and interest are paid in full, or 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 irrevocable until all of such bonds are paid. Said annual tax for the payment of said bonds and interest shall be derived from two sources: (1) 57 per cent of the amount necessary to pay said bonds and interest, and no more, shall be levied as a special tax in addition to the annual tax levy for general corporation purposes, water, light, power and building commission purposes, and library purposes for each year, and other special taxes which may be levied annually as provided by law; and (2) 43 per cent of the amount necessary to pay said bonds and interest shall be raised and obtained from each of the annual tax levies made by said village for general corporation purposes, water, light, power and building commission purposes, and library purposes for each year until all of said bonds are paid, in the same ratio as the tax levy for paying 43 per cent of the bonds and interest payable in any one year bears to the total annual maximum tax levy that could be made for general corporation purposes, water, light, power and building commission purposes, and library purposes for said year. (Act Apr. 20, 1931, c. 277, §6.)

**1225-19. Boards or commissions may not incur indebtedness.**—Whenever any department, board or commission of such village has the power to expend money such department, board or commission shall not during any year contract any indebtedness, or incur any pecuniary liability, which shall be in excess of the sum that may be allotted to its department for said year by the village council. The village council shall by resolution, prior to February 1st, each year, set aside for each such department, board or commission, such sum as it deems necessary and adequate for the proper operation thereof, subject, however, to amendments of such resolution thereafter as necessity may require. (Act Apr. 20, 1931, c. 277, §7.)

**1225-20. Recorder to keep record.**—The village recorder shall keep a record showing accurately the amount allotted to each board or governing body for the calendar year, and the amounts incurred and expended from time to time by the village council and each department of such village. A record of expenditures for the village council and all its departments shall be presented to and examined at a regular meeting once each month by the village council and shall show the true condition of affairs at the date of such meeting. (Act Apr. 20, 1931, c. 277, §8.)

**1225-21. Federal census to govern.**—For the purpose of this Act, the last federal census of population taken prior to the calendar year in which any levy may be made shall govern and shall be conclusive in determining hereunder the population of any such village. (Act Apr. 20, 1931, c. 277, §9.)

**1225-22. Application of act.**—When a village 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. 20, 1931, c. 277, §10.)

**1225-23. 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. 20, 1931, c. 277, §11.)

**1225-24. Inconsistent acts repealed.**—This act shall take effect and be in force from and after its passage 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. 20, 1931, c. 277, §12.)

**1225-24 ½. Application.**—This Act shall apply to all villages in the state which have a population of more than 1300 and less than 1500, and an assessed valuation of taxable property (exclusive of moneys and credits) of more than \$3,000,000 and less than \$4,000,000, more than 70% of which assessed valuation consists of iron ore. For the purposes of this Act the population shall be determined by the last federal census taken prior to the passage hereof, and the valuation shall be that used as a basis for spreading the 1932 taxes. (Act Apr. 15, 1933, c. 275, §1.)

**1225-24 ½ a. Villages to be on cash basis.**—From and after January 1, 1934, no such village shall draw or issue any order or warrant on any fund until there is sufficient money in such fund to pay the same, together with all warrants and orders previously issued against such fund. (Act Apr. 15, 1933, c. 275, §2.)

**1225-24 ½ b. May not create indebtedness—sale of certificates.**—Whenever from and after January 1, 1934, the expenses and obligations incurred chargeable to any particular fund of such village in any calendar year are sufficient to absorb 90% of the entire amount of the tax levy for such fund payable in that year, including such amount as may remain in the fund from the levy of the prior year or years, neither the village council nor any officer, board or employee of such village shall have power and no power shall exist to create any additional indebtedness (save as the remaining 10% of such tax levy is collected) which shall be a charge against that particular fund or shall be in any manner a valid claim against such village; but such additional indebtedness, if attempted to be created, shall be a personal claim against the officer or members of the municipal board voting for or attempting to create the same; and in no event shall the village council or any officer, board or employee of the village have the power and no power shall exist to create any indebtedness which shall be a charge against the village in excess of the local income and the tax levy payable in that year for the use of a particular department, board or official body, less the amount required to be paid each year therefrom on bonds herein authorized and interest accruing thereon. At any

time after the annual tax levy has been certified to the county auditor and not earlier than October 10 in any year, the governing body of such village may, for the purpose of meeting the obligations of the ensuing year, by resolution issue and sell as many certificates of indebtedness as may be needed in anticipation of the collection of the taxes so levied for any fund named in said tax levy, for the purpose of raising money for such fund. No certificates shall be issued and outstanding for any separate fund exceeding 50% of the amount named in the tax levy for that fund as spread by the county auditor, and in no event exceeding the uncollected portion of said levy. No certificates shall be issued or become due and payable later than December 31 of the year succeeding the year in which such tax levy, certified to the county auditor as aforesaid, was made. Such 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 funds proceeds of the certificate shall be used, the total amount of the certificates issued and outstanding against such fund, and the whole amount embraced in the tax levy for that particular purpose. They shall be numbered consecutively and be in denominations of \$25 or multiples thereof and may have interest coupons attached, and shall be otherwise of such terms and form and be made payable at such place as will best aid in their negotiation. The certificates of indebtedness issued hereunder shall be negotiable instruments. The proceeds of the tax assessed and collected as aforesaid on account of such fund, and the full faith and credit of such village shall be irrevocably pledged for the redemption of the certificates so issued. Such certificates shall be paid from the moneys derived from the levy against which such certificates were issued, or if they be not sufficient for such purpose, from other funds of the village. The money derived from the sale of such 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 except during 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 certificates for any one year may, if necessary, be used to redeem unpaid certificates issued in a prior year. (Act Apr. 15, 1933, c. 275, §3.)

**1225-24 ½ bb. Certificates of indebtedness.**—When any certificates of indebtedness, issued hereunder, have been or shall be unpaid when due by reason of the non-payment, when due and payable, of the taxes against which they were issued, and money to pay the same has heretofore been obtained or is hereafter obtained by the issuance and sale of new certificates of indebtedness or warrants for the payment thereof shall be issued against new certificates, such new certificates, to the extent that the proceeds thereof are so used, shall not be considered in determining the amount of certificates which may be issued against the levy for the calendar year in which they are issued. (Act Apr. 13, 1935, c. 171, §3 ½.)

**1225-24 ½ c. Certificates may be deposited with city treasurer.**—In the event the village is unable to sell such certificates of indebtedness in the manner prescribed, it may issue said certificates of indebtedness to the village treasurer or his order and deposit the same with him. Certificates so issued shall be held by the treasurer until they may be sold and shall bear interest at 6 per cent per annum. The village may thereupon, as long as such certificates are on deposit with the treasurer, issue warrants upon the funds against which such certificates were issued, the total principal amount of such warrants not to exceed the total principal amount of the certificates so held by the treasurer. Such warrants shall bear interest at 6 per cent per annum from and after the date they are presented to the treasurer and stamped "Not paid

for want of funds, but protected by certificates of indebtedness now held by me." Such certificates may be sold by the village council and the proceeds of such sale shall be used to take up such warrants in the order presented for payment. Interest upon such warrants shall stop upon the date they are called by the treasurer for payment. Such certificates of indebtedness so held by the treasurer shall be paid at the same time and in the same manner as if they had been issued to a purchaser thereof. All warrants attempted to be issued and all obligations or indebtedness attempted to be incurred under authority of this section in excess of the principal amount of the certificates of indebtedness so held by such treasurer shall be void. (Act Apr. 15, 1933, c. 275, §4.)

**1225-24 1/2 d.** Shall remain on cash basis.—From and after January 1, 1934, such village 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 village taxes shall be levied as now provided by law, but for the succeeding year. (Act Apr. 15, 1933, c. 275, §5.)

**1225-24 1/2 e.** May issue bonds to fund indebtedness.—If any such village prior to January 1, 1933, has incurred by proper authority a valid indebtedness, excluding bonds, in excess of its cash on hand not specifically set aside for the retirement of bonds and interest thereon, such village may for the purpose only of paying and discharging such valid indebtedness and interest thereon, issue its bonds in the manner now provided by law, except that such bonds may be issued on a vote of the village council without a vote of the electors; provided that the purchaser of such bonds shall not be charged with notice of the invalidity of any indebtedness funded by such bonds, and bonds issued hereunder in the total amount of such indebtedness as determined by the resolution of the village council, in the hands of any purchaser, shall be valid obligations of the village, notwithstanding any claim of invalidity of any such indebtedness funded thereby. If any moneys received from taxes levied in 1932 and payable in 1933, or income from local sources received since January 1, 1933, have been used prior to the issuance of bonds authorized by this Act for the retirement of indebtedness existing January 1, 1933, or interest thereon, such bond issue may include the amount of such payments for the purpose of reimbursing the funds from which such moneys were paid. (Act Apr. 15, 1933, c. 275, §6.)

**1225-24 1/2 f.** Tax levy to pay bonds and interest.—The village council of any such village 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 irrevocable until all of such bonds are paid. Such annual tax levy for the payment of such bonds shall be within the existing per capita and millage limitations upon tax levies applicable to such village. The county auditor, at the time of spreading the annual tax levy of said village, shall adjust the same so that the total tax levy of such village, including levies for bonds issued hereunder, whether to the state or to private purchasers, shall not exceed existing per capita and millage limitations, plus any levies which may be authorized in excess of such limitations for bonded indebtedness and interest thereon existing at the time of the passage of this Act. The levies for the payment of such bonds shall be charged against the permissible levies for general corporation purposes, library purposes and water, light, power and building purposes in such proportions as the council may determine, but the amount levied, whether by the state auditor or the village council of such village, for the

payment of interest on such bonds shall not be charged against any fund levied by the village council for such village, and shall be in excess of all existing millage limitations. (Act Apr. 15, 1933, c. 275, §7; Apr. 17, 1939, c. 298.)

**1225-24 1/2 g.** May be sold or exchanged.—Such bonds may be issued and sold to the State of Minnesota pursuant to existing laws at the time of the issuance thereof (except as herein modified), or to private purchasers, or to both, or exchanged for outstanding orders at par with accrued interest. (Act Apr. 15, 1933, c. 275, §8.)

**1225-24 1/2 h.** Tax levy—limit.—The amount which may be included by any such village in its annual tax levy for each year hereafter made for general corporation and library purposes shall be 22 mills on the dollar of the taxable valuation of the village, and it may levy for such additional purpose as may be authorized by law; provided that the total amount of such levy shall not exceed the amounts authorized by Laws 1921, Chapter 417 [ §§2061 to 2066 ], as amended by Laws 1929, Chapter 206, and with the levies for the payments of bonds issued hereunder, shall not exceed the total number of mills authorized in such village. (Act Apr. 15, 1933, c. 275, §9.)

**1225-24 1/2 i.** Not to incur indebtedness.—No department, board or commission of such village shall during any year contract any indebtedness or incur any pecuniary liability which shall be in excess of the sum that may be levied and collected for said department, board or commission or allotted to it for said year by the village council, plus local income accruing to such department, board or commerce. A record of expenditures of the village shall be presented to and examined at a regular meeting of the village council once each month and shall show the true condition of the affairs at the date of such meeting. (Act Apr. 15, 1933, c. 275, §10.)

**1225-24 1/2 j.** District Court may require village to limit expenditure.—If at any time during any year a village operating hereunder is incurring obligations at a rate or upon a scale which would make it probable, if such rate or scale be continued, after allowing for variations in seasonal requirements, that the total expenditures for said year would exceed the moneys to be received therein, after allowance for probable tax delinquencies, the District Court, in an action brought by any taxpayer, may require such village to limit its expenditures to a rate and scale which will assure that the total obligations incurred in such year will not exceed the moneys available therein. (Act Apr. 15, 1933, c. 275, §11.)

**1225-24 1/2 k.** Contracts to be null and void in certain cases.—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 obligations thereby sought to be imposed upon the village, and no claim therefor shall be allowed by the council of the village nor any board thereof; nor shall the clerk or recorder of such village or any other officer or employee issue or execute, nor shall the village treasurer pay any check, warrant or certificate of indebtedness issued on account thereof. Each member of the village council and each other village officer or employee participating in or authorizing any violation of this Act shall be individually liable to the village or to any other person for any damages caused thereby. Each member of the village council or any board of such village present at a meeting of the board or council when any action is taken with reference to paying money or incurring indebtedness or entering into any contract in violation of the provisions of this act, 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. 15, 1933, c. 275, §12.)

**1225-24 1/2 l.** Village to continue under provision of this act.—When a village 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. 15, 1933, c. 275, §13.)

**1225-24 1/2 m.** Operation of act to be postponed one year in certain cases.—The funding of the indebtedness of the village is necessary to the functioning of this law and if any such village shall find it impossible to sell bonds herein provided for prior to January 1, 1934, but can sell such bonds during the year 1934, the operation of this Act shall be postponed for one year. In that event the indebtedness authorized to be funded hereunder shall be the valid indebtedness, excluding bonds, in excess of cash on hand not specifically set aside for the retirement of bonds and interest thereon, incurred prior to January 1, 1934, and the provisions of Sections 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, shall not take effect until and after January 1, 1935. (Act Apr. 15, 1933, c. 275, §14.)

**1225-24 1/2 n.** Provisions separable.—If any provision hereof is found unconstitutional, such determination shall not affect the validity of the remaining provisions not clearly dependent thereon. (Act Apr. 15, 1933, c. 275, §15.)

**1225-25.** Villages not to draw orders.—That from and after January 1, 1932, no village now or hereafter having a population of more than 1,400 inhabitants, and less than 1,600 inhabitants, and an assessed valuation of more than \$700,000, and less than \$2,000,000, shall draw any order or warrant on any fund until there is sufficient money in such fund to pay the same, together with all orders previously issued against said fund. (Act Apr. 25, 1931, c. 388, §1.)

**1225-26.** Not to create indebtedness.—Whenever from and after January 1, 1932, the expense and obligations incurred chargeable to any particular fund of such village 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 any prior year or years, no officer, board or official body of such village 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 village, but such additional indebtedness attempted to be created shall be a personal claim against the officer or members of the municipal board or body voting for or attempting to create the same; and in no event shall any officer, board or official body of such village have the power, and no power shall exist, to create any indebtedness which shall be a charge against the village, in excess of the tax levy payable in that year for the use of the particular department, board or official body, less the amount required to be paid each year therefrom on bonds herein authorized and interest accruing thereon. (Apr. 25, 1931, c. 388, §2.)

**1225-27.** May issue certificates of indebtedness.—At any time after the annual tax levy has been certified to the county auditor, but not earlier than October 10 of the year preceding the year for which the tax levy is made, the governing body of such village may, by resolution, issue and sell as many certificates of indebtedness as may be needed in anticipation of the collection of taxes levied for any fund named in the tax levy for the purpose of raising money for any such fund, but the certificates outstanding for any of such separate funds shall not at any time exceed 50 per cent of the amount of taxes previously levied for such fund remaining uncollected, and no certificate shall be issued to become due and payable later than December 31 of the year succeeding the year in which said tax levy, certified to the county auditor as aforesaid, was made, and said certificate shall not be sold for less

than par and accrued interest and shall not bear a greater rate of interest than six per cent per annum. Each certificate shall state upon its face for which fund the proceeds of said certificate shall be used, the total amount of said certificate so issued, and the whole amount embraced in said tax levy for that particular purpose. They shall be numbered consecutively and be in the denominations of \$100.00, or a multiple thereof, and may have interest coupons attached and shall be otherwise of such form and terms and may be made payable at such place as will best aid in their negotiation, and the proceeds of the tax assessed and collected, as aforesaid, on account of said fund, and the faith and credit of such village 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. 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 certificates for any one year may, if necessary, be used to redeem unpaid certificates issued in a prior year. (Act Apr. 25, 1931, c. 388, §3.)

**1225-28.** Tax revenues for 1932.—All taxes levied in 1931 shall be considered as the tax revenues for the year 1932, and thereafter in any such village, taxes shall be levied as now provided by law not later than October of each year, but for the succeeding year. (Act Apr. 25, 1931, c. 388, §4.)

**1225-29.** May issue bonds.—If any such village prior to January 1, 1931, has incurred by proper authority a valid indebtedness, excluding bonds, in excess of its cash on hand, such village 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 except that such bonds may be issued on a vote of the council thereof, without a vote of the electors and such bonds shall mature in equal annual installments extending over a period of not more than twenty years; provided that if any moneys received from taxes levied in 1930 and payable in 1931, or income from local sources received since January 1, 1931, have been used prior to the issuance of bonds authorized by this act for the retirement of indebtedness existing January 1, 1931, and interest thereon, 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. 25, 1931, c. 388, §5.)

**1225-30.** Tax levy to retire bonds.—The village council of any village issuing bonds pursuant to the authority of this act shall, before the issuance thereof, by a resolution, provide for a levy for each year until the principal and interest 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 irrepealable until all of such bonds are paid. Said annual tax for the payment of said bonds and interest shall be derived from two sources: (1) 52 per cent of the amount necessary to pay said bonds and interest, and no more shall be levied as a special tax in addition to the annual tax levy for general corporation purposes, park and park board, library, and water, light, power and building commission purposes, and other special taxes which may be levied annually as provided by law; and (2) 48 per cent of the amount necessary to pay said bonds and interest shall be raised and obtained from each of the annual tax levies made by said village for general corporation purposes, water, light, power and building commission purposes, park and park board and library purposes, for each year until all of said bonds are paid, in the same ratio

as the tax levy for paying 48 per cent of the bonds and interest payable in any one year bears to the total annual maximum tax levy that could be made for general corporation purposes, water, light, power and building commission purposes, park and park board and library purposes for said year. Provided, however, that if any bonds of said village are outstanding and held by the State of Minnesota that such state bonds shall be retired upon maturity through the levy of a tax sufficient to pay the same when due, and said levy shall be in addition to all others herein provided for, and shall not be subject to any of the limitations provided for herein. (Act Apr. 25, 1931, c. 388, §6.)

**1225-31. Boards or departments not to incur indebtedness.**—Whenever any department, board or commission of such village has the power to expend money such department, board or commission shall not during any year contract any indebtedness, or incur any pecuniary liability, which shall be in excess of the sum that may be allotted to its department for said year by the village council or to pay maturing bonds outstanding at the time this Act takes effect. The village council shall by resolution, prior to February 1, each year, set aside for each such department, board or commission, such sum as it deems necessary and adequate for the proper operation thereof, subject, however, to amendments of such resolution thereafter as necessity may require. (Act Apr. 25, 1931, c. 388, §7.)

**1225-32. Village recorders to keep record of allotment.**—The village recorder shall keep a record showing accurately the amount allotted to each board or governing body for the calendar year, and the amounts incurred and expended from time to time by the village council and each department of such village. A record of expenditures for the village council and all its departments shall be presented to and examined at a regular meeting once each month by the village council and shall show the true condition of affairs at the date of such meeting. (Act Apr. 25, 1931, c. 388, §8.)

**1225-33. Federal census shall govern.**—For the purpose of this act, the last federal census of population taken prior to the calendar year in which any levy may be made shall govern and shall be conclusive in determining hereunder the population of any such village. (Act Apr. 25, 1931, c. 388, §9.)

**1225-34. Change in valuation or population not to change status.**—When a village has once come under the provisions of this act, it shall continue under its provisions, notwithstanding any subsequent change in assessed valuation or population. (Act Apr. 25, 1931, c. 388, §10.)

**1225-35. 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. 25, 1931, c. 388, §11.)

**1225-36. Inconsistent acts repealed.**—This act shall take effect and be in force from and after its passage 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. 25, 1931, c. 388, §12.)

**1225-37. Villages to be on cash basis.**—That from and after January 1, 1932, no village now or hereafter having a population of more than 2,000 inhabitants, and less than 3,000 inhabitants, and an assessed valuation of more than \$3,000,000, and less than \$4,000,000, shall draw any order or warrant on any fund until there is sufficient money in such fund to pay the same, together with all orders previously issued against said fund. (Act Apr. 25, 1931, c. 342, §1.)

**1225-38. Officers may not incur indebtedness.**—Whenever from and after January 1, 1932, the expense and obligations incurred chargeable to any particular fund of such village 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 any prior year or years, no officer, board or official body of such village 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 village, but such additional indebtedness attempted to be created shall be a personal claim against the officer or members of the municipal board or body voting for or attempting to create the same; and in no event shall any officer, board or official body of such village have the power, and no power shall exist, to create any indebtedness which shall be a charge against the village, in excess of the tax levy payable in that year for the use of the particular department, board or official body, less the amount required to be paid each year therefrom on bonds herein authorized and interest accruing thereon. (Act Apr. 25, 1931, 342, §2.)

Mill limitations provided for by laws under which a village is operating must cover expenditures for all corporate purposes, and in making public improvements a village operating under cash basis law is not authorized to make a special levy therefor above general village levy authorized by law, except in cases where specific power is given to levy a special tax, and village is not authorized to make a special levy to raise funds for payment of bonds to be issued for purpose of improving heat distribution system as a WPA project. Op. Atty. Gen. (44a-8), Apr. 7, 1937.

**1225-39. Governing board may sell certificates.**—At any time after the annual tax levy has been certified to the county auditor, but no earlier than October 10 of the year preceding the year for which the tax levy is made, the governing body of such village may, by resolution, issue and sell as many certificates of indebtedness as may be needed in anticipation of the collection of taxes levied for any fund named in the tax levy for the purpose of raising money for any such fund, but the certificates outstanding for any of such separate funds shall not at any time exceed 50 per cent of the amount of taxes previously levied for such fund remaining uncollected, and no certificate shall be issued to become due and payable later than December 31 of the year succeeding the year in which said tax levy, certified to the county auditor as aforesaid, was made, and said certificates shall not be sold for less than par and accrued interest and shall not bear a greater rate of interest than six per cent per annum. Each certificate shall state upon its face for which fund the proceeds of said certificate shall be used, the total amount of said certificate so issued, and the whole amount embraced in said tax levy for that particular purpose. They shall be numbered consecutively and be in the denominations of \$100.00, or a multiple thereof, and may have interest coupons attached and shall be otherwise of such form and terms and may be made payable at such place as will best aid in their negotiation, and the proceeds of the tax assessed and collected, as aforesaid, on account of said fund, and the faith and credit of such village 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. 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 certificates for any one year may, if necessary, be used to redeem unpaid certifi-

icates issued in a prior year. (Act Apr. 25, 1931, c. 342, §3.)

**1225-40. Tax levies for 1932.**—All taxes levied in 1931 shall be considered as the tax revenues for the year 1932, and thereafter in any such village, taxes shall be levied as now provided by law not later than October of each year, but for the succeeding year. (Act Apr. 25, 1931, c. 342, §4.)

**1225-41. Village may issue bonds.**—If any such village prior to January 1, 1931, has incurred by proper authority a valid indebtedness, excluding bonds, in excess of its cash on hand, such village 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, except that such bonds may be issued on a vote of the council thereof, without a vote of the electors; provided that if any moneys received from taxes levied in 1930 and payable in 1931, or income from local sources received since January 1, 1931, have been used prior to the issuance of bonds authorized by this act for the retirement of indebtedness existing January 1, 1931, and interest thereon, 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. 25, 1931, c. 342, §5.)

**1225-42. To provide for tax levy.**—The village council of any village issuing bonds pursuant to the authority of this act shall, before the issuance thereof, by a resolution, provide for a levy for each year until the principal and interest 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 irrevocable until all of such bonds are paid. Said annual tax for the payment of said bonds and interest shall be derived from two sources:

(1) 52 per cent of the amount necessary to pay said bonds and interest, and no more, shall be levied as a special tax in addition to the annual tax levy for general corporation purposes, water, light, power and building commission purposes, and library purposes for each year, and other special taxes which may be levied annually as provided by law; and (2) 48 per cent of the amount necessary to pay said bonds and interest shall be raised and obtained from each of the annual tax levies made by said village for general corporation purposes, water, light, power and building commission purposes, and library purposes for said year. (Act Apr. 25, 1931, c. 342, §6.)

Laws 1927, c. 131, does not apply to bonds issued pursuant to this act, but a village has the right to anticipate delinquencies and provide for them by an excess levy each year. Op. Atty. Gen., Aug. 5, 1931.

**1225-43. Departments of board shall not incur indebtedness.**—Whenever any department, board or commission of such village has the power to expend money, such department, board or commission shall not during any year contract any indebtedness, or incur any pecuniary liability, which shall be in excess of the sum that may be allotted to its department for said year by the village council. The village council shall by resolution, prior to February 1, each year, set aside for each such department, board or commission, such sum as it deems necessary and adequate for the proper operation thereof, subject, however, to amendments of such resolution thereafter as necessity may require. (Act Apr. 25, 1931, c. 342, §7.)

**1225-44. Recorder to keep record of allotments.**—The village recorder shall keep a record showing accurately the amount allotted to each board or governing body for the calendar year and the amounts in-

currred and expended from time to time by the village council and each department of such village. A record of expenditures for the village council and all its departments shall be presented to and examined at a regular meeting once each month by the village council and shall show the true condition of affairs at the date of such meeting. (Act Apr. 25, 1931, c. 342, §8.)

**1225-45. Federal census shall govern.**—For the purpose of this act, the last federal census of population taken prior to the calendar year in which any levy may be made shall govern and shall be conclusive in determining hereunder the population of any such village. (Act Apr. 25, 1931, c. 342, §9.)

**1225-46. Change in population not to affect law.**—When a village has once come under the provisions of this act, it shall continue under its provisions, notwithstanding any subsequent change in assessed valuation or population. (Act Apr. 25, 1931, c. 342, §10.)

**1225-47. 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. 25, 1931, c. 342, §11.)

**1225-48. This act shall take effect and be in force from and after its passage 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. 25, 1931, c. 342, §12.)

**1225-49. Application of act.**—This Act shall apply to all villages in the State which adopt the provisions of this Act by a unanimous vote of the council prior to December 31, 1933, and which have a population of more than 2500 and less than 3000 and an assessed valuation of taxable property (exclusive of moneys and credits) of more than \$4,000,000 more than 70% of which assessed valuation consists of iron ore. For the purposes of this Act the population shall be determined by the last federal census taken prior to the passage hereof and the valuation shall be that used as a basis for spreading the 1932 taxes. (Act Apr. 22, 1933, c. 415, §1.)

**1225-50. To be on cash basis after January 1, 1934.**—That from and after January 1, 1934, no such village shall draw or issue any order or warrant against any of its funds until there is sufficient money in such fund to pay the same together with the warrants and orders previously issued against said fund. (Act Apr. 22, 1933, c. 415, §2.)

**1225-51. May not incur indebtedness in excess of income.**—Whenever from and after January 1, 1934, the expenses and obligations incurred chargeable to any particular fund of such village in any calendar year are sufficient to absorb 90% 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 any prior year or years, no officer, board or official body of such village shall have the power, and no power shall exist, to create any additional indebtedness (save as the remaining ten per cent of said tax levy is collected) which shall be a charge against such village, but such additional indebtedness attempted to be created shall be a personal claim against the officer or members of the municipal board or body voting for or attempting to create the same; and in no event shall any officer, board or official body of such village have the power, and no power shall exist, to create any indebtedness which shall be a charge against the village, in excess of the tax levy payable in that year for the use of the particular department, board or official body, less the amount required to be paid each year therefrom on bonds herein authorized and interest accruing thereon. (Act Apr. 22, 1933, c. 415, §3.)

**1225-52. May issue certificates of indebtedness.**—At any time after the annual tax levy has been certified to the county auditor, and not earlier than Octo-

ber 10th in any year, the governing body of such village may for the purpose 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, and 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 annum; each certificate shall state upon its face for which fund the proceeds of said certificate shall be used, the total amount of said certificates so issued, and 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, and the proceeds of the tax assessed and collected as aforesaid on account of such fund, and the faith and credit of such village shall be irrevocably pledged for the redemption of the certificates so issued. Such certificates shall be paid from the money derived from the levy for the year against which such certificates were issued. 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 certificates for any one year may, if necessary, be used to redeem unpaid certificates issued in a prior year. (Act Apr. 22, 1933, c. 415, §4.)

**1225-53. Shall remain on cash basis.**—From and after January 1, 1934, such village 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 village taxes shall be levied as now provided by law not later than October of each year, but for the succeeding year. (Act Apr. 22, 1933, c. 415, §5.)

**1225-54. May issue bonds to fund indebtedness.**—If any such village prior to January 1, 1933, has incurred by proper authority a valid indebtedness, excluding bonds in excess of its cash on hand, such village may, for the purpose only of paying and discharging such valid indebtedness and interest thereon, issue its bonds in the manner now provided by law, except that such bonds may be issued on a vote of the Council thereof without a vote of the electors; provided that if any moneys received from taxes levied in 1932 and payable in 1933, or income from local sources received since January 1, 1933, have been used prior to the issuance of bonds authorized by this Act for the retirement of indebtedness existing on January 1, 1933, and interest thereon, such bond issue may include the amount of such payments for the purpose of reimbursing the funds from which such moneys were paid. (Act Apr. 22, 1933, c. 415, §6.)

**1225-55. Tax levy to retire bonds.**—The village council of any village issuing bonds pursuant to the authority of this Act shall, before the issuance thereof, by resolution provide for a levy for each year until the principal and interest 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 ir-

repealable until all of such bonds are paid. Such annual tax for the payment of such bonds shall be within existing per capita limitations upon tax levies applicable to such village and shall be derived from two sources: (a) 27% of the amount necessary to pay said bonds and interest, and no more, shall be levied as a special tax in addition to the annual tax levy for general corporation and library purposes, water, light, heat and building commission purposes, and any other special taxes which may be levied annually as provided by law; and (b) 73% of the amount necessary to pay said bonds and interest shall be raised and obtained from the annual tax levies made by said Village for general corporation and library purposes, water, light, power and building commission purposes for each year, until all of said bonds are paid, in the same ratio as the tax levy for paying 73% of the bonds and interest payable in any one year bears to the total annual maximum tax levy that could be made for general corporation and library purposes, water, light, power and building commission purposes for said year. (Act Apr. 22, 1933, c. 415, §7.)

**1225-56. Department or boards shall not exceed limit.**—Whenever any department, board or commission of such village having the power to expend money which shall not have been provided by law with a special tax levy, such department, board or commission shall not during any year contract any indebtedness or incur any pecuniary liability which shall be in excess of the sum that may be allotted to its department for said year by the Village Council. The Village Council shall by resolution prior to February 1 each year, set aside for each such department, board or commission such sum as it deems necessary and adequate for the proper operation thereof, subject, however, to amendments of such resolution thereafter as necessity may require. (Act Apr. 22, 1933, c. 415, §8.)

**1225-57. Village recorder to keep record.**—The Village Recorder shall keep a record showing accurately the amount allotted to each board or governing body for the calendar year and the amounts incurred and expended from time to time by the Village Council and each department of such village. A record of expenditures for the Village Council and all its departments shall be presented to and examined at a regular meeting once each month by the Village Council and shall show the true condition of affairs at the date of such meeting. (Act Apr. 22, 1933, c. 415, §9.)

**1225-58. Warrants and order legalized.**—In the event that any such village, prior to the passage of this Act, issued its warrants or orders against any of its funds, which warrants or orders were outstanding and unpaid at the time of the passage of this Act, the said warrants and orders are hereby in all respects legalized. (Act Apr. 22, 1933, c. 415, §10.)

**1225-59. Violations—penalties.**—Any member of the Village Council or other governing body or board, or other village officer or employe, knowingly participating in and authorizing any violation of this Act shall be guilty of a misdemeanor punishable by a fine not exceeding \$100.00 or by imprisonment in the County Jail not exceeding three months for each offense. Every 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 village. No claim therefor shall be allowed by the Village Council nor any governing board; nor shall the Village Recorder or any other village or department officer or employe issue or execute, nor shall the Village Treasurer pay, any warrant or certificate of indebtedness issued on account thereof. Each member of the Village Council or any village board or other village officer or employe participating in or authorizing any violation of this Act shall be individually liable to the village or to any

other person for any damages caused thereby. Each member of the Village Council or Village Board present at a meeting of the board of council 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. Any member of the village council or governing board knowingly participating in or authorizing any violation of this Act shall be liable to suspension from office. Any vacancy created thereby shall be filled according to law. (Act. Apr. 22, 1933, c. 415, §11.)

**1225-60. To continue under provisions of act.**—When a village 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. 22, 1933, c. 415, §12.)

**1225-61. 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. 22, 1933, c. 415, §13.)

**1225-62. Effective date.**—This Act shall take effect and be in force from and after its passage, and all Acts and parts of Acts inconsistent herewith; provided that the funding of the indebtedness existing on January 1, 1933, in any such village is a necessary step in the working out of this law and if any village hereunder shall be unable to sell its bonds prior to January 1, 1934, this Act shall not take effect therein. (Act Apr. 22, 1933, c. 415, §14.)

**1225-71. Application of act.**—This act shall apply to any village having an assessed valuation in excess of \$500,000 and less than \$1,000,000, exclusive of moneys and credits, more than 70 per cent of which valuation consists of iron ore, a population of more than 1,000 and less than 2,000, and an outstanding unfunded indebtedness in excess of 20 per cent of its assessed valuation. It shall apply, to the extent of the tax levies and payments provided for herein, to any town which embraces within its limits all the territory of any such village, and from which such village has not been separated for election or assessment purposes, and to any school district which embraces within its limits all the territory of any such village; provided that more than 50 per cent of the total population of such town and school district is contained in such village. Where the words "village," "town" or "school district" are hereinafter used, they shall be understood as applying only to villages, towns or school districts to which this act applies, as hereinbefore provided. (Jan. 3, 1936, Ex. Ses., c. 2, §1.)

**1225-72. Outstanding warrants segregated for payment under this act.**—All outstanding warrants or other indebtedness of any such village as of December 31, 1935, shall be and are hereby segregated to be paid only by levies and contributions from the village, town and school district as hereinafter provided. There shall be a special fund created by the village treasurer, called the "village indebtedness fund," from which such warrants and indebtedness shall be paid. (Jan. 3, 1936, Ex. Ses., c. 2, §2.)

**1225-73. Part of taxes segregated for payment into fund—tax levy—limitations—Other payments into fund.**—Of the annual levy of such village for general purposes 9 mills (or so much thereof as, after allowance for probable tax delinquencies, will produce \$6,000) shall be segregated and levied for and paid into such village indebtedness fund; of the annual tax levy of any such town 2 mills (or so much thereof as, after allowance for probable tax delinquencies, will produce \$15,000) shall be levied for and paid into such village indebtedness fund; of the annual tax levy of any such school district 2 mills (or so much thereof as, after allowance for probable tax

delinquencies, will produce \$10,000) shall be levied for and paid into such village indebtedness fund. All such levies shall be within the existing per capita or mill limitations upon levies of such village, school district or town. In addition to the levies above provided, any such village may levy in excess of existing mill limitations 14 mills (or so much thereof as, after allowance for probable tax delinquencies, will produce \$9,000) upon all the taxable property of the village, which amount shall be paid into such village indebtedness fund. In addition thereto, there shall be set aside and paid into such village indebtedness fund all moneys hereafter collected by such village on the tax levies of 1934 and prior years, which shall have not been used prior to December 31, 1935, for the reduction of such indebtedness, and all moneys, not exceeding however, the sum of \$15,000, hereafter collected on the delinquent taxes of 1933 and prior years by any such town; provided that no part of the delinquent village taxes for library fund shall be paid into such village indebtedness fund except insofar as necessary to pay warrants or indebtedness against such library fund. (Jan. 3, 1936, Ex. Ses., c. 2, §3.)

**1225-74. Payments to village treasurer—separate fund—apportionment—payment of warrants.**—All moneys provided to be paid into such village indebtedness fund by any such town or school district shall, as collected, be paid to the treasurer of the village by the county auditor and county treasurer. Such funds shall be kept separate from all other moneys of the village, and shall be used solely for the payment of such indebtedness or any bonds issued to fund the same. The village treasurer shall apportion the moneys in such village indebtedness fund between the various funds of the village against which warrants or indebtedness are outstanding, in proportion to the respective amounts of warrants and indebtedness against each such fund, and shall pay warrants against such funds out of the moneys apportioned thereto, in the order that such warrants were presented to the treasurer and stamped "Not paid for want of funds." In any year in which the levies and contributions to such fund, as hereinbefore provided, shall not equal an amount which could be levied for payment upon such warrants by the village under existing laws, the warrant-holders, or any of them, may require payment by the village from other funds of the amount by which such permissible levy of the village shall exceed the levies and contributions to such fund. (Jan. 3, 1936, Ex. Ses., c. 2, §4.)

**1225-75. Attainment of cash basis—tax levies.**—From and after January 1, 1936, any such village shall be deemed for all purposes to be on a cash basis, and shall thereafter remain on a cash basis. All taxes levied in 1935 (except such portions thereof as are provided to be levied for such village indebtedness fund) shall be considered as tax revenues for the year 1936 and thereafter in any such village taxes shall be levied as now provided by law but for the succeeding year, with the exception of levies hereinbefore provided for such village indebtedness fund. (Jan. 3, 1936, Ex. Ses., c. 2, §5.)

**1225-76. Warrants not to be issued where fund for payment insufficient.**—From and after January 1, 1936, no such village 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 such fund, and not segregated as provided for hereunder. (Jan. 3, 1936, Ex. Ses., c. 2, §6.)

**1225-77. Limitation on creation of indebtedness—personal liability of officers.**—Whenever, from and after January 1, 1936, the expenses and obligations incurred, chargeable to any particular fund of such village in any calendar year, are sufficient to absorb 90 per cent of the entire amount of the tax levy for such fund payable in that year, including such amount



as may remain in the fund from the levy of prior year or years, no officer or board of such village shall have power, and no power shall exist, to create any additional indebtedness (save as the remaining 10 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 village, but such indebtedness attempted to be created shall be a personal claim against the officer or member of the board voting for or attempting to create the same. (Jan. 3, 1936, Ex. Ses., c. 2, §7.)

**1225-78. Certificates of indebtedness.**—At any time after January first following the making of an annual tax levy the council of any such village may, for the purpose of meeting the obligations of the current 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. All certificates of indebtedness issued under the provisions of this act shall be negotiable and shall be payable to the order of the payee and shall have a definite due date. No certificate shall be issued to become due and payable later than December 31st of the year of issuance. Such certificates shall not be sold for less than par and accrued interest and shall not bear a greater rate of interest than six per cent per annum. Each certificate shall state upon its face for which funds proceeds of the certificate shall be used, the total amount of the certificates so issued against such fund and the whole amount embraced in said tax levy for that fund. They shall be numbered consecutively and be in denominations of \$25, or any multiple thereof, and may have interest coupons attached, and shall be otherwise in such terms and form and be made payable at such place as will best aid in their negotiation. (Jan. 3, 1936, Ex. Ses., c. 2, §8.)

**1225-79. Same—limitations—renewal of certificates.**—No such village shall be permitted during any year to anticipate by issuance of certificates of indebtedness more than 50 per cent of its tax levy payable in said year for any of its funds during the period prior to July 1st, and not more than 40 per cent of said levy (plus any amount authorized but not issued during the period prior to July 1st) during the period subsequent to July 1st and prior to December 31st; provided that the total amount of certificates of indebtedness issued against and fund, with interest thereon to maturity, shall not exceed 90 per cent of the tax levy for such fund payable in such year, and the aggregate of outstanding certificates shall in no event exceed the uncollected portion of said tax levy for such fund. Any such villages may renew any outstanding certificate of indebtedness of any prior year or any prior six-months period, or issue new certificates, notwithstanding the fact that prior certificates were unpaid, whenever inability to pay such outstanding certificates is due to failure to collect sufficient moneys from the tax levy payable in said year to discharge such certificates; in the event such certificates are renewed, such village may pay accrued interest thereon at the time of renewal. (Jan. 3, 1936, Ex. Ses., c. 2, §9.)

**1225-80. Same—inability to sell—warrants—interest—limitation of amount.**—If any such village is unable to sell such certificates of indebtedness in the manner prescribed hereby it may proceed by one of the following methods: (a) issuing its certificates of indebtedness in any denomination but within the limitations as to total amounts herein contained, payable to the order of the creditor of such village, in payment of the debt, claim or account of such creditor after the same has been allowed by the council; or (b) issuing such certificates of indebtedness to the village treasurer, or his order, and depositing the same with him. Certificates so issued shall be held by the treasurer until they may be sold and shall bear

interest at not to exceed six per cent per annum. The village may thereupon, as long as such certificates are on deposit with the treasurer, issue warrants upon funds against which such certificates were issued, the total principal amount of such warrants not to exceed the total principal amount of the certificates so held by the treasurer. Such warrants shall bear interest at not to exceed six per cent per annum from and after the day they are presented to the treasurer and stamped "Not paid for want of funds, but protected by certificates of indebtedness now held by me." Such certificates may be sold by the council and the proceeds of such sale shall be used to take up such warrants in the order in which they were presented to the treasurer, registered by him and stamped as aforesaid. Interest upon such warrants shall stop upon the date they are called by the treasurer for payment. Such certificates of indebtedness so held by the treasurer shall be paid at the same time and in the same manner as if they had been issued to a purchaser thereof. All warrants attempted to be issued and all obligations or indebtedness attempted to be incurred under authority of this subsection in excess of the principal amount of the certificates of indebtedness so held by such treasurer shall be void. (Jan. 3, 1936, Ex. Ses., c. 2, §10.)

Where village was unable to sell certificates of indebtedness and deposited them with village treasurer and issued warrants upon funds against which such certificates were issued, in accordance with §1225-80, and as a result of litigation assessed valuation of mineral properties was decreased 35%, and delinquent taxes on forfeited lands were cancelled, a sale of the certificates of indebtedness by the village at their face value and accrued interest would have no effect on their status as deductible items in net indebtedness calculations. Op. Atty. Gen. (476a-4), April 25, 1939.

**1225-81. Same—taxes levied pledged—limitation on amount of certificates for given year.**—The proceeds of the taxes assessed and collected as aforesaid on account of said fund and the faith and credit of the village 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 there be not sufficient for that purpose, from other funds of the village. The money derived from the sale of such certificates (except those issued to take up old certificates as hereinbefore authorized) shall be credited to such fund or funds for the calendar year in which issued, and shall not be used or spent except during such year. Except as hereinbefore authorized, no certificate 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 certificates for any one year may, if necessary, be used to redeem unpaid certificates issued in a prior year. (Jan. 3, 1936, Ex. Ses., c. 2, §11.)

**1225-82. Funding bonds—obligation, lien—Sale—interest—maturity—investment in—tax levy—payment.**—Any such village may, without a vote of the electors, fund all or any portion of such indebtedness existing on December 31, 1935. Bonds issued for such purpose shall be the obligation of the village alone and, except as contributions from the annual levies of the town or school district are provided for herein, shall not be a lien upon any property in said town or school district outside the limits of the village. Such bonds may be issued and sold to the state or to private purchasers, or both, or exchanged for warrants or other evidence of indebtedness funded thereby, with the holders thereof. Such bonds shall bear interest at not to exceed six per cent per annum, and if sold to the state, at not to exceed the rate provided by statute on loans from the state. They shall be sold or exchanged for not less than par. They shall mature in annual installments as nearly equal as practicable, the amount of such installments not to exceed the probable receipts of such village indebtedness fund, as provided for herein. The first of such

installments shall fall due in not less than one year from the issuance of such bonds, and the last of such installments shall fall due in not more than ten years thereafter. Within the limits of the constitution, such bonds shall be legal investments of the State Board of Investment. At the time of issuing any such bonds, the village shall make an annual and irrevocable tax levy in an amount sufficient, with the contributions and levies for such fund by the town and school district, to retire such bonds at maturity. If purchased by the state, the state auditor, at the time of certifying to the county auditor the levy to be spread for the payment thereof shall take into consideration, in fixing the amount of such levy, the probable receipts from the contributions and levies to be made by the town and school district towards the payment of such bonds. If such bonds be sold to the state, the village treasurer shall pay into the county auditor's fund for the payment of such bonds any moneys in the village indebtedness fund provided for herein, and the county auditor shall withhold any pay into the fund maintained by him for the payment of such bonds the moneys levied and to be paid by the town and school district thereon. Levies made for the payment of such bonds shall be within the limitations herein set forth, except as such limitations may be insufficient to meet such bonds at maturity. (Jan. 3, 1936, Ex. Ses., c. 2, §12.)

**1225-83. Contracts violative of this act void—personal liability of officers participating.**—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 village, and no claim therefor shall be allowed by the council of said village; nor shall the clerk of such village or any other officer or employe issue or execute, nor shall the village treasurer pay, any warrant or certificate of indebtedness issued on account thereof. Each member of the council and each other village officer or employe participating in or authorizing any violation of this act shall be individually liable to the village or to any other person for any damage that is caused thereby. Each member of the council present at a meeting thereof 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. (Jan. 3, 1936, Ex. Ses., c. 2, §13.)

**1225-84. Liability of towns and school districts.**—This act shall not be construed as providing for the payment of any moneys by the town or school district to the village after the indebtedness herein referred to shall have been paid and retired in full, or as thereafter limiting in any way the levies of such town, village or school district. (Jan. 3, 1936, Ex. Ses., c. 2, §14.)

**1225-85. Purpose and construction—change in population, etc.**—This act is remedial in its nature and intended to remedy the financial condition of villages within the class stated, where, by reason of a substantial portion of the valuation consisting of iron ore, there is likelihood of diminishing valuations in the future, and for such purpose to set aside contributions from the levies of the town and school district in which any such village is located, where by reason of the majority of the population of such town and school district being within the limits of the village, and by reason of the property in the village against which such indebtedness is a charge being subject to taxation by such town and school district, there is a community of interest in the discharge of such indebtedness. It is also intended to secure a sound fiscal policy in such villages after the payment of such indebtedness. If any such village shall come within the provisions of this act, the act shall continue to govern

the operations thereof, notwithstanding any subsequent change in population, valuation or indebtedness. (Jan. 3, 1936, Ex. Ses., c. 2, §15.)

**1225-85a. Certain warrants and orders legalized.**—All orders, warrants or obligations incurred or contracted by such village upon any fund or by any department prior to December 31, 1935, and which orders or warrants have been segregated and are to be paid from the "Village Indebtedness Fund", be and the same are hereby in all respects legalized and declared valid obligations of the said village. (Jan. 3, 1936, Ex. Ses., c. 2, §15½; added Apr. 8, 1937, c. 181, §1.)

**1225-86. Separability of provisions.**—The provisions of this act, insofar as they provide for contributions from the town, school district, village and excess levies over the mill limitations upon property in the village, are not severable, and if any of said levies be held to be unconstitutional the entire act shall be unconstitutional. (Jan. 3, 1936, Ex. Ses., c. 2, §16.)

**1225-87. Effective date—revision of tax levies already made—limitation of levies.**—Except as herein otherwise provided, this act shall take effect from and after its passage, approval and adoption. If any such town or school district shall have heretofore made its 1935 tax levy, the county auditor, at the time of spreading the same, or at the time of making apportionments of taxes collected thereunder, shall revise such levy so as to incorporate therein the levy for the village indebtedness fund as herein provided, reducing the levy for road and bridge purposes of said town and the levy for general purposes of the school district by the amount of the levy for such indebtedness fund. The total amount of such taxes as so levied shall not exceed the existing limitations upon the levies of such town or school district. If any such village shall have heretofore made its 1935 levy and such levy shall not have been spread by the county auditor, the county auditor shall revise the same by transferring \$6,000 (but not exceeding 9 mills on the assessed valuation) from the levy for general purposes to a levy for the village indebtedness provided for herein. In addition thereto, he shall add to such village levy an additional \$9,000 (but not exceeding 14 mills) for such village indebtedness fund. If such village levy has heretofore been spread by the county auditor, the village treasurer, at the time of receiving the proceeds thereof, shall transfer \$6,000 (but not exceeding 9 mills) from the general fund to the village indebtedness fund provided for herein, advising the council of such action. (Jan. 3, 1936, Ex. Ses., c. 2, §17.)

**1225-91. Cash basis and limitation of expenditures in villages having 800 to 1200 population, etc.—Application of act.**—This act shall apply to all villages in the state which have a population of more than 800 and less than 1200, and an assessed valuation of taxable property (exclusive of moneys and credits) of more than \$775,000.00 and less than \$1,000,000.00, more than 70% of which assessed valuation consists of iron ore. (Apr. 22, 1937, c. 356, §1.)

**1225-92. Same—Shall not draw warrants without funds after January 1, 1938.**—From and after January 1, 1938, no such village shall draw or issue any order or warrant on any fund until there is sufficient money in such fund to pay the same, together with all warrants and orders previously issued against such fund. (Apr. 22, 1937, c. 356, §2.)

**1225-93. Same—Shall not create additional indebtedness; sale of certificates of indebtedness.**—Whenever from and after January 1, 1938, the expenses and obligations incurred chargeable to any particular fund of such village in any calendar year are sufficient to absorb 90% of the entire amount of the tax levy for such fund payable in that year, including such amount as may remain in the fund from

the levy of the prior year or years, neither the village council nor any officer, board or employee of such village shall have power and no power shall exist to create any additional indebtedness (save as the remaining 10% of such tax levy is collected) which shall be a charge against that particular fund or shall be in any manner a valid claim against such village; but such additional indebtedness, if attempted to be created, shall be a personal claim against the officer or members of the municipal board voting for or attempting to create the same; and in no event shall the village council or any officer, board or employee of the village have the power and no power shall exist to create any indebtedness which shall be a charge against the village in excess of the local income and the tax levy payable in that year for the use of a particular department, board or official body, less the amount required to be paid each year therefrom on bonds herein authorized and interest accruing thereon. At any time after the annual tax levy has been certified to the county auditor and not earlier than October 10 in any year, the governing body of such village may, for the purpose of meeting the obligations of the ensuing year, by resolution issue and sell as many certificates of indebtedness as may be needed in anticipation of the collection of the taxes so levied for any fund named in said tax levy, for the purpose of raising money for such fund. No certificate shall be issued and outstanding for any separate fund exceeding 50% of the amount named in the tax levy for that fund as spread by the county auditor, and in no event exceeding the uncollected portion of said levy. No certificate shall be issued or become due and payable later than December 31 of the year succeeding the year in which such tax levy, certified to the county auditor as aforesaid, was made. Such certificate shall not be sold for less than par and accrued interest and shall not bear a greater rate of interest than six per cent per annum. Each certificate shall state upon its face for which funds proceeds of the certificates shall be used, the total amount of the certificates issued and outstanding against such fund, and the whole amount embraced in the tax levy for that particular purpose. They shall be numbered consecutively and be in denominations of \$25 or multiples thereof and may have interest coupons attached, and shall be otherwise of such terms and form and be made payable at such place as will best aid in their negotiation. The certificates of indebtedness issued hereunder shall be negotiable instruments. The proceeds of the tax assessed and collected as aforesaid on account of such fund, and the full faith and credit of such village shall be irrevocably pledged for the redemption of the certificates so issued. Such certificates shall be paid from the moneys derived from the levy against which such certificates were issued, or if they be not sufficient for such purpose, from other funds of the village. The money derived from the sale of such 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 except during 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 certificates for any one year may, if necessary, be used to redeem unpaid certificates issued in a prior year. (Apr. 22, 1937, c. 356, §3.)

**1225-94. Same—Sale; may be held by village treasurer.**—In the event the village is unable to sell such certificates of indebtedness in the manner prescribed, it may issue said certificates of indebtedness to the village treasurer or his order and deposit the same with him. Certificates so issued shall be held by the treasurer until they may be sold and shall bear interest at six per cent per annum. The village may thereupon, as long as such certificates are on deposit with the treasurer, issue warrants upon the funds

against which such certificates were issued, the total principal amount of such warrants not to exceed the total principal amount of the certificates so held by the treasurer. Such warrants shall bear interest at six per cent per annum from and after the date they are presented to the treasurer and stamped "Not paid for want of funds, but protected by certificates of indebtedness now held by me." Such certificates may be sold by the village council and the proceeds of such sale shall be used to take up such warrants in the order presented for payment. Interest upon such warrants shall stop upon the date they are called by the treasurer for payment. Such certificates of indebtedness so held by the treasurer shall be paid at the same time and in the same manner as if they had been issued to a purchaser thereof. All warrants attempted to be issued and all obligations or indebtedness attempted to be incurred under authority of this section in excess of the principal amount of the certificates of indebtedness so held by such treasurer shall be void. (Apr. 22, 1937, c. 356, §4.)

**1225-95. Same—Shall be deemed on cash basis after January 1, 1938.**—From and after January 1, 1938, such village shall be deemed for all purposes to be on a cash basis and shall thereafter remain on a cash basis. All taxes levied in 1937 shall be considered as the tax revenue for the year 1938, and thereafter in any such village taxes shall be levied as now provided by law, but for the succeeding year. (Apr. 22, 1937, c. 356, §5.)

**1225-96. Same—May issue bonds to pay floating indebtedness.**—If any such village prior to January 1, 1937, has incurred by proper authority a valid indebtedness, excluding bonds, in excess of its cash on hand not specifically set aside for the retirement of bonds and interest thereon, such village may for the purpose only of paying and discharging such valid indebtedness and interest thereon, issue its bonds in the manner now provided by law, except that such bonds may be issued on a vote of the village council without a vote of the electors; provided that the purchaser of such bonds shall not be charged with notice of the invalidity of any indebtedness funded by such bonds, and bonds issued hereunder in the total amount of such indebtedness as determined by the resolution of the village council, in the hands of any purchaser, shall be valid obligations of the village, notwithstanding any claim of invalidity of any such indebtedness funded thereby. If any moneys received from taxes levied in 1936 and payable in 1937, or income from local sources received since January 1, 1937, have been used prior to the issuance of bonds authorized by this Act for the retirement of indebtedness existing January 1, 1937, or interest thereon, such bond issue may include the amount of such payments for the purpose of reimbursing the funds from which such moneys were paid. (Apr. 22, 1937, c. 356, §6.)

**1225-97. Same—Tax levy to retire bonds.**—The Village Council of any village 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 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 irrevocable until all of such bonds are paid. Such annual tax for the payment of such bonds shall be derived from two sources: (a) 30% of the amount necessary to pay said funding bonds and interest and no more shall be levied as a special tax in addition to the annual tax levied for general corporation purposes, water, light, power and building commission purposes, and library purposes for each year, and in addition to such other special taxes as may now be levied annually as provided by law and; (b) 70% of the amount necessary to pay said funding bonds and interests shall be raised and obtained

from each of the annual tax levies made by said village for general corporation purposes, water, light, power and building commission purposes, and library purposes and such other special tax levies as may be levied annually as provided by law in such proportion as may be determined by the village council. Nothing herein shall be construed as a limitation on any taxes that may now be legally levied by such villages, and the annual tax levies in such villages, in addition to the taxes which now may be levied for general corporation purposes, water, light, power and building commission purposes, and library purposes, may include all other levies for special tax purposes, including levies for payment of judgment and bonds, as are now permitted by law. (Apr. 22, 1937, c. 356, §7.)

**1225-98. Same—Not to limit issuance of bonds.**—Nothing in this act shall be construed to limit or restrict the issuance of bonds for any purpose authorized by law, nor the expenditures of funds therefrom. (Apr. 22, 1937, c. 356, §8.)

**1225-99. Same—May be sold to state of Minnesota or private purchasers.**—Such bonds may be issued and sold to the State of Minnesota pursuant to existing laws at the time of the issuance thereof (except as herein modified), or to private purchasers, or to both, or exchanged for outstanding orders at par with accrued interest. (Apr. 22, 1937, c. 356, §9.)

**1225-100. Sale—Warrants legalized.**—In the event that any such village prior to the passage of this act, issued its warrants or orders against any of its funds, which warrants or orders were outstanding and unpaid at the time of the passage of this act, the said warrants and orders are hereby in all respects legalized. (Apr. 22, 1937, c. 356, §10.)

**1225-101. Sale—Shall not contract indebtedness.**—No department, board or commission of such village shall during any year contract any indebtedness or incur any pecuniary liability which shall be in excess of the sum that may be levied and collected for said department, board or commission or allotted to such department, board or commission. A record of expenditures of the village shall be presented to and examined at a regular meeting of the village council once each month and shall show the true condition of the affairs of the village at the date of such meeting. (Apr. 22, 1937, c. 356, §11.)

**1225-102. Sale—District court may restrict expenditures.**—If any time during any year a village operating hereunder is incurring obligations at a rate or upon a scale which would make it probable, if such rate of scale be continued, after allowing for variations in seasonal requirements, that the total expenditures for said year would exceed the moneys to be received therein, after allowances for probable tax delinquencies, the District Court, in an action brought by any taxpayer, may require such village to limit its expenditures to a rate and scale which will assure that the total obligations incurred in such year will not exceed the moneys available therein. (Apr. 22, 1937, c. 356, §12.)

**1225-103. Sale—Contracts to be null and void under certain conditions.**—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 obligations thereby sought to be imposed upon the village, and no claim therefor shall be allowed by the council of the village nor any board thereof; nor shall the clerk or recorder of such village or any other officer or employee issue or execute, nor shall the village treasurer pay any check, warrant or certificate of indebtedness issued on account thereof. Each member of the village council and each other village officer or employee participating in or authorizing any violation of this act shall be individually

liable to the village or to any other person for any damages caused thereby. Each member of the village council or any board of such village present at a meeting of the board or council when any action is taken with reference to paying money or incurring indebtedness or entering into any contract in violation of the provisions of this act, 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. (Apr. 22, 1937, c. 356, §13.)

**1225-104. Sale—Salary of president and trustees.**—In all such villages the President and Trustees shall receive an annual salary of \$100.00 for their services as such officers. (Apr. 22, 1937, c. 356, §14.)

**1225-105. Same—Change in assessment and population not to affect status.**—When a village has once come under the provisions of this Act, it shall continue under its provisions notwithstanding any subsequent change in assessed valuation or population. (Apr. 22, 1937, c. 356, §15.)

**1225-106. Same—Provisions severable.**—If any provision hereof is found unconstitutional, such determination shall not affect the validity of the remaining provisions not clearly dependent thereon. (Apr. 22, 1937, c. 356, §16.)

#### **1227. Settlement of affairs.**

Op. Atty. Gen. (469a-15), Apr. 26, 1934; note under §1117.

This section applies to villages operating under Village Code of 1905 and not to villages incorporated under Laws 1885, c. 145. Op. Atty. Gen. (469a-4), Aug. 20, 1936.

Dissolution terminated liability for future contract installments for lighting streets. Op. Atty. Gen. (469a-4), Aug. 20, 1936.

#### **1229. Water and light plants.**

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, 244 NW558. See Dun. Dig. 6669b.

Evidence that superintendent of a village electric system had general authority with respect to management thereof is sufficient prima facie to establish his authority to act with respect to a particular matter concerning same. *Theisen v. M.*, 200M515, 274NW617. See Dun. Dig. 6812.

A city accepting water from well for six years was liable for contract price, though contract was let without a proper call for bids and contained terms not included in call and purported to bind city to abandonment of a certain mine. *Chisholm Water Supply Co. v. C.*, 285 NW895. See Dun. Dig. 6707.

It is lawful for contract for power plant to provide that excess earnings can only be employed to make extensions and additions and that earnings therefrom shall go into fund to pay cost of original municipal plant. There is a reasonably sufficient relation to additions and extensions made from excess net earnings and original plant to justify requirement. *Davies v. V.*, 287 NW1. See Dun. Dig. 6683.

Village council had the power to determine that bidders should submit bids for entire power plant, generating equipment, and distributing system rather than for separate units thereof, and likewise it could provide that payment for entire undertaking was to be from net earnings only. *Id.* See Dun. Dig. 6697.

So long as village council acted freely and independently and for best interests of village, mere fact that it incorporated into plans and specifications suggestions advanced by representatives of possible bidders on village power plant appearing at open, public meetings, is not ground to set contract aside when it also appears that competition was not unreasonably limited. *Id.* See Dun. Dig. 6697.

Plans and specifications for municipal power plant were sufficiently definite to present an adequate standard to bidders since legend on map clearly specified that bids were to be on lines within corporate limits. *Id.* See Dun. Dig. 6707.

In a taxpayers' suit to restrain performance of and to set aside a contract for the construction of a municipal light, heat and power plant, held that contract could not be impeached on ground that there was collusion between successful bidder and village council. *Id.* See Dun. Dig. 6707.

Specifications for power plant were not fatally defective because they failed to state time for payment, number of payments, and interest to be charged but left his to individual bidder. *Id.* See Dun. Dig. 6707.

Absent charter or statutory requirement, a resolution of a village council for construction of power plant need not be signed, attested and published. *Id.* See Dun. Dig. 6748.

Village is without power to operate waterworks at a profit, its duty being to reduce rates if existing rates are too high. *Op. Atty. Gen.*, June 3, 1930.

Approval by voters unnecessary for changes, alterations or extensions where no bonds are required to issue. *Op. Atty. Gen.*, Aug. 16, 1930.

Village of Kenyon incorporated under the 1885 Village Law cannot purchase equipment for a power plant through a contract stipulating that it is to be paid for out of earnings of the plant. *Op. Atty. Gen.*, July 10, 1931.

Where at time tract of land was separated from a village there were water bonds outstanding, and owner later obtained loan from Rural Credits Bureau, and state obtained title through foreclosure and later sold the land on contract to a private purchaser, after such sale to the private purchaser the land became subject to a special levy for the purpose of paying off the water bonds. *Op. Atty. Gen.*, Sept. 24, 1931.

Under a village resolution authorizing a refund of part of tapping fee for connection of private property with water mains, the refund should be made to the person paying the tapping charge and not to a purchaser of the property. *Op. Atty. Gen.*, Sept. 26, 1931.

The Village of Kenyon cannot enter into a contract for the purchase of electric generating equipment for a proposed municipal light plant to be paid for out of future earnings, nor can it issue warrants payable in the future out of such earnings. *Op. Atty. Gen.*, Oct. 10, 1931.

If village council, on its own initiative, passed resolution calling for special election to vote upon construction of waterworks system and issuing bonds, it had right to consider matter and rescind action taken. *Op. Atty. Gen.*, June 15, 1932.

Village does not have power to furnish water and light free to churches and parsonages. *Op. Atty. Gen.*, Jan. 17, 1933.

A five-eighths vote is necessary to authorize village to erect and operate power plant, but only a majority vote is necessary to authorize sale of bonds to state for erection of a power plant. *Op. Atty. Gen.*, May 11, 1933.

Five-eighths vote is needed to erect lighting and heating plant for village of Mora, notwithstanding bonds are to be sold to state. *Op. Atty. Gen.*, May 24, 1933.

Procedure and forms for special election for erection of waterworks system and issuing bonds, discussed. *Op. Atty. Gen.*, Aug. 17, 1933.

Sewer and water system could be voted upon as a single question. *Op. Atty. Gen.*, Nov. 27, 1933.

Village proceeding under this section for construction of well must obtain five-eighths vote of electors, but after such authorization a majority vote is sufficient to authorize issuance of bonds to state. *Op. Atty. Gen.*, Dec. 5, 1933.

Council cannot rescind action of electors authorizing construction of sewage and water system and issuance of bonds to pay for cost of same. *Op. Atty. Gen.* (476b-14), June 12, 1934.

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

Attorney's fees incurred in election and in issuance and sale of bonds may be paid out of bond proceeds. *Op. Atty. Gen.* (59a-7), May 28, 1935.

Lot owner with house four-fifths in village limits was entitled to water connection upon payment of usual charges and assessments, and could not be compelled to have his entire lot attached to village. *Op. Atty. Gen.* (624d-3), Aug. 10, 1936.

Reasonableness of Ordinance requiring connections with water mains to be of copper is for determination of village officials. *Op. Atty. Gen.* (624d-3), Sept. 3, 1936.

Village of Litchfield owning and operating electric light power plant may purchase appliances, such as electric stoves, and sell same to village consumers of light and power. *Op. Atty. Gen.* (624c-5), Apr. 27, 1937.

An order granting a franchise to electric light and power company not exclusive in terms does not interfere with or restrict right of city or village to establish, construct, and operate an electric light and power system, nor from purchasing electric energy and distributing same through its own system. *Op. Atty. Gen.* (624c-6), Nov. 18, 1937.

Though in maintaining water plant for use by fire department in extinguishing fires municipality is performing a public or governmental function and is not liable for negligence of its officers and employees, such is not true when a municipality undertakes to furnish water or light to individuals and makes a charge therefor. *Op. Atty. Gen.* (469a-8), Mar. 1, 1938.

School district may contract with village for water supply, contract to be made by each board, but to run no longer than one year. *Op. Atty. Gen.* (707b-10), Mar. 29, 1938.

Village may issue bonds for construction of municipal light plant payable solely from net earnings. *Op. Atty. Gen.* (624c-16), Apr. 13, 1938.

Petition of voters for special election on proposition of construction of a municipal light plant requires coun-

cil to submit proposition to voters. *Op. Atty. Gen.* (476b-15), May 10, 1938.

Procedure for issuing bonds or warrants for water works and sewer system payable from earnings or special assessments. *Op. Atty. Gen.*, (476b-15), Sept. 21, 1938.

A blank ballot may be disregarded in computing vote actually required to carry proposition. *Op. Atty. Gen.* (44B-8), May 22, 1939.

### 1235. Operation of plants.

Whether rate to be charged by city for water must be based on the quantity of water used by any consumer regardless of the use to which the water is put, query. *Op. Atty. Gen.*, June 27, 1931.

A village may not invest money of water fund in bonds or other forms of obligations of village. *Op. Atty. Gen.*, Jan. 31, 1933.

Persons desiring to connect with a private main must obtain permission of owners, and city or village is not liable for inadequate water supply for fire department. *Op. Atty. Gen.*, (624d-9), July 12, 1938.

**1235-1. Proceedings and bonds validated.**—All proceedings heretofore taken for the authorization and issuance of bonds by any village of this State for the purpose of financing in whole or in part the construction of a waterworks plant or waterworks system are hereby validated, ratified, approved and confirmed and declared to be valid and of full force and effect, notwithstanding any defects or irregularities in such proceedings, and notwithstanding the fact that the maturities of the bonds proposed to be issued as stated in any proposition submitted to and approved by the voters of such village for the issuance of such bonds did not comply with the requirements as to maturities in the statutes applicable thereto; and the village council of any such village is hereby authorized to complete such proceedings and to issue bonds of any such village in an amount not exceeding the amount authorized at such election, such bonds to mature in accordance with the statutes applicable thereto, and all such bonds when delivered and paid for shall be binding, legal, valid and enforceable obligations of such village. (Act Feb. 8, 1935, c. 8, §1.)

**1235-2. Not to affect pending litigation.**—This act shall not affect any bonds, the validity of which is questioned in any litigation pending when this act shall take effect. (Act Feb. 8, 1935, c. 8, §2.)

Sec. 3 of Act Feb. 8, 1935, cited, provides that the act shall take effect from its passage.

### 1236. Water-works—Special tax for mains.

Village may not make water rent a lien against real property of user in absence of statute or charter authorization. *Op. Atty. Gen.* (477h-36), Aug. 7, 1936.

**1245. Tax levy for water and light plants.**—That the village council or governing body of any incorporated village in this state whose water and light plant is operated and controlled by a water, light and building commission is hereby authorized, annually, at the time of levying the general corporation taxes, to levy a special tax not exceeding five mills on each dollar of the taxable property in such village, for the purpose of paying the cost of operating the village water and light plant and other municipal plants and utilities under the supervision of said commission in supplying such village with the necessary water for fire protection and street sprinkling and the necessary electric current or other means of light, for lighting the streets and public parks and public buildings in such village, and for the purpose of paying the cost of operating such municipal plants and utilities in supplying such village with any other services given or rendered to such village by said commission. (G. S. '13, §1322; '13, c. 214, §1; Apr. 15, 1933, c. 280, §1.)

Village cannot pay for electricity used for lighting streets and public buildings out of the water and light fund, it appearing that city furnished only water to its inhabitants. *Op. Atty. Gen.*, June 1, 1929.

Power and building commission may not furnish hydrant rental and light to village free of charge with the purpose of permitting the village to recoup its finances so that it may be able to purchase a fire truck, if the village does not levy a tax of five mills for such purpose. *Op. Atty. Gen.*, Apr. 27, 1931.

Village which has no water, light and building commission may not levy a special tax for water and light purposes. *Op. Atty. Gen.* (481b-7), Jan. 5, 1935.

Where a tax has been levied for water and light purposes pursuant to this section, water, light, power

and building commission may fix rates and collect for water furnished to residents of village under §1858, and may refuse to furnish water to persons owing delinquent accounts. Op. Atty. Gen. (469b-6), Mar. 2, 1935.

It is not permissible to give water and light to a village free without imposition of tax levy. Op. Atty. Gen. (476a-6), Feb. 11, 1936.

**1247. Clerk and recorder to make and file estimate.**—Before making such special tax levy, the water, light and building commission of such village each year, shall at the request of the village council on or before the following first day of August, make and file with the village recorder (clerk) a statement containing an estimate of the probable cost of supplying such village with the necessary water and light and other services given and rendered to the village for the ensuing year. (G. S. '13, §1324; '13, c. 214, §3; Apr. 15, 1933, c. 280, §2.)

**1247-1. Villages may pay salaries in certain cases.**—That in all villages having a population of more than 12,000 and an assessed valuation of more than \$60,000,000.00, the village council of such village be authorized to provide for the payment of salaries to the members of the water, light, power and building commission of such village, such salaries to be set by such village council and paid from the water and light fund of said village, provided, however, that the salary to be paid the chairman of such commission shall not exceed the sum of \$150.00 per month and the salary of the other members of such commission shall not exceed the sum of \$100.00 per month. (Act Apr. 20, 1929, c. 281, §1.)

Act Feb. 20, 1935, c. 18, authorizes villages with 3200 to 3500 inhabitants and assessed valuation of \$1,000,000 to \$1,200,000, to award specified compensation to members of village water, light, power, and building commission. It is omitted as local.

**1248. [Repealed].**

**Explanatory Note**—Repealed and re-enacted by Laws 1919, c. 172, §4. The provision as re-enacted is set forth as §§1865, 1866, 1867, Mason's Minn. St. 1927.

Approval by voters unnecessary for changes; alterations or extensions where issue of bonds is not required. Op. Atty. Gen., Aug. 16, 1930.

A village which disposed of its light and heat distributing system to a private utility and granted a franchise to such company, which refused to install an extension to citizens of the village residing out of the settled portion thereof, could not appropriate money to pay for such extension upon the agreement of such citizens not to withdraw their property from the village limits for a period of three years. Op. Atty. Gen., July 1, 1931.

Except in cases of water and light plants village council may sell real estate when no longer needed for village purposes and without a vote of the people. Op. Atty. Gen. (469a-15), Apr. 26, 1934.

**1249. [Repealed].**

**Explanatory Note**—Repealed and re-enacted by Laws 1919, chap. 172, §4. See §§1865 to 1867, Mason's Minn. St. 1927, for re-enactment.

**1250. Property owners required to connect with water and sewer systems in villages.**

Village may not make water rent a lien against real property of user in absence of statute or charter authorization. Op. Atty. Gen. (477h-36), Aug. 7, 1936.

Lot owner with house four-fifths in village limits was entitled to water connection upon payment of usual charges and assessments, and could not be compelled to have his entire lot attached to village. Op. Atty. Gen. (624d-3), Aug. 10, 1936.

Reasonableness of Ordinance requiring connections with water mains to be of copper is for determination of village officials. Op. Atty. Gen. (624d-3), Sept. 3, 1936.

Legislature did not intend to exclude a village owning its water and sewer distribution system installed in its streets or alleys within its corporate limits even though sources of such water supply and septic tank of sewer system might be located outside of corporate limits. Op. Atty. Gen. (624c-16), Apr. 22, 1937.

A village ordinance that no building should be rented to nonresidents without having running water, bath room, and sewage or disposal system, violates equal protection clause of constitution. Op. Atty. Gen., (477b-3), Oct. 13, 1938.

**1252. Purchase of electrical energy.**

Section 1186(18, 19) is source of authority by city council to provide electric lighting of streets and for pumping water while §§1252 and 1253 appear to be applicable only to proposed contracts that would include distribution and supplying of electrical energy to inhabitants. Op. Atty. Gen., Mar. 20, 1933.

A village entering into an absolute contract to pay certain amount for electricity for 10 years has no power to revise or lower such rate during such period. Op. Atty. Gen. (624c-11), Aug. 8, 1934.

An order granting a franchise to electric light and power company not exclusive in terms does not interfere with or restrict right of city or village to establish, construct, and operate an electric energy and distributing same through its own system. Op. Atty. Gen., (624c-6), Nov. 18, 1937.

**1253. Contract, how made—Term.**

Contract for purchase of electrical energy purporting to extend over a term longer than that limited by statute is void after the expiration of the limited period. Op. Atty. Gen. (469a-2), June 12, 1935.

One village council may bind subsequent councils to either grant extension of electric franchise or pay portion of cost of white way constructed by a private utility. Op. Atty. Gen. (707b-14), Oct. 31, 1936.

Village operating under Laws 1885 is bound by 25 year franchise granted to a power company in 1916, and cannot lower rates by ordinance. Op. Atty. Gen. (624c-6), Sept. 16, 1937.

Contract of village for purchase of electricity over a period of ten years may not be entered into without first advertising for bids. Op. Atty. Gen. (624c-2), Sept. 10, 1938.

**1253-1. Sale of surplus electricity.**

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

There is no tax upon sale of surplus electric energy outside of corporate limits of a city, even though in another county. Op. Atty. Gen. (624c-13), Aug. 12, 1937.

Village of Mazeppa may dispose of its surplus electric energy at corporate limits. Op. Atty. Gen., (624c-12), Aug. 24, 1938.

Section is not applicable to those villages which own their distributing plants but do not produce electricity. Op. Atty. Gen. (624d-17), June 14, 1939.

Village owning distribution system but purchasing energy from a power company may own lights outside corporate limits and sell and dispose of electric energy there, but only upon vote of electors under §1867-1. Id.

**1255. Parks and parkways in certain villages.**

Until a levy has been made under section 1258, the village council may appropriate money for park purposes under section 1264-4. Op. Atty. Gen., Apr. 10, 1931.

**1256. Officers—Vacancies.**

It would be permissible to adopt a rule that in the absence of the president of the board, the vice-president may act and sign warrants. Op. Atty. Gen., Apr. 10, 1931.

**1258. Tax levy—Park fund—What land may be taken—Regulating traffic.**—The village council, upon request in writing signed by all the members of the board of park commissioners, presented to the council at any regular meeting thereof, and without any election by the voters of the village, may at any time issue warrants of the village in such amount and denomination as it may deem proper and expedient, and may sell or enter into any contract for the sale of such warrants without giving published notice thereof, not exceeding in total amount at any one time outstanding the sum of \$2,000, but no such warrants shall be issued or sold by said village, which, with the indebtedness of the village then existing, shall exceed 15 per cent of the assessed valuation of the taxable property of said village. Such warrants shall bear interest at a rate not to exceed six per cent per annum, payable annually, or semi-annually, as may be determined by such village council, and may run for a period not exceeding ten years, and shall mature serially. Such warrants shall be designated and inscribed as Village Park Fund Warrants and they shall not be sold for less than their par value, and the proceeds thereof shall be used exclusively for the purposes of the village park fund as hereinafter referred to. Every village which shall issue any warrants under the authority of this act is hereby required annually to levy taxes upon all the taxable property in such village sufficient to pay the interest on such warrants, and to provide a fund for the payment of the principal of such warrants at their respective maturities. In addition to the village taxes necessary for the said fund, the village council shall annually at the time of levying other village taxes, levy such sum as it shall deem necessary, not to exceed two mills upon the dollar of taxable property

of the village, for park purposes, and such taxes shall be collected with and as a part of other village taxes, and paid into the village treasury and set apart as a village park fund. The board of park commissioners shall have power to expend such park fund, including the proceeds of any such warrants, in the acquisition, maintenance and improvement of parks and parkways. All warrants drawn upon such fund shall be accompanied by receipted vouchers, showing the purpose for which the warrant is drawn, and shall be signed by the president of the board and by the village recorder, and countersigned by the president of the village council. The board of park commissioners may, with the consent of the village council take any land within the village, which has been acquired or dedicated as a public park or common, and thereafter administer and govern the same as if acquired by purchase under the provisions of this act. The board of park commissioners may also, with the consent of the village council, take as a parkway, any street or highway, or portion thereof, and thereafter administer and govern the same in all respects and with like powers as if it had been originally acquired as a parkway under the provisions of this act. The board of park commissioners shall have power to regulate, control and govern the traffic upon and over any parkway, and may exclude therefrom all vehicles excepting those in use for carrying passengers, or impose lesser restrictions thereon as it may deem best. All orders, warrants or obligations incurred or contracted by any such village, which has heretofore created and maintained a board of park commissioners pursuant to Chapter 167, Laws 1905 [ §§1255 to 1262 ] for park purposes, are hereby in all respects legalized and declared valid obligations of such village. (As amended Feb. 18, 1939, c. 25.)

Op. Atty. Gen., Apr. 10, 1931; note under §1256.

Park board must turn gift money into the village treasury and expend it pursuant to warrants drawn upon it, and cannot expend such money without restrictions and without the consent of the village council. Op. Atty. Gen., Apr. 10, 1931.

Neither village council nor board of park commissioners may issue warrants where there is no money immediately available in treasury for their payment, unless in anticipation of current tax levy sufficient to cover, and anticipation warrants may not be discounted under any circumstances. Op. Atty. Gen. (476c-2), Apr. 19, 1937.

A village organized under Laws 1885, c. 145, with a board of park commissioners organized under Mason's Stat. 1927, §1255, et seq., may pay out of its general fund for improvements on park property. Op. Atty. Gen., (330a-5), Oct. 11, 1938.

#### 1261. Docks, boat houses, etc.

Park board of village of Excelsior may be licensed to sell non-intoxicating malt liquors. Op. Atty. Gen., Apr. 22, 1933.

**1263-1. Flying fields—Acquisition of land—Erection.**—Every village of this state, situated in counties having an assessed valuation of not more than \$2,000,000.00 and a population of not more than 5,000 inhabitants is hereby authorized by resolution of the council to establish and maintain a municipal flying field and airport, to acquire land by lease, gift, purchase, devise or condemnation from time to time necessary for that purpose, and to erect thereon terminal and other buildings and structures necessary and suitable for the operation thereof. (Act Jan. 9, 1934, Ex. Ses., c. 55, §1.)

Village in counties having 28 or 29 townships and valuation of \$7,000,000 to \$9,000,000, having acquired property for municipal airport may sell such property. Laws 1939, c. 299.

A city or village may erect poles and high lines outside of corporate limits for purpose of lighting airport without submitting proposition to electors. Op. Atty. Gen. (234b), Dec. 27, 1934.

Words "assessed valuation of not more than \$2,000,000 and a population of not more than 5,000 inhabitants" refer to valuation and population of county, rather than valuation and population of village. Id.

**1263-2. Same—Taking possession of land, condemned.**—Such village may at any time after the filing of the petition in the condemnation proceedings, take possession of said lands to be used and except as herein provided, such condemnation proceedings

shall be exercised only under and pursuant to the provisions of the statutes of the State of Minnesota relating to eminent domain. (Act Jan. 9, 1934, Ex. Ses., c. 55, §2.)

#### 1263-3. Same—expense, how paid—levy of tax.

The cost of establishing and maintaining any airport established and maintained in pursuance with the provisions of this act shall be paid from the funds of the water and light department of any such village and if such funds are not sufficient therefor, the council of such village is hereby authorized to levy a tax, upon all taxable property of such village, in an amount sufficient to pay the balance of such costs. (Act Jan. 9, 1934, Ex. Ses., c. 55, §3.)

**1263-4. Combined recreational council for village and school district.**—Any village to which this act shall apply, which is now authorized by law to expend moneys for recreational purposes, which is located within the territorial limits of any independent school district, which district is also authorized by law to expend moneys for recreational purposes, may combine with such independent school district to form and create a combined recreational council, as hereinafter provided, and with the powers and authority as hereinafter provided. (Jan. 15, 1936, Ex. Ses., c. 29, §1.)

#### 1263-5. Same—creation—membership—powers.

The governing boards of such village and of such independent school district may by resolution passed by a majority vote of each governing body, create a recreational council consisting of two members of such village council and two members of the governing board of such independent school district, to be known as a combined recreational council. Such recreational council so formed shall have authority to maintain recreational activities, but shall have no authority to incur any obligations in connection therewith except such as are expressly authorized by the governing bodies of both of such respective municipalities. (Jan. 15, 1936, Ex. Ses., c. 29, §2.)

#### 1263-6. Same—expenditures—budget.

The said village shall not expend more money than it is authorized by law to expend for such purpose and such independent school district shall not expend more money for such purpose than it is authorized to expend, and such combined recreational council shall not be authorized to incur indebtedness in excess of such amounts nor in excess of the amounts as set aside for such purpose by the governing bodies of such village and such independent school district, which bodies are hereby authorized to create and set apart a budget for such combined expenditures and to designate the proportionate amount of such expenditures to be met by each respective municipality. (Jan. 15, 1936, Ex. Ses., c. 29, §3.)

#### 1263-7. Same—compensation—tenure.

The members of such combined recreational council shall serve without pay, and their respective terms of office shall expire at the end of the time for which they are appointed, not to exceed their term of office for which they have been elected to the respective governing bodies. (Jan. 15, 1936, Ex. Ses., c. 29, §4.)

#### 1264-1. Bonds for funding floating indebtedness.

Act providing for placing certain villages on cash basis through issuance of bonds to fund outstanding indebtedness. Laws 1931, c. 277, ante, §§1152-13 to 1152-24.

**1264-3. Villages may acquire land for park purposes by condemnation.**—The village council of any village in the state may by resolution or ordinance acquire, by gift, condemnation, or purchase for or in the name of the village, a tract of land, either with or without the corporate limits of the village, for park purposes and may appropriate money from the general revenue fund of the village for the purpose of purchasing such tract of land, not exceeding the sum of \$2,000; provided that no tract of land so acquired by purchase or condemnation shall exceed 80 acres in area. Provided, however, that no village can

acquire more than 40 acres unless the question of issuing bonds for acquiring a park shall have been submitted to voters of the village prior to January 1, 1936, and carried by more than a five-eighths majority. ('19, c. 197, §1; Apr. 17, 1933, c. 319; Jan. 18, 1936, Ex. Ses., c. 41.)

Village has no power to purchase land for park on installment plan, though current tax levy is sufficient to pay first installment, it being insufficient to pay entire price. Op. Atty. Gen. Dec. 13, 1923.

Advertisement for bids for purchase of park lands is not required. Op. Atty. Gen., May 19, 1930.

Village funds may be appropriated for purchase of land for park purposes. Op. Atty. Gen. (476b-10), Mar. 20, 1935.

Village may use funds for leasing land for park and playgrounds purposes. Op. Atty. Gen. (476b-10), Mar. 21, 1935.

This provision is controlling as to villages operating under revised laws of 1905, and not more than \$2,000 may be paid for a park and a park may not be purchased on installment plan. Op. Atty. Gen. (476b-10), Apr. 30, 1935.

Village may issue bonds to pay cost of land for park purposes upon approval by electors. Op. Atty. Gen. (44b-10), June 6, 1935.

Village may lease land outside its limits for bathing beach but cannot extend money for making permanent improvements thereon, and may employ beach guards. Op. Atty. Gen. (476b-10), Dec. 26, 1935.

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

Village may purchase out of available funds vacant lot to be used for park purposes without vote of electors. Op. Atty. Gen. (469a-12), Apr. 6, 1937.

Village of Wadena had no right to purchase 120 acres outside corporate limits at a price of \$7,200 for use as a public bathing beach and for park purposes. Op. Atty. Gen. (476b-10), June 9, 1937.

Village council may acquire land outside corporate limits of village for park and recreation purposes and appropriate money from general revenue fund not exceeding \$2,000 without submitting proposition to electors, if village has sufficient money on hand or available out of current tax levy in process of collection. Op. Atty. Gen. (476b-10), Jan. 17, 1938.

Village may purchase 172 acre farm for park and sewer purposes where owner claims overflow from sewage disposal plant creates a private nuisance, and may do so without vote of electors where cost price is less than \$2,000. Op. Atty. Gen. (476b-10), Feb. 10, 1938.

School board may lease land to village to be used as a playground if it reserves for itself right to use land at any time for school purposes, without vote of electors, and village may enter into such agreement. Op. Atty. Gen. (622a-7), Feb. 18, 1938.

County or village may purchase land at sales held pursuant to Laws 1935, c. 386 (§2139-15). Op. Atty. Gen. (425c-10), May 4, 1938.

Village desiring to widen street may purchase an entire lot and use excess for a park. Op. Atty. Gen. (469a-12), March 2, 1939.

There is no statutory authority authorizing a village to purchase lots for resale on a commercial basis, but a village has right to acquire a tract of lake shore property for purpose of creating and maintaining a public park. Op. Atty. Gen. (469a-12), March 6, 1939.

**1264-4. Same—Appropriation from revenue fund for improvement.**

Improvement of parks may be paid for out of general funds of village. Op. Atty. Gen. (476b-10), Dec. 31, 1937.

**1264-6. Police pension fund created in certain villages.**—In every village in this state now having or hereafter having a population of over 5,000 inhabitants and as assessed valuation of more than \$8,000,000, there may be created a police pension fund which shall be managed, controlled and distributed in accordance with the provisions of this Act; however, if any such paid police department of any village within the classifications of this act shall become duly incorporated as a Policemen's Relief Association under and pursuant to this act, and thereafter such village shall adopt a home rule charter or shall become incorporated as a city of the second, third, or fourth class the provisions of this act shall remain in full force and effect as to such relief associations incorporated therein. (Act Mar. 9, 1931, c. 48, §1; Mar. 28, 1933, c. 122, §1.)

There is no provision of law for creation of a police relief association similar to the firemen's relief association in cities of the fourth class. Op. Atty. Gen., May 27, 1931.

**1264-7. May incorporate—amount of pension.**—That every paid municipal police department now existing or which may hereafter be organized is here-

by authorized to become incorporated pursuant to the provisions of Chapter 58, General Statutes 1923, and the laws amendatory thereto, and adopt a constitution and by-laws as a relief association, and is authorized to provide for and permit and allow such police relief association, so incorporated and organized, to pay out of and from any funds it may have received from any source a service, disability or dependency pension in such amounts and in such manner as its articles of incorporation and constitution and by-laws shall designate, not exceeding, however, the following sum per month to each of its pensioned members who shall have reached the age of fifty-five years or more, and shall have served 20 years or more in such department, or their widows and children under 16 years of age, viz:

Seventy-five Dollars (\$75.00) per month when such members shall have reached the age of fifty-five years or more and shall have served as a member of such paid Municipal Police Department for a period of twenty years or more in the Police Department of such village in which such relief association shall have been organized, or who has been disabled physically or mentally because of any injury received or suffered after at least one year of service as such member, while a member of such organizations and Police Department, so as to render necessary his retirement, from active police service and cause a total and permanent disability; provided, further, that no pension authorized by this Act shall be paid to any person while receiving compensation in any form, or sick benefit, from any county, city, village, township or other political subdivision of the state, or to any person after he removes his residence from the United States, or to any person who shall have been convicted of a felony for which he shall have been adjudged to be imprisoned, or who is an habitual drunkard, or to any person receiving a pension or sick relief from any other public relief association.

Provided, however, that said maximum monthly payments of Seventy-five Dollars (\$75.00) per month may be increased by adding thereto an amount not exceeding Three Dollars (\$3.00) per month for each year of active duty over twenty years of service before retirement; provided, further, that with such increases no pension or payment hereunder shall exceed the sum of One Hundred Dollars (\$100.00) per month; and provided, further, that no such pension shall be paid to any person while he remains a member of the Police Department and no person receiving such pension shall be entitled to any other relief from the association. (Act Mar. 9, 1931, c. 48, §2.)

Compensation is payable whether injury or sickness occurred in or out of service. Op. Atty. Gen. (785j), Feb. 14, 1936.

Police civil service commission may not require retirement at certain age, but may provide that amount of pension shall depend upon number of years of service. Op. Atty. Gen. (785i), Nov. 10, 1936.

**1264-8. Widows and children may receive pension.**—Pensions may be paid to any widow or child under 16 years of age of such pensioned and retired members of the police department, or to any widow or child under 16 years of age of any member who dies while in the service of the police department of any such village. (Act Mar. 9, 1931, c. 48, §3.)

Compensation is payable whether injury or sickness occurred in or out of service. Op. Atty. Gen. (785j), Feb. 14, 1936.

**1264-9. Amount of pension.**—Pensions may be paid by such police relief association to any widow or child under 16 years of age of any such pensioned and retired member of the police department, and to any widow or child under 16 years of age of any member who dies while in the service of the police department of such village, and such widow or child shall receive not to exceed the sums hereinafter provided for, viz.:

\$40.00 per month to such widow, and \$10.00 per month to each of such children under 16 years of age; provided that where such widow and such children



reside together the money herein required to be paid to such children shall be paid to such widow for the support of such children, but that the money paid to such widow for herself and such children shall not exceed \$75.00 per month in all. Provided, further, that in the event of the death of both parents leaving a minor child or children under the age of 16 years of age, entitled to such pension, such sums as may be necessary for the care, maintenance and education of such child or children may be paid to the legal guardian thereof, but not to exceed the sum of \$75.00 per month to the children of any one policeman. Provided, further, that in the event that any such widow remarries, she shall receive no further benefits under this law; and provided, further, that said fund shall not be used for any other purpose than the payment of service, disability or dependency pensions, as herein provided, and for the relief of a sick, injured and disabled policeman. The word "member," as used in this Act, shall include policewomen, police matrons and assistant police matrons. (Act Mar. 9, 1931, c. 48, §4.)

**1264-10. Not to be subject to process.**—No pension allowed or to be allowed by said police relief association under this act shall be subject to judgment, garnishments or executions or other legal process, and no person entitled to such pension shall have any right to assign the same nor shall said association have the power to recognize any attempted assignment or pay over any sum whatever which has been assigned or attempted to be assigned. (Act Mar. 9, 1931, c. 48, §5.)

**1264-11. Association to have control of pension fund.**—Subdivision 1. Said association through its officers shall have full charge, management and control of the pension fund herein provided for, which said fund shall be derived from the sources herein stated: From gifts of real estate or personal property, and from the rents and sales thereof or the income therefrom. It shall also be the duty of the village recorder, treasurer or other disbursing officer of such village where a police relief association has been duly incorporated and organized under the provisions of this Act, to deduct each month from the monthly pay of each member of such police department who is a member of the association and entitled to the benefits therefrom a sum equal to two per cent of such monthly pay and to place the same to the credit of said police pension fund; it shall also be the duty of every police officer receiving any reward for services, in making arrests or otherwise, to pay unto said police pension fund all such rewards, and it shall be the duty of the chief of police of any such village to place to the credit of and pay into such police pension fund all moneys coming into the hands of the police when the same shall have been unclaimed for a period of six months, and to sell all unclaimed property coming into the hands of the police when the same shall have been unclaimed for a period of six months, and place the proceeds thereof to the credit of said police pension fund.

Subd. 2. The village council or other governing body of such city shall each year, at the time the tax levies are made for the general revenues of the village, levy within the limits now permitted by law, a tax of one-fifth of a mill on all the taxable property of such village, the amount of which tax shall not in the aggregate exceed the sum of \$6,000 per annum, and which levy shall be transmitted to the county auditor of the county in which the village is situated at the time the other tax levies are transmitted and shall be collected and the payment thereof shall be enforced in the same manner as the other taxes of such village. The village treasurer, when the moneys derived from such tax are received by him, shall credit the same to the Police Pension Fund, together with all penalties and interest collected thereon, in the following manner: of the first levy made after the passage of this act, in all villages within this act and having a pop-

ulation of less than 10,000 inhabitants, a sum not to exceed \$700.00, may, at the discretion of the Board of Trustees of said relief association, be placed to the credit of the general fund of said association, and the balance of said levy, as well as all subsequent levies, shall be credited to the special fund of said association, and said moneys shall not be withdrawn from said fund or transferred to any other fund, except for the purposes of this act.

Subd. 3. If at any time the balance on hand of the fund so raised by taxation as in this section provided, together with other resources, exceeds the sum of \$50,000, then as often as this shall occur the levy of said sums shall be omitted for any year in which said condition shall exist, and if at any time the whole amount of the sums that may be raised by taxation in any year is not needed for the purposes of this Act and the maintenance of the said fund at \$50,000 then said sum so to be raised by taxation in any such year shall be proportionately reduced to such amount as will be sufficient to carry out the provisions thereof.

Subd. 4. The village treasurer shall, upon written direction of the governing board or Board of Directors of said Association, invest said funds in such interest bearing securities as are specified from time to time by the said Board of Directors, provided that the same shall be such securities as are prescribed from time to time by the statutes of Minnesota as securities for investments of the State Board of Investment. (Act Mar. 9, 1931, c. 48, §6; Mar. 28, 1933, c. 122, §2; Apr. 20, 1939, c. 304.)

**1264-12. Board of directors.**—The governing board or Board of Directors of said association then incorporated shall consist of five members, to be elected annually, who shall first hold their offices for one, two, three, four and five years, respectively, and thereafter each for a five-year term, or until the successor of each is duly elected and qualified, who shall serve without compensation and shall be active members of said Paid Police Department, and the Mayor or President and Village Treasurer shall be ex-officio members of said Board, and the Village Treasurer shall be the custodian of all funds of said association and shall disburse the same directed by said Board. The said Village Treasurer shall give bond to the Board of Trustees in an amount not less than the total balance of funds owned and belonging to such relief association as shown by its last annual statement, conditioned for the faithful discharge of his duties during his continuance in office and for the payment without delay to the officer or persons entitled by law, thereto, of all moneys belonging to said relief association, which shall come into his hands by virtue thereof, provided that the premium for said bond may be paid by the said Board of Trustees out of the special fund of said association. All vacancies occurring in the elective membership of said Board shall be filled by a special election called for that purpose. None of said members shall be eligible to vote upon any question relating to his benefits hereunder. (Act Mar. 9, 1931, c. 48, §7; Mar. 28, 1933, c. 122, §3.)

**1264-13. Board to file report.**—The said Governing Board of said Association shall file annually on or before the 1st day of September of each year with the Recorder of said Village a detailed report of the amount of money or property so received, expended and still remaining on hand to the credit of said fund. The books and records of said Board shall be open to inspection and audit by any taxpayer of said Village or his duly authorized representative. (Act Mar. 9, 1931, c. 48, §8.)

**1264-13½. Firemen's pension in certain villages**—In any village having a population in excess of 5,000 and a valuation in excess of \$8,000,000, exclusive of moneys and credits, and having a Fire Department Relief Association organized under the laws of this state and authorized to pay pensions under Ma-

son's Minnesota Statutes of 1927, Sections 1919 and 1920 and Sections 3723-3728, inclusive, or any amendments thereof, such Fire Department Relief Association may pay retirement pensions in excess of the amounts authorized by said Statutes, but not in excess of the following total amounts:

\$75.00 per month to each member of the Association who shall have reached the age of 55 years and shall have served 20 years or more as a member of the paid municipal fire department in such village. The monthly payments of \$75.00 may be increased by adding thereto an amount not exceeding three dollars per month for each year of active duty over 20 years of service before retiring; provided, that no such pension or payment hereunder shall exceed the sum of \$96.00 per month. No such pension shall be paid to any person while he remains a member of the Fire Department. (Act Apr. 15, 1935, c. 192, §1.)

**1264-13 ½ a. Limitation.**—No pension authorized by this act shall be paid to any person while receiving a pension in any form, or sick benefits, from any state, county, city, village, township or other political subdivision of the state, or to any person after he removes his residence from the United States, or to any person who shall have been convicted of a felony for which he shall have been adjudged to be imprisoned, or who is a habitual drunkard, or to any person receiving a pension or sick relief from any other public relief association, and no person receiving such pension shall be entitled to any other relief from the association. (Act Apr. 15, 1935, c. 192, §2.)

**1264-13 ½ b. May pay benefits.**—Nothing herein shall be construed as preventing any such association from paying any benefits other than service pensions which they may be authorized to pay to members of the association under the General Laws of this state or of the Statutes hereinbefore referred to, except that such benefits shall not be paid to any member while he is receiving a pension hereunder. (Act Apr. 15, 1935, c. 192, §3.)

**1264-13 ½ c. Not to be subject to process.**—No pension allowed or to be allowed by any Firemen's Relief Association under this act, and no accumulated contributions of members to the fund hereinafter referred to, shall be subject to judgment, garnishments, or executions or other legal process, and no person entitled thereto shall have any right to assign the same, nor shall the association have the power to recognize any attempted assignment or pay over any sum whatever which has been assigned or attempted to be assigned. (Act Apr. 15, 1935, c. 192, §4.)

**1264-13 ½ d. Deductions from pay—Tax levy—Premium on bonds of treasurer and secretary—Investment of surplus.**—In addition to the moneys in the special fund of said association or provided to be raised therefor under existing laws for the payment of pensions and other benefits, revenues from the following sources shall be paid to said special fund, to-wit: It shall be the duty of the village recorder, treasurer or other disbursing officer of such village to deduct each month from the monthly pay of each member of the Fire Department who is a member of the association a sum equal to three and one-half per cent of such monthly pay, and to place the same to the credit of said special fund. The village council or other governing body of such village shall each year, at the time the tax levies are made for the general revenues of the village, levy, within the per capita or mill limitations now permitted by law, a tax one-tenth of a mill on all of the taxable property of such village, which levy shall be transmitted to the county auditor of the county in which the village is situated at the time the other levies are transmitted and shall be collected, and the penalties therefor shall be enforced, in the same manner as the other taxes of such village. The village treasurer, when the moneys derived from such tax are received by him, shall pay the same to the treasurer of the Firemen's Relief Association, together

with all penalties and interest collected thereon, in the following manner: Of the first levy made after the passage of this act an amount not to exceed one-half of such levy may, at the discretion of the board of trustees of said relief association, be placed to the credit of the general fund of said association. The balance of said levy, as well as all subsequent levies, shall be credited to the special fund of said association, and shall not be withdrawn from said fund or transferred, to any other fund except for the purposes of this act; provided, however, that said board of trustees may, in its discretion, pay premiums upon the bond of the treasurer and secretary from said special fund, and may also invest the balance of its funds in certificates of indebtedness of such municipality, and the governing body of such municipality shall sell its certificates of indebtedness to such relief association at the prevailing rate that it sells such certificates to the general public, or others. (Act Apr. 15, 1935, c. 192, §5; Apr. 13, 1939, c. 212.)

**1264-13 ½ e. Levy to be discontinued when.**—If at any time the balance on hand of the fund so raised by taxation as in this section provided, together with other resources in said special fund, shall exceed the sum of \$100,000 or more, then as often as this shall occur, the levy of said sum shall be omitted for any year in which said condition shall exist; if at any time the whole amount of the sums that may be raised by taxation in any year is not needed for the purposes of this act and the maintenance of said fund at the amount prescribed herein, then such sum so to be raised by taxation in any such year shall be proportionately reduced to such amount as will be sufficient to carry out the provisions hereof. (Act Apr. 15, 1935, c. 192, §6.)

**1264-13 ½ f. Treasurer to invest funds.**—The treasurer of said association shall, upon written direction of the governing body or board of directors thereof, invest said funds in such interest-bearing securities as are specified, from time to time, by said board of directors; provided same shall be such securities as are prescribed by laws of Minnesota, from time to time, as securities for investments of the State Board of Investment. (Act Apr. 15, 1935, c. 192, §7.)

**1264-13 ½ g. Officers.**—The governing board or board of directors of said association whether heretofore or hereafter incorporated shall consist of five members, to be elected annually, who shall first hold their offices for one, two, three, four and five years, respectively, and thereafter each for a five-year term, or until the successor of each is duly elected and qualified, who shall serve without compensation and shall be active members of said paid fire department, the Mayor, Recorder or Clerk, and Chief of said Department shall be ex officio members of said board. The treasurer of said association shall give bond to the Board of Trustees in an amount not less than the total balance of funds owned and belonging to such relief association as shown by its last annual statement, conditioned for the faithful discharge of his duties during his continuance in office and for the payment without delay to the officer or persons entitled by law thereto, of all moneys belonging to said relief association which shall come into his hands by virtue thereof. All vacancies occurring in the elective membership of said board shall be filled by a special election called for that purpose. None of said members shall be eligible to vote upon any question relating to his benefits hereunder. (Act Apr. 15, 1935, c. 192, §8.)

**1264-13 ½ h. To make annual reports.**—The said governing board of said association shall file annually on or before the first day of September of each year with the Recorder of said village a detailed report of the amount of money or property so received, expended, and still remaining on hand to the credit of said fund. The books and records of said board shall be open to inspection and audit by any taxpayer of said

village or his duly authorized representative. (Act Apr. 15, 1935, c. 192, §9.)

**1264-13½ i.** Act to remain in force.—If after the adoption and approval of this act any village subject to the terms hereof shall adopt a home rule charter, or shall become incorporated as a city, the provisions of this act shall remain in full force and effect as to said city and the Firemen's Relief Association incorporated therein. (Act Apr. 15, 1935, c. 192, §10.)

**1264-13½ j.** Accumulated deductions to be repaid in certain cases.—Whenever a member of said association shall cease to be a member of said department, for any reason other than death or retirement, he shall be paid, on demand, the full amount of the accumulated deductions from pay standing to his credit. Whenever any member shall die without having received a pension, or without having received in pension payments an amount equal to the total amount of the accumulated deductions from his salary heretofore provided for, the full amount of such accumulated deductions, less such pension payments, if any, as have been made to said member shall be paid in one lump sum to the beneficiary or beneficiaries designated by such member, or if none, to the legal representatives of such member; provided, however, if no valid claim is established therefor, such accumulated deductions shall remain with and become the property of said association. Provided, further, that if any member shall pay any regular payment for sick relief or hospitalization while a member of said Department under any plan approved by the association, such amount may be deducted from the 3½ per cent of the member's salary hereinbefore mentioned. No member shall be entitled to interest upon deductions under the provisions of this paragraph. (Act Apr. 15, 1935, c. 192, §11.)

**1264-14.** Certain villages may transfer monies from one fund to another.—When in the opinion of the Village Council in any village of this state, having a population of not less than 700 nor more than 800 according to the U. S. Government census of 1930, and a total tax valuation not more than \$325,000, nor less than \$290,000, for the year 1932, there is more money in any village fund than is necessary for the purposes for which such fund was created, such Village Council may transfer such excess funds to any other village fund. (Act Apr. 13, 1933, c. 220.)

Act Jan. 18, 1936, Sp. Ses. 1935-36, c. 46, authorizes certain villages to transfer money from one fund to another.

**1264-15.** Certain warrants and certificates of indebtedness validated.—That all warrants, orders, or certificates of indebtedness drawn and issued or obligations incurred or contracted by any village in this state having more than 8,000 and less than 9,000 inhabitants upon any fund or by any department between the first day of January, 1925, and the first day of January, 1933, be and the same are hereby legalized and declared valid obligations of said village. (Act Apr. 13, 1933, c. 222, §1.)

Sec. 2 of Act Apr. 13, 1933, cited, provides that the act shall take effect from its passage.

Act Apr. 24, 1937, c. 405, legalizes payments incident to construction of sewers.

#### STATUTES RELATING TO VILLAGES IN GENERAL

Act Mar. 9, 1933, c. 72, relates to the financial affairs of villages between 2,500 and 3,000 population, with assessed valuation, exclusive of moneys and credits, of \$1,500,000 to \$2,000,000, 70% of which is iron ore. It is omitted as of local application only.

Per capita village operating under Laws 1885, c. 145, on cash basis may not levy taxes in excess of mill limitations contained in Laws 1933, c. 72. Op. Atty. Gen. (519q), May 11, 1937.

Levy by village operating under cash basis law for bond and interest payment must be included within limitations provided by Laws 1933, c. 72. Op. Atty. Gen. (519q), July 8, 1938.

#### CITIES

##### 1266. Census governs.

This section sets forth method of computing population of city for purpose of issuing licenses for sale of intoxicating liquors. Op. Atty. Gen., Jan. 30, 1934.

**1268. Home rule charters—Patrol limits—Sale of intoxicating liquors in first class cities—Prescribing areas.**—Any city or village in the state of Minnesota, whenever incorporated, may frame a city charter for its own government in the manner hereinafter prescribed provided, that in such cities having patrol limits or districts or areas established by charter, outside of which intoxicating liquors may not be sold, such patrol limits or districts or areas may be altered by an amendment to the Home Rule Charter adopted by a three-fifths vote of the qualified voters of such city.

In any city of the first class, notwithstanding the provisions of its Home Rule Charter prescribing or fixing an area or areas in such city where intoxicating liquors may or may not be sold, it shall be lawful to sell intoxicating liquors as hereinafter provided when such sale of intoxicating liquors is duly licensed and regulated as provided by law, and the common council or other governing body of such city shall have power subject to the provisions of general laws regulating the sale of intoxicating liquors applicable to such cities, by a vote of three-fourths of the members thereof to prescribe and fix from time to time but not oftener than once in five years the areas or districts within such city where intoxicating liquors may be sold, provided, however, that the areas or districts so prescribed and fixed shall be confined to the industrial and commercial sections of such city as now existing, and provided that no such area or district having less than a width of two thousand feet (2000) shall be established. (R. L. '05, §748; '07, c. 375, §1; G. S. '13, §1342; Jan. 9, 1934, Ex. Ses., c. 82, §1.)

Sp. Sess., Laws 1933, c. 82, applies to Minneapolis only. Op. Atty. Gen., Feb. 17, 1934.

A constable is not a constitutional officer, and city charter may abolish the office. Op. Atty. Gen., Oct. 3, 1931.

**1268-1. Same—powers additional.**—The powers herein granted are in addition to powers now possessed by such cities under the provisions of Home Rule Charters and shall not limit or restrict such powers. (Act Jan. 9, 1934, Ex. Ses., c. 82, §2.)

**1268-2. Same—repeal—territory added by special act.**—All Acts or parts of Acts inconsistent herewith are hereby repealed and provided that the provisions of this Act shall not apply to territory added to any such city by special act which provided that intoxicating liquors should not be sold in such territory. (Act Jan. 9, 1934, Ex. Ses., c. 82, §3.)

**1268-3. Same—effective date—duration.**—This Act shall take effect and be in force from and after its passage and until ninety (90) days after the next general state election. (Act Jan. 9, 1934, Ex. Ses., c. 82, §4.)

##### 1269. Board of freeholders.

Existence of freehold population is not a condition precedent to incorporation or reincorporation of a municipality. State v. City of Fraser, 191M427, 254NW776. See Dun. Dig. 6517, 6526a.

Motives of electors at a city charter election are not to be considered so long as their actions are within the law. Id. See Dun. Dig. 6532, 6543.

Even if member of board of freeholders is not a freeholder, his acts are valid as those of a de facto officer. Id. See Dun. Dig. 6556a.

A freeholder is one having title to real estate, however small its value. Id. See Dun. Dig. 6560.

Members of board of freeholders were qualified though they were conveyed land as a gift for sole purpose of qualifying them. Id. See Dun. Dig. 6560.

##### 1270. Compensation—Expenses.

Expenses of preparation and submission of a charter, including legal services in connection therewith, must be kept within \$500 limit. Op. Atty. Gen., July 1, 1933.

**1271. Framing charter.**

The city of White Bear has authority under its home rule charter to condemn Goose Lake outside its corporate limits, as a sewage disposal plant, notwithstanding Sp. Laws 1881, c. 410. 172M255, 214NW930.

Minneapolis ordinance imposing liability on adjoining owners to sheath-pile in making excavation so as to protect walls on the adjoining property held invalid. 172M428, 215NW840.

Provision in home rule charter of Waseca that "no finer judgment recovered by the city shall be remitted or discharged except by vote of the common council and with the approval of the mayor" is valid. Op. Atty. Gen., Apr. 8, 1931.

City charter of Brainerd cannot regulate the employment of attorneys by the school district, which is not an integral part of the city government. Op. Atty. Gen., June 10, 1931.

Charter provisions of the city of Ely with respect to condemnation of land outside city are valid. Op. Atty. Gen., June 15, 1931.

County board of Hennepin county may issue license to Minneapolis Park Board to sell non-intoxicating malt liquors at golf course and airport situated outside city limits. Op. Atty. Gen., Apr. 22, 1933.

City of Waseca under its home rule charter has authority to condemn land outside city for airport. Op. Atty. Gen. (817f), Aug. 3, 1934.

City may acquire by gift land used as a golf course, though such land is incumbered, provided city does not assume the indebtedness, and provided it is not to be used as private golf course by members of club making gift. Op. Atty. Gen. (59b-11), Aug. 30, 1935.

Municipal regulation of public utilities in Minnesota. 16MinnLawRev541.

**1272. Bonded indebtedness.**

An outline of municipal bond procedure in Minnesota. 20MinnLawRev583.

City of Duluth may adopt ordinance declaring sewage disposal plants to be a public utility and issue bonds to pay cost of completing same payable out of rentals or charges for use of such plants, without an election, and sell them to the state. Op. Atty. Gen. (387b-9), Sept. 23, 1937.

**1283. Regulation of franchises.**

City of Mankato, at no time, had power to grant a perpetual electric franchise. Op. Atty. Gen., Dec. 28, 1933.

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. Op. Atty. Gen. (59a-36), May 25, 1935.

Village operating under Laws 1885, is bound by 25 year franchise granted to a power company in 1916, and cannot lower rates by ordinance. Op. Atty. Gen. (624c-6), Sept. 16, 1937.

Municipal regulation of public utilities in Minnesota. 16MinnLawRev541.

**1284. Charter—How submitted.**

Special election on proposed city charter for village of North St. Paul on same date as state-wide primary was entirely separate, and polls should remain open from nine A. M. until nine P. M. though no person could vote at primary after eight P. M. Op. Atty. Gen., June 15, 1932.

**1285-1. Election validated.**—That in all cases where an election has been held upon the question of the adoption of a charter pursuant to article 4, section 36, of the constitution, and notice of such election, properly stating the time, place and object thereof, was posted for more than 15 days prior thereto, but said notice was dated and first posted prior to the time the election was ordered by the governing body of the municipality, and where white ballots were used instead of lavender colored ballots at said election, and where a sample of said ballot was not published for one week in the official newspaper, but the proposed charter was so published, and said charter was thereafter duly adopted at said election, all such proceedings for the adoption of the charter are hereby legalized and validated as against the following objections: (a) that the notice of election was posted before the election was ordered by the governing body; (b) that the ballots used were white in color; (c) that a sample ballot was not published for one week prior to the election in the official newspaper. (Act Apr. 13, 1931, c. 145.)

**1286. Amendments to home rule charters—Petition—Election.** Subdivision 1. Proposal on petition.—

The board of freeholders may propose amendments to such charter, and shall do so upon the petition of five per cent of the voters of the city. All petitions circulated with respect to a charter amendment shall be uniform in character and shall have attached thereto the text of the proposed amendment in full; except that in the case of a proposed amendment containing more than one thousand words, a true and correct copy of the same may be filed with the city clerk, and the petition shall then contain a summary of not less than 50 nor more than 300 words setting forth in substance the nature of the proposed amendment. Such summary shall contain a statement of the objects and purposes of the amendment proposed, and an outline of any proposed new scheme or frame work of government and shall be sufficient to inform the signers of the petition as to what change in government is sought to be accomplished by the amendment. The summary, together with a copy of the proposed amendment shall first be submitted to the charter commission for its approval as to form and substance, the commission shall within ten days after such submission to it, return the same to the proposers of the amendment with such modifications in statement as it may deem necessary in order that the summary may fairly comply with the requirements above set forth.

**Subdivision 2. Petitions—Signature—Affidavit.**—

The signatures to such petition need not all be appended to one paper, but to each separate petition there shall be attached an affidavit of the circulator thereof as provided by this section. Each signer of any such petition paper shall sign his name in ink or indelible pencil and shall indicate after his name his place of residence by street and number, or other description sufficient to identify the place. There shall appear on each petition the names and addresses of five electors of the city, and on each paper the names and addresses of the same five electors, who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition. The affidavit attached to each petition shall be as follows:

State of ..... )  
 )ss

County of ..... )

.....being duly sworn, deposes and says that he, and he only, personally circulated the foregoing paper, that all the signatures appended thereto were made in his presence, and that he believes them to be the genuine signatures of the persons whose names they purport to be.

Signed .....  
(Signature of Circulator)

Subscribed and sworn to before me  
this.....day of ..... 19...

Notary Public (or other officer)  
authorized to administer oaths

The foregoing affidavit shall be strictly construed and any affiant convicted of swearing falsely as regards any particular thereof shall be punishable in accordance with existing law.

**Subdivision 3. Examination and certification by city clerk—Separate papers assembled as one petition—Amendment of petition—New petition.**—All petition papers for a proposed amendment shall be assembled and filed with the charter commission as one instrument. Within ten days after such petition is transmitted to the city council, the city clerk shall determine whether each paper of the petition is properly attested and whether the petition is signed by a sufficient number of voters. The city clerk shall declare any petition paper entirely invalid which is not attested by the circulator thereof as required in this section. Upon completing his examination of the petition, the city clerk shall certify the result of his examination to the council. If he shall certify that

the petition is insufficient, he shall set forth in his certificate the particulars in which it is defective and shall at once notify the committee of the petitioners of his findings. A petition may be amended at any time within ten days after the making of a certificate of insufficiency by the city clerk, by filing a supplementary petition upon additional papers signed and filed as provided in case of an original petition. The city clerk shall within five days after such amendment is filed, make examination of the amended petition, and if his certificate shall show the petition still to be insufficient, he shall file it in his office and notify the committee of the petitioners of his findings and no further action shall be had on such insufficient petition. The finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

**Subdivision 4. Publication of proposed amendments—Ballots—Three-fifths vote.—** Amendments shall be submitted as in the case of the original charter, and the proposal shall be published for at least 30 days in not exceeding three newspapers of general circulation in such city. The form of ballot and mode of voting shall be similar to those used upon the adoption of such charter, the general nature of each amendment being briefly indicated. If three-fifths of those lawfully voting at such election shall declare in favor of any amendment so proposed, the same shall be certified, deposited and recorded, and shall take effect, as in the case of the original charter, provided that, if it be proposed that any amendment shall take effect at a specified time, it shall take effect as proposed. (As amended Apr. 17, 1939, c. 292.)

Laws 1935, c. 91. Validation of charter amendment. Submission of Charter Amendment No. 8 to voters of Minneapolis on Nov. 8, 1932, was a special election notwithstanding it was not so designated by city council. *Godward v. C.*, 190M51, 250NW719. See Dun. Dig. 6543.

Blank ballots at special election were properly rejected by trial court in computing total number of voters at special election on charter amendment. *Id.* See Dun. Dig. 2973a, n. 29.

A village which has once adopted a home rule charter may amend its charter but can never do away with it so as to again become a village, but would still remain a city of the fourth class. *Op. Atty. Gen.*, Oct. 21, 1931.

Neither charter commission nor city council have authority to revise or supervise charter amendments presented to commission by petition, and courts have no jurisdiction to determine constitutionality until electors have acted. *Op. Atty. Gen.*, Aug. 25, 1933.

Charter amendments authorizing issuance of bonds for certain purposes upon vote of people must be adopted before calling an election to vote on proposition of issuance of bonds. *Op. Atty. Gen.* (63b-4), June 5, 1935.

Amendment to home rule charter may be submitted at special election called for that purpose. *Op. Atty. Gen.* (64t), Nov. 6, 1935.

Amendments to a home rule charter may be submitted pursuant to constitution, article 4, §36, and Mason's Stats., §§1284 and 1286, and not pursuant to terms of home rule charter, and may be submitted at special election, and it is not required that all newspapers be published in city if they have general circulation there. *Op. Atty. Gen.* (58c), Oct. 18, 1937.

Proposed amendment may specify time it shall take effect, but it must be fixed at some date following election. *Id.*

It is necessary to publish amendments in three newspapers although only two newspapers are published in city. *Id.*

Publication of proposed charter amendments once each week for a period of 30 days in a weekly newspaper is sufficient, but if a daily newspaper is used it must be published in each issue of such paper for requisite 30 day period. *Id.*

If only one newspaper is published in city, in addition to publishing proposed amendment in such paper, publication must also be made in two other newspapers having general circulation in the city. *Op. Atty. Gen.* (59a-11), Feb. 21, 1938.

Proper method of submitting alternative proposals is to submit them in such a manner that voters may vote for only one. *Op. Atty. Gen.* (59a-11), Feb. 21, 1938.

Voters should vote on each amendment separately. *Op. Atty. Gen.*, (59a-11), Oct. 4, 1938.

**1287. Amendments in cities of fourth class—Postponing election.**

If proposed amendment to charter provides for holding of city election at a later date than is provided in charter, and special election will be called to vote on proposed amendment and same if adopted will not take effect prior to date fixed for city election in charter, city primary

and election may be postponed within limitation of this section. *Op. Atty. Gen.* (58c), Oct. 18, 1937.

**1293. Powers of mayor and council.**

The city of Hastings may lawfully enter into a contract for the rental of property for public purposes which it might lawfully acquire by purchase, but it cannot purchase such equipment under a conditional sale contract or on the installment plan under the guise of hiring the use thereof. *Op. Atty. Gen.*, Jan. 26, 1931.

Where a city, such as Duluth, is operating under a home rule charter, it has authority to regulate the rate of a public service corporation and to require such reasonable extension as fact warrants. *Op. Atty. Gen.* (524c-11), Aug. 20, 1934.

**1294. Recall and removal of officers—Ordinances.**

A charter provision requiring a verification of signatures on each separate "paper" or petition for a recall election is not satisfied where several such papers or petitions are bound together and then one verification attached purporting to cover signatures on all of such separate papers or petitions. *State v. Bickford*, 193M 135, 258NW11.

**1297. New charter authorized.**

The provision herein permitting the submission of a new or revised charter in the manner of an original charter, without publication, does not violate Const. art. 4, §36. *Op. Atty. Gen.*, July 31, 1931.

City may adopt a proposed new or revised charter in same manner that original home rule charter is adopted, and it is not necessary to publish new or revised charter in any newspaper. *Op. Atty. Gen.* (59a-11), July 30, 1937.

**1298. Amendments authorized.**

The provision herein permitting the submission of a new or revised charter in the manner of an original charter, without publication, does not violate Const. art. 4, §36. *Op. Atty. Gen.*, July 31, 1931.

Proposed revision to Home Rule Charter must be published for at least 30 days in three newspapers of general circulation in city or village affected. *Op. Atty. Gen.*, Jan. 12, 1933.

Thirty days' publication of proposed revision of home rule charter must be published once each week in weekly papers and daily in daily papers. *Op. Atty. Gen.*, Jan. 12, 1933.

**1300. [Repealed].**

Repealed by Laws 1929, c. 185.

**1310 1/2.**

**DECISIONS RELATING TO CITIES IN GENERAL**

City flushing street was engaged in corporate function and was liable for negligence. 174M184, 218NW892.

The rule that, where a city receives supplies or property and uses or consumes them it may be held liable for the reasonable value thereof, does not apply where there has been no material use and no one having authority has taken any part in the matter and prompt objection has been taken by taxpayers. 177M44, 224NW 261.

The passage of a resolution, instead of the adoption of an ordinance, if either were necessary, was permissible. *State ex rel. Madsen et al v. Houghton*, 182M77, 233NW831. See Dun. Dig. 6749(22).

City Clerk furnishing a certificate showing no special assessments on property was liable to a buyer relying thereon to his damage. *Mulroy v. W.*, 185M84, 240NW 116. See Dun. Dig. 8001.

The existence and amount of benefits resulting from a local improvement in a city are legislative questions on which the judgment of the local legislative body must prevail, unless demonstrably wrong. *Third Street Widening*, 185M170, 240NW355. See Dun. Dig. 6521(67).

Rule of assessment properly ignoring both use and value was condemned because it adopted a combination of factors of frontage and depth in such fashion as to cause discrimination in favor of undivided lots. *Third Street Widening*, 185M170, 240NW355. See Dun. Dig. 6860.

Evidence held to sustain finding of negligence of city and contractor leaving ridge across street, resulting in injury to automobile passenger. *Hoffman v. C.*, 187M 320, 245NW373. See Dun. Dig. 6831, 6844.

There was no issue for jury upon contributory negligence of plaintiff, who was riding as a guest in an auto and was injured when auto struck ridge in city street. *Hoffman v. C.*, 187M320, 245NW373. See Dun. Dig. 6842, 7037, 7038.

Where excavation and ridge in street were made by contractor under direct supervision of city inspector, both were negligent if either was. *Hoffman v. C.*, 187M 320, 245NW373. See Dun. Dig. 6818, 6836.

Where members of city council act in good faith in ordering work done by day labor which cannot be legally done in that manner they incur no personal liability. *Op. Atty. Gen.*, Jan. 9, 1933.

Evidence held to show that city was not negligent and that damage to property was caused by unusual and extraordinary storm. *Hanson v. C.*, 189M268, 249NW46. See Dun. Dig. 6808.

City operating hospital and receiving compensation from practically all patients was exercising its corporate

or proprietary powers and not its governmental or public powers as affecting liability for negligence of nurse. *Borwege v. C.*, 190M394, 251NW915. See Dun. Dig. 6808, 6809, 6810.

Evidence justified finding village liable for injuries inflicted when balcony railing insecurely and negligently maintained in its community building, gave way and fell, with some of the spectators, upon plaintiff engaged below in a hockey game; village not wishing to assert defense that it functioned governmentally in maintaining such building for health and recreation of inhabitants. *Howard v. V.*, 191M245, 253NW766. See Dun. Dig. 6809.

Where snow accumulated on cornice of building during night and melted next day and formed strip of ice upon abutting sidewalk, at which time pedestrian was injured, city cannot be held to have had constructive notice of the presence of ice upon walk. *Mesberg v. C.*, 191M393, 254NW597. See Dun. Dig. 6823.

In action for injuries to pedestrian from ice on sidewalk formed during day of accident, evidence to show that ice patches such as existed were formed every winter regularly for a number of years was properly excluded as immaterial, as affecting constructive notice to city. *Id.*

In considering liability for ice and snow on public sidewalk, city must not be held to a degree of diligence beyond what is reasonable, in view of prevailing climatic conditions in this state. *Id.* See Dun. Dig. 6823.

Rights and liabilities of a municipality in respect to surface water are the same as those of a private landowner. *Bush v. C.*, 191M591, 255NW256. See Dun. Dig. 10172.

Evidence held to support jury's verdict that defendant city was legally responsible for constructing its street without making reasonable provision for the disposal of surface water to plaintiff's damage. *Bush v. C.*, 191M591, 255NW256. See Dun. Dig. 6822, 10172.

Where sidewalk in front of one lot is kept free from snow and ice and in front of adjoining lot snow and ice are allowed to accumulate to a depth of two inches, slant or slope, arising from two levels joining, does not constitute such an obstruction or menace to safe travel, in this climate, that a city may be held liable to a pedestrian who slips and falls thereon. *Kelleher v. C.*, 193M487, 258NW834. See Dun. Dig. 6829.

Presumption is in favor of constitutionality of city ordinances. *City of St. Paul v. C.*, 194M183, 259NW824. See Dun. Dig. 8929.

Burden of proof of conditions which justify a finding that an ordinance fixing minimum taxi fares is beyond police power is upon person attacking ordinance. *Id.* See Dun. Dig. 1205a.

Where a charter or statute provides that vote of a majority of members elected to council shall be necessary to pass a measure, fact that there are vacancies in office due to death, resignation, or other cause, does not diminish number of votes necessary to pass such measure. *State v. Hoppe*, 194M186, 260NW215. See Dun. Dig. 6786.

Where charter or statutory provision requires an affirmative vote of a majority of entire council to give effect to a measure, requirement is satisfied by an affirmative majority vote of all members of council in existence when measure is passed, and not all of those originally elected. *Id.* See Dun. Dig. 6786.

Where by charter or statute vote of a majority of members of city council is required to give effect to a measure, such measure cannot be enacted by a mere majority of a quorum, unless those voting for measure also constitute a majority of all members of council, both present and absent. *Id.* See Dun. Dig. 6786.

A prosecution for a violation of a municipal ordinance is not a criminal proceeding. *City of St. Paul v. K.*, 194M386, 260NW357. See Dun. Dig. 6801.

Proof beyond a reasonable doubt is not required for conviction for violation of a city ordinance. *Id.* See Dun. Dig. 6806.

It is incumbent upon a municipality to exercise reasonable care and diligence to keep and maintain its streets and sidewalks in a safe and passable condition for public use and travel, including protection from falling objects, but city is not an insurer of safety, and jury was justified in finding no liability for injuries sustained by a pedestrian by falling of a defective cornice. *Heidemann v. C.*, 195M611, 264NW212. See Dun. Dig. 6818.

Doctrine of *res ipsa loquitur* did not apply against a city in favor of a pedestrian injured by falling of cornice extending over sidewalk. *Id.* See Dun. Dig. 6830.

In action by landowner against village, evidence held to sustain finding that tile put in creek by defendant was not cause of overflow of plaintiff's land. *Nichols v. V.*, 195M621, 263NW900. See Dun. Dig. 6642.

Where a municipal officer sells to his municipality property within its corporate powers to acquire and use, and same is so acquired and used by it, liability may be enforced quasi *ex contractu*, but not beyond value of such property to municipality. *Mares v. J.*, 196M87, 264NW222. See Dun. Dig. 6703.

Providing electricity for its inhabitants is a proprietary function of a municipality, and its contracts relating thereto are governed by same rules of contract law, regarding laches and estoppel, as those of private corporations or individuals. *City of Staples v. M.*, 196M303, 265NW58. See Dun. Dig. 6669b.

A municipality may, unless forbidden by statute or charter, compromise claims against it without specific

express authority, such power being implied from its capacity to sue and to be sued, and ordinarily power to compromise claims is inherent in the common council as a representative of the municipality. If it makes such a compromise in good faith, and not as a gift in the guise of a compromise, the settlement is valid and does not depend upon the ultimate decision that might have been made by a court for or against the validity of the claim. *Snyder v. C.*, 197M308, 267NW249. See Dun. Dig. 6746.

As city council had power to determine compensation of officers and employees, a fire department captain who accepted payment of 75% of his regular salary after passage of resolution placing fire department on three-quarter time service could not under any theory of contract or quantum meruit recover the other quarter of the salary because fire chief compelled him to work full time under threat of discharge. *Nelson v. C.*, 197M394, 267NW261. See Dun. Dig. 6600.

Where a municipality is by its charter authorized to contract for commodities and services in its proprietary capacity, rules and principles of law applicable to contracts and transactions between individuals apply. *McNaught v. C.*, 198M379, 269NW897. See Dun. Dig. 6696.

When a municipal corporation by authority of law creates a particular fund with reference to which it contracts, any indebtedness arising on such contract is payable therefrom only. *Judd v. C.*, 198M590, 272NW577. See Dun. Dig. 6579a.

City may not be held liable generally as for money had and received in absence of unjust enrichment. *Id.* See Dun. Dig. 6703.

Treating city as trustee of its permanent improvement revolving fund, where it affirmatively appears that fund created for meeting payments of a particular improvement, to which alone warrants held by plaintiffs relate, has been exhausted without city's fault, plaintiffs may not resort to general improvement revolving fund for contribution. *Id.* See Dun. Dig. 6869.

Court rightly determined that city council in reducing "time" of city officers and employees used that word as equivalent of "pay." *Burns*, 200M191, 273NW691. See Dun. Dig. 8939, 8940.

Members of a municipal council may exercise functions of their office throughout their term, including last day thereof. *Ambrozich v. C.*, 200M473, 274NW635. See Dun. Dig. 6575.

Power of city to acquire property by purchase, condemnation, or otherwise includes power to acquire it by lease, and a lease made pursuant to such power may be subsequently canceled, rescinded, modified, or amended. *Id.* See Dun. Dig. 6693.

While personnel and membership of city council or governing board changes, municipal corporation continues unchanged and a contract entered into by council is contract of corporation. *Id.* See Dun. Dig. 6700.

A lease of real property by a city is not comprehended within a provision of city charter requiring advertisement for bids for all contracts involving expenditure of more than \$250 for commodities or services including all labor, materials, property lighting, services and local and public improvements. *Id.* See Dun. Dig. 6707.

Whether chief engineer of city fire department waived right to compensation for unlawful suspension for two weeks by signing payrolls for his subsequent pay without asserting his rights for two years held for jury. *Ringer v. C.*, 203M249, 281NW47. See Dun. Dig. 6558a.

Whether city exercised such control over WPA employees engaged in blasting operations in improvement of its streets as to justify application of doctrine of respondeat superior held for jury. *Hughes v. C.*, 204M1, 281NW871. See Dun. Dig. 6815.

Municipal corporations have no inherent power to legislate and are invested by law with legislative powers for protection and promotion of the public health, morals, comfort and convenience. *Larson v. L.*, 204M80, 282NW669. See Dun. Dig. 6548, 6684.

City ordinance prohibiting placing, leaving, throwing, dropping or scattering any material on sidewalks created no obligation upon fruit company abutting on sidewalk upon which a customer accidentally dropped a visor cap which tripped and injured a pedestrian, though officials and employees noticed cap but did not remove it. *O'Hara v. M.*, 203M541, 282NW274. See Dun. Dig. 6845.

Merely fact that a less burdensome course might have been adopted to accomplish end does not invalidate an ordinance. *Sverkerson v. C.*, 204M388, 283NW555. See Dun. Dig. 6755.

Minneapolis city ordinance requiring fuel dealers to obtain liability insurance as a condition precedent to obtaining a license to make deliveries is valid. *Id.* See Dun. Dig. 6794.

Ordinance requiring persons engaged in the business of plastering to be licensed does not exceed limitations upon governmental power imposed by state and federal constitutions. *State v. Clousing*, 285NW711. See Dun. Dig. 6794.

License fees must be reasonable, but a court will not declare them unreasonable unless they are palpably so, general rule being that a license fee should be intended to cover cost of issuing it, services of officers, and other expenses directly or indirectly imposed. *Id.* See Dun. Dig. 6800.

Ordinance requiring a firm or corporation engaged in plastering an area in excess of 100 square yards to be licensed but permitting persons working under the direct

supervision of a licensee or engaged in applying plaster on a job covering less than 100 square yards to do so without a license held not to be so discriminatory as to violate constitutional rights. *Id.* See Dun. Dig. 6799.

In absence of fraud or illegality, a municipality is estopped to deny validity of a contract to be performed over a period of 20 years when it had power to make contract in a proper manner, has accepted performance for about six years, one of which was after it had been notified that it would be held strictly to terms of contract, and has permitted other party to put itself to expense in performance which will result in substantial loss if contract is set aside. *Chisholm Water Supply Co. v. C.*, 285NW895. See Dun. Dig. 6719.

Ordinances passed years ago but never published in full need not be re-passed, but may be published and made valid. *Op. Atty. Gen.*, June 24, 1931.

Resolution "city attorney—\$70 per month; and in addition thereto a reasonable fee for investigation, preparation for trial, briefing and argument in district and supreme court," held not to sufficiently fix the salary under the charter of New Ulm. *Op. Atty. Gen.*, July 11, 1931.

A city council contemplating the establishing of a municipally owned electric light plant may not use city funds to insert advertisements to combat propaganda of a power company. *Op. Atty. Gen.*, July 27, 1931.

A city contemplating the establishing of a municipal electric light plant may expend money for the purpose of making a survey of the feasibility of such construction or purchase. *Op. Atty. Gen.*, July 27, 1931.

Power of city to enact ordinances for the regulation and licensing of solicitors who take orders for future delivery, discussed. *Op. Atty. Gen.*, Aug. 20, 1931.

An ordinance was not invalid because the enacting clause read, "the city council of the city of Columbia Heights," instead of the words, "the city of Columbia Heights does ordain." *Op. Atty. Gen.*, Aug. 20, 1931.

Council of Mankato cannot pass an ordinance by adopting a printed building code by reference without setting forth the contents thereof in full and publishing the same, in view of Mankato Charter §60. *Op. Atty. Gen.*, Sept. 12, 1931.

City on sale of electric light plant entirely paid for by earnings may use the proceeds to retire the general indebtedness of the city. *Op. Atty. Gen.*, Oct. 28, 1931.

A city has no authority to issue scrip money. *Op. Atty. Gen.*, Apr. 19, 1933.

City receiving bids for well need not advertise for new bids after changing location of well, there being no change in plans and specifications nor in topography of land. *Op. Atty. Gen.*, June 3, 1933.

City could not contract for heating buildings at monthly rate amounting to conditional contract for purchase of heating apparatus. *Op. Atty. Gen.*, June 23, 1933.

There is no statute authorizing a city to tax by way of licensing business and occupation of selling fresh fruits and vegetables at wholesale or otherwise. *Op. Atty. Gen.*, July 12, 1933.

Village council has no legal authority or power to grant privilege to individuals of installing gasoline curb pump on state trunk highway, and a village would be liable for any injuries caused by such an obstruction to one who was in exercise of due care. *Op. Atty. Gen.* (396g-9), Jan. 8, 1935.

Reimbursement to a village officer or servant for damages paid can only be made when act which caused damage was one directly related to matter in which village was interested or was one in actual discharge of his duty. *Op. Atty. Gen.* (59a-12), Jan. 15, 1935.

City may operate a skating rink and is not liable for injuries received thereon where no charge is made, being a governmental function. *Op. Atty. Gen.* (844b-1), Feb. 11, 1935.

City cannot lease auditorium added to high school building for a long term, or issue bonds therefor, though the auditorium is built for purpose of obtaining federal money and to take care of unemployed. *Op. Atty. Gen.* (63b-2), May 17, 1935.

A city may carry workmen's compensation insurance in a mutual company under a policy limiting liability within maximum indebtedness of such municipality as prescribed by law. *Op. Atty. Gen.* (489c-5), May 23, 1935.

City is not liable for negligence in maintaining public bathing beach. *Op. Atty. Gen.* (283d-1), June 27, 1935.

City erecting municipal building larger than necessary for purpose of obtaining extra space to rent to industry coming to city, had no power to leave such extra space. *Op. Atty. Gen.* (63b-11), July 31, 1935.

Municipality in maintaining parks and bathing beaches acts in a governmental capacity and is not liable to a person becoming infected as a result of bathing in polluted water, if the city is in no way responsible for such pollution. *Op. Atty. Gen.* (283d-1), Apr. 17, 1936.

A village is not liable for accident occurring while its fire department is responding to calls, though firemen may be personally liable. *Op. Atty. Gen.* (688h), May 19, 1936.

City is not liable for injuries sustained by people using swimming pool maintained by city. *Op. Atty. Gen.* (59b-11), Aug. 10, 1936.

Municipality is not liable for negligence in operation of fire apparatus in absence of statute. *Op. Atty. Gen.* (688h), Aug. 27, 1936.

City is liable for negligent operation of truck used in maintaining and repairing city streets. *Op. Atty. Gen.* (844b-8), Sept. 3, 1936.

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

Decoration of city streets is legal if primary object is to serve a public purpose. *Op. Atty. Gen.* (59a-32), July 23, 1937.

A city or village maintaining a public park is discharging a governmental function and is not responsible for negligence in maintenance of a slide, unless so maintained as to constitute a nuisance. *Op. Atty. Gen.* (844b-1), Aug. 9, 1937.

Board cannot pay expenses of person injured at school play. *Op. Atty. Gen.* (844f-3), Aug. 11, 1937.

City of Luverne could enter into contract for purchase of diesel generating unit, to be paid for out of earnings of power plant only, without calling for bids. *Op. Atty. Gen.* (707a-4), Aug. 12, 1937.

Board of public works of city of Alexandria may enter into a contract for group life insurance on employees of municipal water and light plant, and pay half of the premium. *Op. Atty. Gen.* (253b-4), Aug. 13, 1937.

Village operating a water plant is acting in a proprietary and not governmental capacity, and is liable for negligence in shutting off water without notifying merchants operating electrical refrigeration machine cooled by water. *Op. Atty. Gen.* (476b-15), Sept. 18, 1937.

Municipality may not enter into conditional sales contracts or other installment contracts for purchase of personal property to be used in carrying on its governmental functions. *Op. Atty. Gen.* (59a-7), Dec. 20, 1937.

City may lease city real estate to private individuals if not needed for public purposes, provided a reasonable rental is charged and lease reserves city right to terminate at any time building is needed for public use. *Op. Atty. Gen.* (59a-40), Jan. 26, 1938.

Though in maintaining water plant for use by fire department in extinguishing fires municipality is performing a public or governmental function and is not liable for negligence of its officers and employees, such is not true when a municipality undertakes to furnish water or light to individuals and makes a charge therefor. *Op. Atty. Gen.* (469a-8), Mar. 1, 1938.

City leasing park facilities to private persons, income to be used solely for upkeep and incidental expense, is not liable for negligence in maintaining facilities. *Op. Atty. Gen.* (330c), Apr. 28, 1938.

Village is not liable for damages or injuries to persons using playground or its facilities, operation of a playground constituting exercise of a governmental function. *Op. Atty. Gen.* (844b-1), June 13, 1938.

A city or village in operating a motor vehicle for purpose of keeping streets and highways in a safe and proper condition for public travel is performing a corporate rather than a governmental function, and is liable for negligent acts of its officers and agents, but a different rule seems to apply where primary purpose is in interest of promotion of public health, such as sprinkling streets to prevent accumulation of dust. *Op. Atty. Gen.* (844b-5), July 5, 1938.

Village is not liable by reason of inadequate water supply for fire department. *Op. Atty. Gen.*, (624d-9), July 12, 1938.

District court may appoint a new trustee in place of a municipality which has no authority to administer testamentary trust. *Op. Atty. Gen.*, (59a-40), Aug. 3, 1938.

There is no way city may acquire title to tax forfeited lands except at a sale held under Laws 1935, c. 386. *Op. Atty. Gen.*, (4251), Oct. 4, 1938.

City furnishing services of fire department outside limits is acting in governmental capacity as affecting liability for injuries. *Op. Atty. Gen.*, (688a), Oct. 4, 1938.

City may make a donation to a poultry association to defray expenses incident to holding exhibits and for prize money, if for a public purpose. *Op. Atty. Gen.*, (59a-22), Oct. 28, 1938.

A city may regulate but cannot prohibit billboards on private property, regulation includes power to prohibit billboards in residential sections. *Op. Atty. Gen.* (59a-32), Dec. 23, 1938.

City may not provide for licensing of used car dealers in absence of statutory or charter authority, and could under no circumstances discriminate in favor of established dealers or extract an unreasonable license fee. *Op. Atty. Gen.* (59a-32), Dec. 28, 1938.

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

Where an organization or public spirited citizen of a city bought land and constructed bath house and donated it to city, and city loaned its credit to the project and issued notes, and income from beach was insufficient to pay notes, city council has no authority to release individuals guarantying payment of the notes, notwithstanding that city holds title to the property and is willing to pay the notes if it can do so legally. *Op. Atty. Gen.* (59a-22), April 26, 1939.

Village in maintaining a fire department acts in a purely governmental capacity and is not liable for negligence. *Op. Atty. Gen.* (688a), May 1, 1939.

A city is not liable for negligent acts of its fire department members, and there is no necessity for a contract of indemnity as between municipalities involved in fire protection agreement. Op. Atty. Gen. (688a), May 4, 1939.

Municipalities may purchase insurance from mutual companies provided there is a limitation upon liability of members and contingent liability is within maximum indebtedness of municipality. Op. Atty. Gen., (487c-1), August 23, 1939.

Liability for failure to prevent explosion of fireworks in city streets. 15MinnLawRev248.

Validity of ordinance requiring junk dealers to consent to inspection and search of premises. 15MinnLawRev481.

Total liability of administrative officers. 21 MinnLawRev 263.

#### PROVISIONS RELATING TO ALL CITIES

##### 1311. Public utilities—Definition.

This act has no application to river terminal property of Stillwater. Op. Atty. Gen. (63b-11), Feb. 2, 1939.

##### 1312. Cities may own and operate or lease.

Proposals and bids for construction of city power plant held too indefinite to permit a competitive bid, and bid received not responsive to advertisement for bid. City of Bemidji v. E., 204M90, 282NW683. See Dun. Dig. 6707.

Letting of contract for construction of power plant for a city was void where advertisement was in such form that there could only be one possible bidder that could complete its negotiations for materials and service. Id. See Dun. Dig. 6707.

Letting of contract for construction of power plant was invalid where made in connection with an ordinance which attempted to delegate to trustee or to a receiver appointed by court powers to take over and manage plant in certain contingencies, thereby removing management and control thereof from city. Id. See Dun. Dig. 6764.

This section applies to cities only. Op. Atty. Gen., March 30, 1933.

Municipally owned electric light plant cannot refuse to render service to all persons and corporations within its corporate limits. Op. Atty. Gen., June 5, 1933.

Question whether city council may permit operation of gasoline curb pumps is a matter to be determined by it. Op. Atty. Gen., Nov. 1, 1933.

Board of public works of city of Alexandria may enter into a contract for group life insurance on employees of municipal water and light plant, and pay half of the premium. Op. Atty. Gen. (253b-4), Aug. 13, 1937.

Municipal ownership of public utilities in Minnesota. 16MinnLawRev457.

##### 1313. Certificates in lieu of bonds.

A home rule city or any city electing to come under this act may issue or sell its bonds, or in lieu thereof interest bearing certificates, to raise funds for municipal electric light plant. Op. Atty. Gen., Aug. 24, 1933.

##### 1314. Accounts, how kept.

Williams v. V., 187M161, 244NW558; note under §1229.

##### 1315. Adoption of act.

Action of adoption of act should be submitted for approval of electors separately from question of issuing bonds to pay for cost of utility. Op. Atty. Gen., Oct. 23, 1933.

##### 1317. Time limit of grant or lease.

Franchise for electric lighting cannot be made for a period exceeding 20 years. Op. Atty. Gen., Nov. 28, 1933.

##### 1321-1. Building lines—establishment.

175M379, 221NW535.

#### PROVISIONS RELATING TO CERTAIN CITIES

##### 1322. Gas, electric and water plants.

Liability for injuries from electric shock. 180M125, 230NW469.

In action to set aside contract for construction of electric plant, evidence sustains finding that allegations of unfair specifications designed to prevent other bidders from bidding on Diesel engines for generating electrical current were unproven and untrue. Ahlquist v. C., 261 NW452. See Dun. Dig. 6707 (96).

City of fourth class organized under general statutes need not advertise for bids to erect municipal water, light and heating plant but may build it by day labor. Op. Atty. Gen., June 30, 1932.

City operating an electric light plant and furnishing city with electricity, heat and water free of charge, has no power to tax an individual manufacturing his own electricity. Op. Atty. Gen. (624c-13), July 11, 1935.

Municipal water plant may furnish water to city department and city board without making a charge therefor, but cannot furnish water to a semi-public golf club managing land to which city has title. Op. Atty. Gen. (59B-13), May 29, 1939.

##### 1325. Service rates.

Where profits from electricity have resulted in large fund, there should be reduction of rates to consumers in city. Op. Atty. Gen., Mar. 23, 1932.

Profits derived by city from sale of electricity may be used for such legitimate municipal expense as the governing body may determine. Op. Atty. Gen., Mar. 23, 1932.

**1325-1. May construct or purchase electric light plant.**—That each city in the State of Minnesota having not less than ten thousand and not more than fifty thousand inhabitants, is hereby authorized and empowered by an affirmative vote of two-thirds of all the members of its city council, to construct, erect or purchase an electric light plant to be operated by such city for the lighting of its public streets, alleys, lanes, parks and public grounds, and for such other municipal purposes and uses requiring light or power, as the city council of such city may direct; and for such use and benefit of the inhabitants of such city, and upon such conditions as the city council of such city may from time to time by ordinance prescribe. ('01, c. 199, §1.)

**1325-2. Bonds.**—That each such city is hereby authorized and empowered by an affirmative vote of two-thirds of all the members of its city council, to issue, in addition to all bonds heretofore authorized to be issued by such city, its bonds in an amount to be determined by said council, not exceeding in the aggregate forty thousand dollars, for the aforesaid purpose of constructing, erecting or purchasing an electric light plant in such city. ('01, c. 199, §2.)

**1325-3. Conditions for bonds.**—Said bonds shall be for the principal sum of one thousand (\$1,000) dollars each, and shall be payable at such times and at such place as the city council may designate, any provision of any law of this state, whether general or special, governing such city, to the contrary notwithstanding; and the faith and credit of such city issuing the same is hereby irrevocably pledged to the payment of the same. Said bonds shall be made payable to bearer, or to the order of the person or corporation to whom they may be delivered, as the city council of such city may deem best, shall draw interest payable semi-annually at such place as the city council may determine, at a rate not exceeding four per cent per annum, to be represented by coupons attached to said bonds. Said bonds shall be signed by the mayor and attested by the recorder or clerk of such city, and the corporate seal of the city shall be imprinted upon said bonds, and said coupons shall be signed by said recorder or clerk. ('01, c. 199, §3.)

**1325-4. Negotiation of bonds.**—The city council of such city shall have authority, by an affirmative vote of two-thirds of all its members, to negotiate the sale of such bonds in such manner as in its judgment shall best subserve the interests of said city, but it shall not negotiate a sale, nor sell said bonds, or any of them, at less than their par value and accrued interest; and neither the said bonds, nor the proceeds from the sale thereof, shall be used for any other purpose than that heretofore specified, and such purpose shall be distinctly stated in the resolution or ordinance authorizing their issue. ('01, c. 199, §4.)

Sec. 5 of Laws 1901, c. 199, cited, provides that the act shall take effect from its passage. Approved Apr. 10, 1901.

**1326-1. Certain cities may contract use of sewers.**—Any city of the second, third or fourth class may contract for the use of its sewers by the owner or occupant of land outside and within one mile of the limits of such city. Any such contract heretofore made is hereby validated and confirmed. Provided nothing herein shall be construed as limiting any power now possessed by any such city under its home rule charter. (Act Feb. 28, 1929, c. 44; Mar. 31, 1937, c. 128, §1.)

Sec. 2 of Act Mar. 31, 1937, cited, provides that the Act shall take effect from its passage.

**1327. Designation of depositories of city funds.**—The city council or common council of any city in this state, but not including cities when governed under a charter adopted under and pursuant to sec-



tion 36, article 4 of the constitution of this state, and Mason's Minnesota Statutes of 1927, sections 1267 to 1310 inclusive, and all acts amendatory thereof or supplementary thereto, in which charter the matter of designating depositories for city funds and the protection thereof is provided for, or in which charter it shall hereafter be provided for, shall have the power and authority to designate or redesignate at the beginning of each calendar year, and/or from time to time, the banks or other legal depositories of any such city in which the city treasurer of such city shall deposit and keep the moneys of such city, designating in each instance the maximum amount which may at any time be kept in any one of such depositories, which maximum amount shall in no case exceed 25 per centum of the paid-up capital and surplus of such depository, unless said depository shall deposit with the city treasurer of said city United States Government bonds to secure the deposit of the funds of said city and in that event the amount so deposited shall not exceed the amount of the United States government bonds so deposited. The city council or common council of each of such cities shall at all times designate depositories in their respective cities or elsewhere in the United States sufficient for the depository of all funds which are likely to be in the hands of the city treasurer of such city at any one time, and shall, so far as consistent with the best interest of such city, designate such depositories in their respective cities and shall require from such depositories good and sufficient bonds payable to such city in a penal sum not to exceed the amount designated as the limit of deposit therein, and conditioned for the safe keeping and payment of funds so deposited, or, in lieu thereof, good and sufficient collateral as provided for by Laws 1925, Chapter 173, as amended by Laws 1929, Chapter 370. ('07, c. 17, §1; G. S. '13, §1391; Apr. 8, 1933, c. 179; Apr. 5, 1935, c. 124, §1.)

A city treasurer is guilty of malfeasance by depositing city funds in an undesignated bank of which he is stockholder, director, and assistant cashier, and a surety on his bond is liable for money lost through failure of the bank, notwithstanding stipulation in bond relieving surety from liability for loss caused by failure of any bank or other depository, and there is liability under a bond for funds wrongfully deposited during its term, though bank does not fail until afterwards. *City of Marshall v. G.*, 193M188, 259NW377. See Dun. Dig. 8000, 8004, 8022.

#### 1328. Duty of treasurer—Exemption from liability.

Where city treasurer has made deposits in excess of collateral securities given by a bank in lieu of a depository bond under §1973-1, city did not have a preferred claim on the theory that the over-deposit was a criminal offense. 172M324, 315NW174.

#### 1329. Failure to designate.

Act authorizing towns and villages and cities of the fourth class to reimburse their treasurers for money paid because of loss of funds in insolvent banks. Laws 1931, c. 279, amending Laws 1931, c. 35. See, post, §1973-9.

#### 1349. State's ownership of bed of navigable river.

State of Minnesota holds title to navigable streams, not in any private or proprietary right, but in its sovereign capacity, as trustee for the people, for public use. *Pike Rapids Power Co. v. M.*, (CCA8), 99F(2d)902.

Title or riparian owner extends to low-water mark, but as to the space between that and high-water mark his title is qualified by the right of the public to use the same for the purpose of navigation or other public purpose. *Id.*

A meander line is not a boundary, but water is true boundary, whether meander line in fact coincides with shore or not. *Schaller v. T.*, 193M604, 259NW529. See Dun. Dig. 1069.

Title to the bed of a stream, navigable but not meandered, is not conveyed to a private grantee by a government patent which describes the subdivisions through which such stream flows. *County of Becker v. S.*, 186M 401, 243NW433. See Dun. Dig. 6964.

Evidence supported finding that Otter Tail river is navigable. *County of Becker v. S.*, 186M401, 243NW433. See Dun. Dig. 6925.

What can a riparian proprietor do? 21 MinnLawRev 512.

#### 1358. Teachers' retirement fund associations in cities.

Electors of city of Minneapolis may not amend its charter so that it would conflict with any general legislation concerning pension systems for employees. *Op. Atty. Gen.* (335d), Aug. 22, 1934.

Laws 1909, c. 343.

Teachers Retirement Fund Association funds to be exempt from garnishment, attachment and execution. Laws 1939, c. 72.

#### 1360. Plan of association—Fund—Approval of council.

Duluth teachers' retirement fund association may extend or renew an existing mortgage, though by reason of depreciation of land values mortgage is in excess of appraised value. *Op. Atty. Gen.*, Jan. 12, 1934.

1363. Tax levies.—When said plan is adopted, as hereinbefore set forth, and said association is formed and incorporated, the proper officers of said association shall certify annually to the proper authorities, who have charge of the levying of taxes for school purposes in said city and in the county in which said city is located, the amount which it will be necessary to raise by taxation in order to carry out the plan so adopted, as hereinbefore set forth, for the coming year, and it shall be the duty of the said authorities so having charge of the levying of taxes to include in the tax levy for the ensuing year a tax in addition to all other taxes, sufficient to produce so much of the sum so certified as the said authorities having charge of the levying of taxes for school purposes in said city shall approve, provided, however, that in cities of the first class which are or are not operating under a home rule charter. Said tax shall in no event exceed one and one-half mills upon each dollar of the assessed value of all taxable property of said city, and in all other cities to which this law is applicable, said tax shall in no event exceed one-tenth of a mill upon each dollar of the assessed value of all taxable property of said city unless the authorities having charge of the levying of taxes for school purposes in such last mentioned cities shall determine that a larger tax than one-tenth of a mill upon all taxable property of said city should be levied, in which event the amount so determined shall be levied, which shall, however, in no event exceed three-tenths of a mill upon each dollar of the assessed value of all taxable property of said city; said tax shall be collected as other taxes are collected in said city and when so collected shall be paid over to the treasurer of said association to be held and disbursed in accordance with the provisions of said plan so to be adopted.

Provided that any such association formed by the teachers employed by any independent school district in any city of the first class the territorial limits of which school district coincide with the territorial limits of such city, and the government of said independent school district, not provided for in the charter of said city, shall not pay to any beneficiary more than \$1800.00 as an annuity in any one year, except that in cases where the amount paid in by any member, with interest to the time of retirement, would provide an annuity in excess of \$900.00, then such association may pay an annuity of \$900.00 from public funds in addition to the annuity which said member's contributions with interest to the time of retirement, would provide, or the equivalent thereof;

Provided, further, that this enactment shall not affect the annuities or rights to annuities of any members of such association who, at the time of this enactment are being paid annuities, or any members who now are, or, prior to July 31, 1940, will be, eligible to retirement, and shall have retired prior to said date; and, at the time said association shall certify to the Board of Education in any year the amount necessary to be raised by taxation, it shall file with the Clerk of said Board an itemized statement of its assets and liabilities at the close of the last fiscal year, an itemized statement of receipts and disbursements for said year, and a list of the annuities paid during said year; and all the records of such association shall be open to reasonable public inspection. ('09, c. 343, §6; '11,

, c. 383; G. S. '13, §1427; '17, c. 300; '19, c. 144; '21, c. 303; '23, c. 310; Apr. 5, 1935, c. 111, §2.)

**1366. "Teachers" defined.**

Act providing for membership by county superintendents of schools in teachers' insurance and retirement fund. Laws 1931, c. 146, post, §§2953-1 to 2953-4. Refusal to sign written contract by teacher terminates membership in Duluth teachers' retirement association. Op. Atty. Gen., Nov. 24, 1933.

**1366-1. Certain proceedings legalized.**—That in any independent school district, however organized, in any city of the first class in the State of Minnesota, the territorial limits of which independent school district coincide with the territorial limits of such city, and the government of which independent school district is not provided for in the charter of such city, wherein a teachers' retirement fund association has been legally organized, incorporated and established pursuant to the provisions of Mason's Minnesota Statutes of 1927, Sections 1358-1366 inclusive, as amended, and has been in operation and engaged in the business of collecting and disbursing funds, receiving, holding and disposing of real estate and personal property more than 20 years, but where after its organization, amendments to its original plan of organization and articles of association were in good faith duly adopted, recorded and filed, and put into effect, but not submitted for approval to or approved by the common council or city council of said city; its organization and said amendments to its articles of incorporation, and conduct of business in accordance therewith shall be deemed to be legal, valid and effective as against any claim of invalidity, irregularity or defect in that any such amendments were not submitted for approval to or approved by the common council or city council of said city. (Act Apr. 5, 1935, c. 111, §1.)

**1366-2. Certain moneys and credits of teachers exempt from execution, etc.**—All moneys deposited by a teacher or member or deposited by any other person or corporation, municipal or private, to the credit of such teacher or member in a corporation organized as a "Teachers Retirement Fund Association" under Chapter 343 of the Session Laws of 1909 or acts amendatory thereof, and all moneys, rights and interests or annuities due or to become due to such teacher, member or annuitant or their beneficiaries, from any such association shall be exempt from garnishment, attachment and execution or sale on any final process issued from any court. (Act Mar. 22, 1939, c. 72.)

**1367. Appropriations for entertainment.**

Repealed by Laws 1927, c. 79 [§§1933-17 to 1933-22]. Op. Atty. Gen., Oct. 28, 1929. Illegal taxes collected under this section after it is repealed should be transferred to general fund. Op. Atty. Gen., May 26, 1933.

**1372-½. Certain cities may buy toll bridges.**—That whenever any bridge has been by any person or corporation constructed to extend over or partly over an interstate or international river or water into another state or country, and such bridge has for at least three years been privately owned and operated as a toll bridge by any person or corporation, any city of any class organized either under a home rule charter or under the general law and situated within three miles of the beginning of the nearest approach to such bridge, or within whose corporate limits is located any portion of such bridge, shall have power and authority to purchase and acquire such bridge and approaches thereto whenever at any general or special election, held in such city, the electors by an affirmative vote of three-fifths majority of all the votes cast upon said proposition, declare in favor thereof at the fair value thereof, determined as hereinafter provided, and thereafter to own, operate, repair, improve, extend and maintain the same as a toll bridge, whether all or any portion of such bridge and approaches be within or without the corporate limits of the city. Any such bridge over navigable waters of the United States shall be owned, operated

and maintained by any city acquiring the same subject to and in accordance with the Act of Congress authorizing the construction thereof and the lawful rules and regulations of the Secretary of War relative thereto. (Act Apr. 20, 1939, c. 316, §1.)

**1372-½a. May operate toll bridges and collect tolls.**

—That any such city, in addition and as a supplement to all other powers herein or by other law granted to it, when so authorized by the voters as set forth in Section 1 shall have power and authority to purchase, acquire, take and hold in fee simple, wherever located within or without the state, all land, structures, franchises, easements, approaches, buildings, equipment, appurtenances, machinery, and other real, personal or mixed property appurtenant to, or necessary and convenient for the owning, operation, repair, improvement, extension and maintenance of, any such bridge so purchased by it; and such city shall have power and authority to charge and receive reasonable and uniform prices and tolls for transit over such bridge from all persons or corporations using the same, which charges and tolls shall be fixed and determined by the common council or chief governing body of such city and may be by such body changed and adjusted from time to time, provided that such charges and rates of toll shall be so fixed and adjusted as to provide a fund sufficient to pay for the reasonable expense of maintaining and operating the bridge and its approaches under economical management, and to provide a sinking fund sufficient to amortize the amount paid therefor as soon as possible under reasonable charges, or within any period fixed by law, and further provided that if any revenue bonds are issued in payment of said bridge as in this act provided the aggregate of such charges and rates shall also be sufficient to enable such sinking fund to meet the interest and principal requirements of any such outstanding revenue bonds as they mature. No person, firm or corporation shall be permitted to use such bridge except he or it pay the full and established rates of toll therefor. After a sinking fund sufficient to pay the cost of acquiring such bridge has been provided from bridge revenues only, such bridge shall thereafter be maintained and operated free of tolls, or the rates of toll shall be so adjusted as to provide a fund of not to exceed the amount necessary for the proper maintenance, repair and operation of the bridge. (Act Apr. 20, 1939, c. 316, §2.)

**1372-½b. Council to adopt resolution.**—Before any such city shall purchase any such toll bridge the common council or chief governing body shall, by resolution adopted by a five-sevenths majority vote of all the members of the council or governing body, find and determine that the purchase of the bridge will be of public benefit and in the interest of the city and the welfare of its inhabitants, and shall find and determine the fair value of the said bridge taking into consideration, so far as can be ascertained, the cost of construction and of maintenance thereof, the rate of depreciation thereon, the reasonably estimated amount of income to be derived therefrom as shown by the revenues received from such bridge during the three years immediately preceding such determination and any incidental expenses connected with the purchase thereof, which findings and which determination of fair value shall for all the purposes of this act be conclusive as to the matters therein found and determined. (Act Apr. 20, 1939, c. 316, §3.)

**1372-½c. (a) May issue and sell bonds.**—For the purpose of acquiring and purchasing any such toll bridge and paying expenses incidental to such acquisition, any such city may when so authorized by the voters as set forth in Section 1, and by a five-sevenths majority of the city council or other governing body, issue and negotiate, sell or dispose of interest bearing bonds to be known as Toll Bridge Bonds and payable out of the revenue and income to be derived from the

toll bridge for the acquisition of which said bonds are issued. Such bonds shall not be issued or secured on any such toll bridge in an amount in excess of the fair value thereof, determined as in this Act provided. All or part of such bonds may be by the city disposed of by delivering the same to the person or corporation from whom the bridge is acquired, as payment of or upon the purchase price thereof to the extent of the par value of such bonds so delivered and the accrued interest thereon at the time of delivery.

(b) Said bonds shall bear interest at not to exceed six (6) per cent per annum, payable semi-annually, shall mature either as a whole or serially on or before twenty years from their date and shall be subject to redemption in such manner and at such times as the city council or governing body may by resolution or ordinance determine at the time of issue.

(c) At the time of, or before the issuance and sale or disposal of any such bonds, the council or governing body shall by a five-sevenths majority vote, by resolution or ordinance, create and set aside a sinking fund for the payment of the bonds and the interest thereon, and shall pledge to such sinking fund and to the payment therefrom of the bonds and all interest thereon, the total net income and revenues of the toll bridge for the acquisition of which such bonds were issued. Such total net income and revenues shall for all the purposes of this Act be deemed to mean all the gross income from said bridge less only actual operating expenses and actual cost of maintenance, and while any of said bonds are outstanding such total net income and revenues shall be used only for the payment of the principal and interest of such bonds. The said bonds and the interest thereon shall constitute a first and prior lien on and against the total net income and revenue derived from said bridge and on and against all funds from whatever source paid into or set apart for said sinking fund. After all said bonds and the interest thereon shall have been fully paid, such sinking fund shall be maintained and continued for the purpose of repaying therefrom any payments previously made thereto from the general funds of the city. (Act Apr. 20, 1939, c. 316, §4.)

**1372-½d. May mortgage toll bridge**—In order to secure the payment of such Toll Bridge bonds and the interest thereon the city may by a five-sevenths majority vote of the city council or other governing body convey by mortgage or deed of trust the bridge and any or all of the property acquired or to be acquired through the issuance of such bonds; which mortgage or deed of trust shall be executed in a manner directed by the council or other governing body of such city and acknowledged and recorded and filed in the manner provided by law for the acknowledgment and recording and filing of mortgages of real estate and of personal property, and may contain such conditions and provisions not in conflict with the provisions of this Act as may be deemed necessary to fully secure the payment of the bonds described therein. In the event that any portion of the bridge or property is within the corporate limits of said city, any such mortgage or deed or trust may carry the grant of a privilege or right to maintain and operate as a toll bridge the bridge and property covered thereby, for a period not exceeding twenty-five years from and after the date such bridge and property may come into the possession of any person or corporation as a result of foreclosure proceedings, which privilege or right may fix the rates which the person or corporation securing the same as a result of the foreclosure proceedings shall be entitled to charge in the operation of said property, for a period of not exceeding twenty-five years. Whenever, and as often as default shall be made in the payment of such bonds issued and secured by mortgage or deed of trust as aforesaid, or in the payment of the interest thereon when due, and when any such default shall have continued for the space of twelve months after notice thereof has been given to the mayor and treasurer or other financial

officer of the city issuing such bonds, it shall be lawful for any such mortgagee or trustee under such indenture, upon the request of the holder or holders of a majority in amount of the bonds issued and outstanding under such mortgage or deed of trust, to declare the whole of the principal of such bonds as may be outstanding to be at once due and payable, and to proceed to foreclose such mortgage or deed of trust in any court of competent jurisdiction. At a foreclosure sale the mortgagee or trustee or the holder or holders of such bonds may become the purchaser or purchasers of such bridge and other property and the rights and privileges sold, if he or they be the highest bidders. (Act Apr. 20, 1939, c. 316, §5.)

**1372-½e.—Not to become obligation of city.**—In the event that any such bonds are secured by mortgage or deed of trust as in this Act provided, then such bonds shall under no circumstances be and become an obligation or liability of the city issuing the same or payable out of the general funds of said city, but shall be payable solely out of the revenues or income to be derived from the toll bridge for the acquisition of which said bonds were issued. (Act Apr. 20, 1939, c. 316, §6.)

**1372-½f. Deficiency and interest may be paid out of city funds.**—In the event that any such bonds are not secured by mortgage or deed of trust as in this Act provided, in such case, and in the further event that in any year the total net income and revenues from said bridge, as in this Act defined, are insufficient to pay the interest on said bonds and the principal of any such bonds maturing in such year, or if no such bonds mature in such year then to pay into the sinking fund such amount as may have been by resolution or ordinance theretofore determined as the minimum payment necessary to be made in such year to the sinking fund in order to amortize the cost of the bridge within the time required by this Act, then the deficiency in such interest and principal or sinking fund payments shall be paid out of the general funds of said city, and the council or chief governing body of such city shall levy a general tax therefor and shall include in the next tax levy a sufficient amount to provide for the payment in full of said interest and principal or sinking fund payments. (Act Apr. 20, 1939, c. 316, §7.)

**1372-½g. Not to be affected by former limitations.**—The bonds authorized by this Act to be issued, whether or not secured by mortgage or deed of trust, may be issued and sold or disposed of by any such city notwithstanding any limitation contained in the charter of such city or in any law of the state prescribing or fixing any limit upon the bonded indebtedness of such city, and shall not create or constitute an indebtedness of the city within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness. (Act Apr. 20, 1939, c. 316, §8.)

**1372-½h. Powers of city in issuance of bonds.**—To any extent not in conflict with the provisions of this Act, any city issuing bonds under this Act shall have the right to covenant with the holders of the bonds, either by resolution or ordinance, adopted or passed by a five-sevenths majority vote of the council or other governing body or by the terms of said mortgage or trust indenture, or by separate written instrument if such bonds be not secured by mortgage or indenture, as to all matters concerning (a) the use and disposition of all income and revenues derived from the operation of any such toll bridge; (b) the manner and expense of operating and maintaining the bridge; (c) the insurance to be carried thereon and the disposition of the insurance moneys; (d) its books of account and the inspection and audit thereof and its accounting methods; (e) the rates of tolls and charges for the use of said bridge and other matters pertaining to the care and operation thereof by the city; (f) the man-

ner of conserving and applying the revenues therefrom to the payment of such bonds and the interest thereon; and (g) the depository of the sinking fund, the method of handling such fund, and the minimum annual requirements thereof. (Act Apr. 20, 1939, c. 316, §9.)

**1372-½i. Revenues to be kept separate.**—Every such city owning and operating a toll bridge under this Act must keep all income and revenues derived from the operation of such bridge separate and distinct from all other revenues, and shall keep the books of account for such bridge distinct from other city accounts, and in such manner as to show the true and complete financial results of such city ownership and operation. Such accounts shall be so kept as to show in detail the actual cost to such city of such bridge; the daily tolls collected therefrom; all cost of maintenance, repair and improvement; all operating expenses of every description; and the amounts set aside for sinking fund purposes. The council or chief governing body shall cause to be printed annually, for public distribution, a report showing the financial results of such city ownership and operation. (Act Apr. 20, 1939, c. 316, §10.)

**1372-½j. Not to be included within limit of indebtedness.**—Any bonds issued under this Act, whether secured or unsecured as herein provided, shall be excepted from and shall not constitute an obligation or indebtedness of such city within the meaning of any provisions contained in the charter of such city or in any law of the state prescribing, limiting or fixing the time and manner of payment of municipal bonds, and any such bonds may be issued and sold or disposed of by any such city as in this Act provided, notwithstanding any such charter or statutory provisions. (Act Apr. 20, 1939, c. 316, §11.)

**1372-½k. Bonds may be registered.**—Any bonds issued under this Act may be payable to bearer or to the order of the person or corporation to whom they may be delivered either for cash or property, and may be registered with the City Treasurer, or with the trustee under any indenture of trust. (Act Apr. 20, 1939, c. 316, §12.)

**1372-½l. May sell bridge to the State of Minnesota.**—(a) Any city purchasing and acquiring any such bridge, as in this Act provided, shall thereafter have power and authority to sell, assign and transfer the same and its approaches, or any interest therein, to the State of Minnesota or to any public agency or political subdivision thereof, or to any other state or public agency or political subdivision thereof within or adjoining which any part of the bridge is located, or to any two or more of them jointly, provided that any such sale or transfer shall not alter, change, modify or affect the rights, powers, securities and privileges of the holders of any outstanding bonds issued by said city in payment of said bridge as in this Act provided, or the payment of the principal and interest of such bonds when and as due; and any such sale or transfer made while any of such bonds are outstanding shall be subject to the payment thereof and to the assumption and performance by the vendee or transferee of all obligations, liabilities and covenants imposed upon said city by this Act or incurred and assumed by it in connection with the issuance of such bonds.

(b) Any city purchasing any such bridge, as in this Act provided, may thereafter acquire, condemn, occupy, possess and use real estate and other property needed for the operation, maintenance, improvement and extension of such bridge and its approaches by purchase or by condemnation or expropriation in accordance with the laws of the state of Minnesota governing the acquisition of private property for public purposes by condemnation or expropriation. (Act Apr. 20, 1939, c. 316, §13.)

**1372-½m. Inconsistent acts repealed.**—All acts and parts of acts inconsistent herewith are hereby repealed. (Act Apr. 20, 1939, c. 316, §14.)

**1372-½n. Provisions severable.**—If any provision of this Act shall be held invalid the remainder of this Act and the application thereof shall not be affected thereby. (Act Apr. 20, 1939, c. 316, §15.)

Sec. 16 of Act Apr. 20, 1939, provides that the act shall take effect from its passage.

**1372-7¼. Port authority commission established.**—A Commission to be known as "Port Authority of . . . . . " is hereby established in and for every city of this State which has, or shall have over 50,000 inhabitants and which is or shall be situated upon, or adjacent to, or which embraces or shall embrace within its boundaries, in whole or in part, a port or harbor located on a navigable lake or stream. This act is expressly declared to be applicable to all such cities, whether now or hereafter existing under a charter framed and adopted under Section 36 of Article 4 of the State Constitution or not. Where two or more port districts in cities of the first class are adjacent, they shall constitute a metropolitan port district, and there is hereby established therein a joint commission to be known as " . . . . . Port Commission," the further designation in the name to be supplied and adopted by the commission. Such joint commission shall consist, ex officio, of all the commissioners of port authority in each district embraced in said metropolitan port district, and shall perform such functions and have such powers as may be delegated or extended to it by concurrent resolutions adopted from time to time by the port authorities in the constituent port districts. When so authorized such joint commission may exercise any or all the powers conferred by this act upon said port authorities. Any such port authority may subsequently withdraw or rescind its action or concurrence in any such resolution, and, upon proper notice thereof, the powers or functions of the joint commission shall to that extent be withdrawn. (Laws 1929, c. 61, §1; Apr. 9, 1931, c. 132.)

**1372-7¼a. Members—Terms—Vacancies.**—Such Port Authority for any city shall consist of three commissioners who shall serve without compensation for their services, or any remuneration, save for expenses incurred in the performance of their duty. They shall be appointed by the city council of each city in and for which such Port Authority is hereby created. The first commissioners of any such Port Authority shall be appointed for terms as follows: one for two years; one for four years; and one for six years. Thereafter as the term of any Commissioner expires a successor shall be appointed to serve for a term of six years. Vacancies in the office of any commissioner shall be filled by the said council for the balance of the term in which such vacancy occurs. (Act Mar. 11, 1929, c. 61, §2.)

It is mandatory upon city council of St. Paul to appoint three commissioners. Op. Atty. Gen., July 6, 1932.

**1372-7¼b. By-laws and rules—Duties.**—The commissioners constituting such Port Authority may adopt by-laws and rules of procedure governing their action, not inconsistent with this or other laws, and shall adopt an official seal. They shall elect from among their number a president, a vice-president and a treasurer, and shall also elect a secretary who may or may not be a member of such commission; any of said officers except those of president and vice-president may be held by one commissioner. The said officers shall have the duties and powers usually attendant upon such offices, and such other duties and powers not inconsistent herewith, as may be provided by the Port Authority. The treasurer shall receive and be responsible for all moneys of the Port Authority from whatever source derived, and the same shall be deemed public funds. He shall disburse the same

only on order signed by the secretary and countersigned by the president or vice-president, or other vouchers authorized by law, and each order shall state the name of the payee, and the nature of the claim for which the same is issued. He shall keep an account of all moneys coming into his hands, showing the source of all receipts, and the nature, purpose and authority of all disbursements, and at least once each year, at times to be determined by the Port Authority, shall file with the secretary a detailed financial statement of the Port Authority showing all receipts and disbursements, the nature of the same, the moneys on hand, and the purposes for which the same are applicable, the credits and assets of the Port Authority and its outstanding liabilities, which report together with the treasurer's vouchers, shall be examined by the Port Authority, and if found correct approved by resolution entered on the records. The treasurer of every Port Authority shall give bond to the state in a sum equal to twice the amount of money which will probably be in his hands at any time during any one year of his term, said amount to be determined at least annually by the Port Authority, such bond to be conditioned for the faithful discharge of his official duties, and to be approved as to both form and sureties by the Port Authority and filed with its secretary. (Act Mar. 11, 1929, c. 61, §3.)

**1372-7 1/2 c. Depositories to be designated.**—The Port Authority shall biennially designate a National or State Bank or banks as depositories of its money. Such depositories shall be designated only within the State of Minnesota and upon condition that bonds approved as to form and surety by the Port Authority and at least equal in amount to the maximum sum expected to be on deposit at any one time, shall be first given by such depositories to the Port Authority, such bonds to be conditioned for the safe keeping and prompt repayment of such deposits. Whenever any of the funds of the Port Authority shall be deposited by the treasurer in any such depository, the treasurer and the sureties on his official bond shall, to such extent, be exempt from liability for the loss of any such deposited funds by reason of the failure, bankruptcy, or any other act or default of such depository; provided, however, that any such Port Authority may accept assignments of collateral by any depository of its funds to secure such deposits to the same extent and conditioned in the same manner as assignments of collateral are permitted by law to secure deposits of the funds of any such city. (Act Mar. 11, 1929, c. 61, §4. July 14, 1937 Sp. Ses., c. 28, §1.)

Sec. 2 of Act July 14, 1937, cited, provides that the act shall take effect from its passage.

**1372-7 1/2 d. Territorial jurisdiction.**—The territorial jurisdiction and authority of the Port Authority shall cover and include all portions of any city in and for which the same is created and established as aforesaid, and, all portions of such port or harbor within said city. Said city and said portions of such port or harbor, are hereinafter referred to as the Port District. (Act Mar. 11, 1929, c. 61, §5.)

**1372-7 1/2 e. Not to levy taxes—City to provide funds.**—The Port Authority shall have no right or authority to levy any tax or special assessment, nor to pledge the credit of the state, or any other subdivision or municipal corporation thereof; nor to incur any obligation enforceable upon any property, either within or without the Port District, other than property owned by said Port Authority. Annually, at such time as may be fixed by charter, resolution or ordinance of the city in and for which any such Port Authority is created, the Port Authority shall transmit to the council of such city a detailed estimate, in writing, of the amount of money which in its opinion will be required for the business and proper conduct

of its affairs during the next ensuing fiscal year, in excess of any expected receipts from the conduct of its business, or other sources, and any such city, in addition to all other powers now possessed thereby, and in addition to, and in excess of any limitation upon the amount it is otherwise permitted by law to levy as taxes, is hereby granted the power and authority, in its discretion, to levy taxes for the benefit of, and for expenditure by, such Port Authority, not exceeding, however, in any one year an amount equal to a tax of fifteen one-hundredths of one mill upon the dollar of the assessed valuation thereof, upon all the taxable property in such city, excluding moneys and credits, and any amount so levied for such purposes shall be paid over by the City Treasurer to the treasurer of said Port Authority, for expenditure by it as above provided. The fiscal year of such Port Authority shall be identical with the fiscal year of such city. The board of county commissioners of any county in which any such city is located, is also hereby authorized to appropriate for the use of such Port Authority, and to include therefor in its levy for general revenue purposes, such amount as it may deem proper; provided that the total amount permitted by law to be levied by any county for general revenue purposes shall not be deemed increased by this provision. Any amounts so appropriated by the county shall be paid over by the County Treasurer to the Port Authority for expenditure by it as herein provided, at such times and in such manner as the county board may provide. (Act Mar. 11, 1929, c. 61, §6.)

**1372-7 1/2 f. City to transfer property.**—The city council of any such city may in its discretion, by majority vote, and with or without consideration, transfer or cause to be transferred to such Port Authority or may place in its possession and control, by lease, or other contract or agreement, either for a limited period or in fee, any dock, waterfront, or riparian property now or hereafter owned or controlled by such city, within the Port District, but nothing in this act contained shall be construed to impair or in any manner restrict any power of such city or any municipality to itself own, develop, use and improve port or terminal facilities. Any such city may issue its bonds for, and appropriate the proceeds thereof, to the purchase, construction, extension, improvement and maintenance of docks, warehouses or other port or terminal facilities owned or to be owned or operated by such Port Authority under the same conditions, to the same extent and in the same manner as if such properties were public utility plants, needful public buildings and public conveniences from which revenue may be derived, and were owned or to be owned or operated solely by said city. Such city may also in its discretion and with or without compensation therefor furnish to such Port Authority offices, warehouses, or other structures and space with or without heat, light and other service, and such stenographic, clerical, engineering or other assistance as its council may determine. The city attorney or similar law officer of any such city shall be the attorney and legal advisor of said Port Authority, but this provision shall not impair the power of the Port Authority to employ additional counsel when in the judgment of its members such action is for any reason advisable. (Act Mar. 11, 1929, c. 61, §7.)

**1372-7 1/2 g. Powers and duties.**—It shall be the general duty of any such Port Authority to promote the general welfare of the Port District, and of the port as a whole; to endeavor to increase the volume of the commerce thereof; to promote the efficient, safe and economical handling of such commerce, and to provide or promote adequate docks, railroad and terminal facilities open to all upon reasonable and equal terms for the handling, storage, care and shipment of freight and passengers to, from and through

the port. It shall further be the special duty of such Port Authority;

(a) To confer with any similar body created under laws of any state embracing within its boundaries any part of any port or harbor of which the Port District forms a part, and insofar as agreement shall be possible to adopt in conjunction with said similar body a comprehensive plan for the regulation and future development and improvement of the entire harbor and port.

(b) To consider and adopt detailed and comprehensive plans for the regulation, future development and improvement of the Port District, which plans shall, so far as may be, be consistent with the general plan above referred to.

(c) To confer from time to time with any such similar body and, so far as may be, to agree therewith upon legislation and regulations needed for the regulation and control of the port as a whole, and to recommend the adoption of such legislation and regulations to the appropriate councils, legislatures or other legislative and regulatory bodies.

(d) To determine upon legislation and regulations needed for the regulation and improvement of the conduct of navigation and commerce within the Port District and to similarly recommend the same.

(e) Either jointly with said similar body, or separately, to recommend to the proper departments of the government of the United States, or any state or subdivision of either, or to any other body, the carrying out of any public improvement for the benefit of the port or Port District.

(f) To investigate the practices, rates and conduct of privately owned or operated dock, terminal and port facilities within the Port District, and to institute such proceedings and take such steps to remedy any abuses as may seem in the public interest. In connection with any such investigation, the Port Authority shall have power, by subpoena issued out of the district court of the county where the Port Authority is situated, to require the attendance of witnesses and the production of books and documents, and to examine witnesses under oath.

(g) Annually in January of each year to make written report to the city council of such city, giving a detailed account of its activities and of its receipts and expenditures during the preceding calendar year, together with such further matters and recommendations as it shall deem advisable for the advancement of the commerce and welfare of the Port District. (Act Mar. 11, 1929, c. 61, §8.)

**1372-7½h. May hold property.**—The Port Authority, in its own name, shall have full power and authority to acquire, purchase, construct, lease or operate any terminal or transportation facility within said district; to make rules, regulations and charges for the use thereof, and for any service rendered; for such purposes to own, hold, lease or operate real and personal property, to borrow money, and to secure the same by bonds or mortgages upon any property held or to be held by it; to sell and exchange any real or personal property owned or held by it in such manner and on such terms as it may see fit, save that no real property owned by said Authority shall be so sold, exchanged or the title thereto transferred without the unanimous vote of all the members of the Port Authority. The Port Authority is hereby empowered to acquire by condemnation any property, corporeal or incorporeal, within said Port District which may be needed by it for public use; and the fact that the property so needed has been acquired by the owner under power of eminent domain, or is already devoted to a public use shall not prevent its acquisition by such Port Authority by the exercise of the right of eminent domain hereby conferred; provided, however, that no property now or hereafter vested in or held by the State of Minnesota, or any

city, county, village, school district, township or other municipality shall be so taken or acquired by such Port Authority without the consent of such state, municipality, or public body. The necessity of the taking of any property by the Port Authority shall be determined by resolution duly adopted by the commissioners, which shall describe the property as nearly as may be, and state the use and purpose to which it is to be devoted. The acquisition of such property shall be thereafter accomplished by proceedings at law, as in taking land for public use by right of eminent domain under the laws of the State of Minnesota. (Act Mar. 11, 1929, c. 61, §9.)

**1372-7½i. May employ engineers, etc.**—The Port Authority shall have power and authority, in its own behalf, to employ such engineering, legal technical, clerical, stenographic, accounting and other assistance as it may deem advisable; to enter into contracts for the erection, repair, maintenance or operation of docks, warehouses, terminals, elevators or other structures upon or in connection with property owned or controlled by it; to contract for the purchase and sale of real and personal property; provided, however, that no such obligation or expense shall be incurred save upon such terms and at times when existing appropriations, together with the reasonable expected revenue of said Port Authority from other sources, shall be sufficient to enable the same to be discharged when due; and neither the state nor any municipal subdivision thereof shall be liable on any such obligation. (Act Mar. 11, 1929, c. 61, §10.)

**1372-7½j. Application.**—Until and unless otherwise provided by law, all laws now or hereafter vesting jurisdiction or control in the Railroad and Warehouse Commission of the State of Minnesota, the Interstate Commerce Commission or War Department of the United States or similar regulatory bodies, shall apply to any transportation, terminal or other facility owned, operated, leased or controlled by the Port Authority, with the same force and effect as if said transportation, terminal or other facility was so owned, operated, leased or controlled by a private corporation. The Port Authority shall have authority either alone or jointly with any similar body having jurisdiction of any part of such Port to petition any Interstate Commerce Commission, Railroad and Warehouse Commission, Public Service Commission, Public Utilities Commission or any like body, or any other federal, municipal, state or local authority, administrative, executive, judicial or legislative, having jurisdiction in the premises, for any relief, rates, change, regulation or action which in the opinion of the Port Authority may be designed to improve or better the handling of commerce in and through the said Port, or improve terminal and transportation facilities therein, and may intervene, before any such body in any proceeding affecting the commerce of the port, and in any such matters shall be considered along with other interested persons, one of the official representatives of the Port District. (Act Mar. 11, 1929, c. 61, §11.)

**1372-8. Hospitals in cities with more than four thousand and not more than twenty thousand inhabitants, etc.**

Cities organized under Constitution Art IV, §36 with population of 2700 to 2800, may build hospitals. Laws 1939, c. 254.

City of St. Peter has power to acquire and maintain a municipal hospital. Op. Atty. Gen. (59b-5), Aug. 6, 1938.

City of St. Peter has authority to use surplus electric light fund for paying cost of constructing a hospital without submitting proposition to voters. Op. Atty. Gen. (624a-6), Sept. 2, 1938.

**1372-9. Same—Acquisition of sites, etc.**

In cities of fourth class hospital boards may execute mortgages. Laws 1939, c. 196.

**1373. Licensing soft-drink vendors.**

Village may, within reasonable limitations, regulate closing and opening hours of restaurants, chicken shacks

and nite clubs, and provide reasonable limitations upon which vendors may sell non-intoxicating beverages. Op. Atty. Gen., July 28, 1932.

This section has not been repealed or changed. Op. Atty. Gen., Apr. 7, 1933.

An ordinance must be adopted before licenses can be issued under non-intoxicating malt liquor law. Op. Atty. Gen., Mar. 10, 1933.

An ordinance must be adopted before licenses under non-intoxicating malt liquor law can be issued. Op. Atty. Gen., Apr. 15, 1933.

Village of Gibbon may enact an ordinance providing for licensing of vendors of nonintoxicating beverages. Op. Atty. Gen. (135B-6(a)), July 10, 1939.

Village may pass an ordinance requiring license from every merchandise and grocery store to sell soda pops, coca cola and various drinks made from extracts, notwithstanding that purpose is to confine sales of these prepared drinks to restaurants and soft drink parlors, same license fee being required of all. Op. Atty. Gen. (477B-24), July 11, 1939.

### 1377. Conciliation and small debtors court.

See Laws 1927, c. 17, creating court of conciliation and small debtors court in Duluth.

Laws 1927, c. 17, §4. Amended July 15, 1937, Sp. Sess., c. 67, §1.

Laws 1927, c. 17, §6. Amended July 15, 1937, Sp. Sess., c. 67, §2.

Laws 1927, c. 17, §7. Amended July 15, 1937, Sp. Sess., c. 67, §3.

Laws 1927, c. 17, §14 (a, b, f). Amended July 15, 1937, Sp. Sess., c. 67, §4.

Laws 1927, c. 17, §15. Amended July 15, 1937, Sp. Sess., c. 67, §5.

Laws 1927, c. 17, §18. Amended July 15, 1937, Sp. Sess., c. 67, §6.

Laws 1927, c. 17, §19(b). Amended July 15, 1937, Sp. Sess., c. 67, §7.

Laws 1917, c. 263, §§3, 7, relating to conciliation court of Minneapolis, are amended by Laws 1929, c. 242.

Conciliation court of St. Paul. Laws 1929, c. 346, amends Laws 1921, c. 525, §3.

Laws 1917, c. 263, §3, as am. Laws 1929, c. 242, §1. Amended. Laws 1935, c. 145, §1.

Laws 1917, c. 263, §4, as am. Laws 1921, c. 281, §1, as am. Laws 1923, c. 262, §1. Amended. Laws 1935, c. 145, §2.

Act Mar. 18, 1939, c. 70, creates for village of Hibbing and city of Chisholm conciliation courts to be conducted by the judges and clerks of the municipal courts in such municipalities.

Virginia City Charter §83, relating to votes on Resolution creating obligation and vetoed by mayor, does not apply to a Resolution of council increasing salary of municipal judge for services rendered in conciliation court. Op. Atty. Gen. (742), July 13, 1936.

### 1378. Duties—Powers.

Conciliation court has power to exclude attorneys for practicing in court. Op. Atty. Gen., Feb. 7, 1934.

### 1382. Appeal.

Certiorari is a proper remedy to review the judgment of the municipal court of Minneapolis rendered on removal from conciliation court though statute says that there shall be no appeal and that judgment shall be final; there being under constitution a right of review of a judicial determination by trial court. Ridgway v. V., 187M552, 246NW115. See Dun. Dig. 1394, 6906.

### 1391. Cities may impose wheelage tax.

## SPECIAL ACTS RELATING TO CITIES GENERALLY

Under Laws 1919, c. 203, city of Eveleth held authorized without vote of electors to issue bonds to refinance certificates of indebtedness issued in 1933, 1934 and 1935. Op. Atty. Gen. (361), Aug. 6, 1937.

## PROVISIONS RELATING TO CITIES OF FIRST CLASS

### 1410. Attaching new territory.

On annexation of city of Columbia Heights to Minneapolis, all of school district No. 65, lying within corporate limits of Columbia Heights would be annexed to school district which comprises city of Minneapolis. Op. Atty. Gen., Mar. 17, 1933.

**1413. Annexation of territory.**—All or any portion of the territory of any incorporated village or city of the fourth class may be annexed to an adjoining city of the first class as follows: The council of any village or city of the fourth class and situated within the same county shall, on the petition of one hundred freeholders, submit the proposition of annexing all or any portion of the territory of such village or city of the fourth class to an adjoining city of the first class to the voters of such village or city of the fourth class for their approval or rejection at the next regular village or city election, or at a special election

called for the purpose. Ten days' notice of any election to vote on such proposition shall be given by posting three written or printed notices thereof in three of the most public places within said village or city, and shall state the time and place, when and where within said village or city of the fourth class such election will be held, and shall also state the proposition on which the said electors will vote. Notice of such election shall also be published for one full week prior to the date of said election in a newspaper printed or published in said village or city of the fourth class, and, if there be no newspaper printed or published in said village or city of the fourth class, then in a newspaper printed and published at the county seat of the county in which such village or city is located. The ballots shall have upon them the proposition to be voted upon, together with the words "for detaching" and "against detaching," and the said special election shall be held, conducted and the results thereof counted and canvassed in the same manner as in special elections held for other purposes in villages and cities of the fourth class. If the proposition to be voted upon is for the annexation of the entire territory of said village or city to such city of the first class, the ballots shall have upon them the proposition to be voted upon, together with the words "for annexation to the city of . . . ." and "against annexation to the city of . . . ." ('23, c. 352, §1; Apr. 24, 1929, c. 352, §1; Apr. 25, 1931, c. 403, §1.)

**1414. To be voted on.**—If it appears that ( $\frac{5}{8}$ ) five-eighths of the electors of such village or city of the fourth class casting their ballots upon the question of such election are in favor of the proposition, then and in such case the council of such village or city of the fourth class shall adopt a resolution reciting the results of such election and stating that such village or city of the fourth class consents to the detachment from it of the territory described and to the annexation of such territory to an adjoining city of the first class, or consents to the annexation of all the territory of such city or village of the fourth class to such adjoining city of the first class as the case may be and a certified copy of such resolution shall thereafter be filed with the clerk of such city of the first class, who shall present the same to the council of such city of the first class at its next regular meeting. ('23, c. 352, §2; Apr. 24, 1929, c. 352, §2; Apr. 25, 1931, c. 403, §2.)

**1415-6. Annexation of cities of fourth class in certain cases.**—The governing body of any city of the fourth class now or hereafter organized, where the territory embraced in said city of the fourth class shall join and be contiguous to a part of the territory of any city of the first class, when such city of the fourth class, or part thereof, by proceedings duly had, has voted to become annexed to said city of the first class, shall, on the petition of one hundred freeholders of said city of the fourth class, or any part thereof, submit the proposition of making all or any such part of the city of the fourth class annexed, or proposed to be annexed, to the city of the first class a part of the county wherein said city of the first class is located, to the voters of such city of the fourth class, or such part thereof, for their approval or rejection at an election to be held for that purpose not more than sixty days after the filing of such petition. (Act Apr. 24, 1929, c. 343, §1.)

**1415-7. People to vote on annexation.**—Notice of any election to vote on such proposition shall be given by posting three written or printed notices thereof in three public places within said city of the fourth class or such part thereof, at least ten days prior to such election, which said notice shall state the time and place such election will be held, and shall also state the proposition on which the said electors will vote.

Notice of such election will also be published for at least one week prior to such election in a newspaper published in said city of the fourth class, or, if there be no newspaper published in said city of the fourth class, then in a newspaper published at the county seat of the county in which said city is located.

The ballots shall briefly and concisely state the proposition to be voted upon, together with the words, "For annexation" and "Against annexation" and such election shall be held, conducted and the results thereof counted and canvassed in the same manner as any other special or general election held for other purposes in cities of the fourth class. (Act Apr. 24, 1929, c. 343, §2.)

**1415-8. Five-eighths vote required to annex.**—If it appears by such canvass that five-eighths of the electors of such city of the fourth class, casting their ballots upon the question of such election, are in favor of the annexation, then and in such case the governing body of such city of the fourth class shall adopt a resolution reciting the result of such election and stating that such city of the fourth class consents to the annexation of the territory embraced in said resolution to the county in which such city of the first class is located, and a certified copy of such resolution shall forthwith be filed with the county auditor of the county, in which said city of the fourth class is located and also with the county auditor of the county in which said city of the first class is located.

The county auditor of the county in which said city of the fourth class is located hereby is required to present the same to the board of county commissioners of the county in which said city of the fourth class is located at its next regular or adjourned regular meeting, and if no such meeting has been set, then at a special meeting to be called by said county auditor at a time not more than 20 days after the filing of such resolution in his office. (Act Apr. 24, 1929, c. 343, §3.)

**1415-9. Duties of county board.**—If the board of county commissioners of the county in which such city of the fourth class is located finds that the territory described in such resolution is so conditioned as to properly be made a part of the county in which said city of the first class is located; it shall have the power, by resolution duly adopted, to consent to the annexation of such territory and to consent that it be made a part of the county in which said city of the first class is located.

Upon the adoption of such resolution it is hereby made the duty of the county auditor of such county to forthwith file a certified copy thereof with the county auditor of the county in which such city of the first class is located. (Act Apr. 24, 1929, c. 343, §4.)

Consent of both counties and both cities is necessary to annexation of cities. Op. Atty. Gen., July 26, 1929.

**1415-10. County auditor to file certificates.**—Upon the filing of such certified copy of such resolution with such county auditor, such county auditor of the county in which the city of the first class is located is hereby required to present the certified copy of the resolution filed in his office by such city of the fourth class and the certified copy of the resolution so filed in his office from the board of county commissioners of the county in which such city of the fourth class is located at its next regular or adjourned regular meeting. (Act Apr. 24, 1929, c. 343, §5.)

**1415-11. Territory to become part of city.**—Whenever the certified copy of resolution duly filed by such city of the fourth class with the clerk of such city of the first class, pursuant to Section 1413, General Statutes 1923 and the certified copy of resolution duly filed by the county auditor of the county in which the city of the fourth class is located with the county auditor of the county in which the city of the

first class is located would allow the annexation of the same territory to the city of the first class and the county in which such city of the first class is situated and the council of such city of the first class shall have determined by resolution duly adopted and filed with the register of deeds of the county in which such city of the first class is situated to annex such territory, the board of county commissioners of such county in which such city of the first class is located shall have the power, by resolution duly adopted, to annex such territory and make it a part of the county in which said city of the first class is located; provided that, notwithstanding any existing law to the contrary, such city of the fourth class or any part thereof shall not become a part of such city of the first class until the filing of the certified copy of such resolution by the county auditor of the county from which the territory is to be detached with the county auditor of the county to which such territory is to be attached; and such territory shall not become detached from one county and attached to the other until the due adoption and filing of certified copies of resolutions providing for such city annexation by both the city of the fourth class and the city of the first class, and provided that such annexation shall not release the property annexed from liability on account of any outstanding indebtedness of such city of the fourth class or of the county in which it is situated existing at the time of the annexation and taxes therefor shall be levied on said property annually until paid at the same rate as on other property in the county of which said city of the fourth class was a part, which levy shall be made by the county auditor of the county of said city of the first class on a certificate therefor from the county auditor of the county of which said city of the fourth class was a part and the proceeds of such levy shall be remitted by the county auditor as collected at the times provided by law for tax settlements, and provided further that the property so annexed shall thereafter be additionally subject, in the county to which it is annexed, to the same tax levy as the property in the county to which it is annexed whether for outstanding bonded indebtedness at the time of annexation of the county to which it is annexed or otherwise.

The county auditor of such county in which the city of the first class is located, after the adoption of any such resolution, shall file for record with the register of deeds of such county and in the office of the secretary of the state and in the office of the register of deeds of the county where such city of the fourth class is located, a certified copy of such resolution so adopted. (Act Apr. 24, 1929, c. 343, §6.)

**1415-12. Not to affect collection of taxes.**—No transfer of territory under the provisions of this act shall affect the collection of taxes levied at the date of the filing and recording of the resolution provided for in Section 6 of this act, but all such taxes shall be collected by the officers of the original county and all monies then remaining in or afterwards coming into the treasury of such original county, or into the possession of any officer of such county and belonging to such city of the fourth class or any school district or any part thereof in the territory transferred. All special assessments belonging to such city of the fourth class in the territory transferred, shall be apportioned and paid over to the city of which said city of the fourth class has become a part and to such school district in the same manner as it would have been paid to such city of the fourth class if such city of the fourth class or such school district had remained a part of such original county. (Act Apr. 24, 1929, c. 343, §7.)

**1415-13. To become part of school districts.**—The territory embraced in the resolutions referred to in Section 6 of this act [§1415-11], shall, after the



adoption of the final resolution as provided for in this act and its recording as herein provided, become and be thereafter a part of the school district of said city of the first class. (Act Apr. 24, 1929, c. 343, §8.)

**1415-14. Annexation of lands.**—Lands outside any incorporated municipality and adjoining and contiguous to any city of the first class, now or hereafter having 350,000 inhabitants, within the same county in which said city of the first class is situated and which have been platted into subdivisions approved by the city council or chief governing body of such city and by the county board of such county and in which streets and alleys have been dedicated for public use, may be annexed to such city of the first class upon petition of the owner or owners thereof, which petition shall be in writing and shall be presented to and filed with the governing body of such city of the first class. The word "owner," as herein used, shall mean any and all persons or parties having any right, title, estate, lien or interest in the lands proposed to be so attached, other than the tax or assessment liens held by the state or any of its subdivisions. (Act Apr. 27, 1929, c. 414, §1.)

**1415-15. Proceedings in annexation.**—Upon the presentation of such petition to the governing body of such city, the same shall be referred to the planning commission of such city, if one exists therein. If such planning commission by a four-fifths vote shall recommend the annexation of such land and if such governing body finds that the territory described in such petition is so conditioned and so located as properly to be made a part of such city of the first class, it shall have power by resolution duly adopted by a four-fifths vote of such governing body to annex such territory, and immediately upon the adoption of such resolution, the territory annexed shall become a part of such city for all purposes. Thereafter the City Clerk of such city of the first class shall file with the Register of Deeds of the county wherein such city of the first class is situated, and in the office of the Secretary of State, a certified copy of the resolution adopted by such governing body, so annexing said territory to such city of the first class. (Act Apr. 27, 1929, c. 414, §2.)

**1415-16. To be part of adjacent wards.**—Such annexed territory shall become parts of adjacent wards of such city of the first class, and the portions of such territory to be added to wards adjacent thereto shall be determined by the extension in straight lines of the ward lines of such adjacent wards. (Act Apr. 27, 1929, c. 414, §3.)

**1415-17. Tax levies.**—Taxes levied and due and payable at the time of the passage of such resolution shall be collected and received by the proper officers of the county in which such city of the first class is located, and when so collected shall be transmitted by such officers to the state or governmental subdivision to which said taxes were originally due and payable. Taxes levied, but not due and payable at the time of the passage of such resolution, shall be collected and received by the proper officers of the county in which such city of the first class is located, and shall be distributed as if at the date of the levy thereof the said lands were a part of such city of the first class. All special assessments levied at the time of the passage of such resolution, for the making of any public improvement, and all assessments made to meet any bonded indebtedness in and of the governmental subdivision in which said lands were prior to the passage of said resolution located, and for the payment of which said lands have become obligated, shall, when collected by the proper officers of the county in which such city of the first class is located, be transmitted to the governmental subdivision making such public improvement and the levy

of assessment therefor. (Act. Apr. 27, 1929, c. 414, §4.)

**1415-18. Limitation on public improvements.**—For the period of 10 years after the annexation of any lands under this act, no works of improvement shall be done within such annexed territory under any law of this state or any provisions of charter of such city of the first class under which any portion of the cost thereof shall be paid for out of the general funds except the cost of such improvements at and in street intersections where no private property abuts against which said cost can be assessed or shall be assessed against any property outside the boundaries of said lands so annexed but during such term such land shall be subject to assessments for any improvements either inside or outside the boundaries thereof permitted by such law or charter. (Act Apr. 27, 1929, c. 414, §5.)

**1415-19. Applications.**—This act shall apply to all cities now or hereafter having over 350,000 inhabitants, including all such cities organized and operating under a home rule charter adopted under the provisions of Section 36, Article IV, of the state constitution, and the laws of the state relating thereto. (Act Apr. 27, 1929, c. 414, §6.)

Sec. 7 provides that act shall take effect from and after its passage.

**1417-1. Salary of alderman in certain cities.**—That in cities now or hereafter having over 50,000 inhabitants and not having a commission or council manager form of government the salary of each alderman shall be \$2400 per annum, payable pro rata monthly out of the city treasury. (Act Apr. 19, 1937, c. 294, §1; Apr. 1, 1939, c. 132.)

**1417-2.** All acts and parts of acts inconsistent with this act are hereby repealed. (Apr. 19, 1937, c. 294, §2.)

**1421. Salary of chief of police.**

Compulsory retirement age of fire and police officers in cities of the first class set at 65 years. Laws 1939, c. 136.

**1422-1. City Council may reduce salaries.**—That the City Council of any city of the First Class now or hereafter having a population of 50,000 inhabitants or more, including any such city operating under a Charter adopted pursuant to the provisions of Section 36, Article 4, of the Constitution of the State of Minnesota, is hereby authorized and empowered to reduce the salaries or compensations now prescribed under the provisions of any such Charter and ordinances enacted in pursuance thereof for all officers and employees, whether elective or appointive, in an amount not less than 10% thereof. (Act Feb. 28, 1933, c. 42, §1.)

**1422-2. Effective for two years.**—This act shall take effect and be in force for a period of two years from and after its passage. (Act Feb. 28, 1933, c. 42, §2.)

**1426, 1427. [Repealed.]**

Repealed by act Apr. 8, 1933, c. 177, §29, post, §3750-29.

**1436. Police pensions.**

Op. Atty. Gen. (335d), Aug. 22, 1934; note under §1358. Statute includes not only those cities within designated class at time law was enacted but also those subsequently coming within same. State v. City Council of Minneapolis, 188M447, 247NW514.

**1437. Incorporation of police department as relief association—Pensions.**—That every paid municipal police department now existing or which may hereafter be organized, is hereby authorized to become incorporated pursuant to the laws of this state, or adopt a constitution and by-laws as a relief association, to provide for and permit and allow such police relief association, so incorporated or so organized, or any police pension relief association now in existence and incorporated according to law, to pay

out of, and form any funds it may have received from any source, a service, disability, or dependency pension in such amounts and in such manner as its articles of incorporation, or the constitution and by-laws shall designate, not exceeding however, the following sum per month to each of its pensioned members who shall have reached the age of fifty years or more, and shall have served twenty years or more in such department, or their widows and children under sixteen years of age, viz.:

A sum equal to one-half of the monthly compensation allowed such member as salary at the date of his retirement, when such member shall have arrived at the age of fifty (50) years or more and shall have served as a member of such paid municipal police department for a period of twenty (20) years or more in the police department of such city in which such relief association shall be so organized, or is so in existence, or who has been permanently disabled physically or mentally because of any injury received or suffered while a duly authorized member of such paid municipal police department, so as to render necessary his retirement from active police service. Provided, however, that any such member who has been a member of such paid municipal police department for twenty (20) years or more and who shall sever his connection with said paid municipal police department before he shall have attained the age of fifty (50) years, shall be eligible to the benefits of such police relief association of such city when he arrives at the age of fifty (50) years. Provided, further, that if any member retires under the provisions of the act before he has served one year in the grade in which he is serving when he retires, he shall receive the same compensation as though he had retired in the next lower grade. Provided, further, that no retired member shall receive less than seventy (\$70.00) dollars nor more than seventy-five (\$75.00) dollars per month, but commencing April 1, 1932, all retired members shall receive seventy-five (\$75.00) Dollars per month. Said pension shall be paid to any widow or child under sixteen years of age of any such pensioned and retired member of the police department or to any widow or child under sixteen years of age of any member who dies while in the service of the police department of any such city, or to any widow or child under sixteen years of age of any member, who after having been a member of such paid municipal police department for twenty (20) years or more, shall sever his connection with such paid municipal police department and who shall die before he arrives at the age of fifty (50) years, and such widow or child shall receive the sums hereinafter provided.

Forty (\$40.00) dollars per month to such widow and Ten (\$10.00) dollars per month to each of such children under sixteen years of age; provided, there where such widow and such children reside together the money herein required to be paid to such children shall be paid to such widow for the support of such children but the money paid to such widow for herself and such children shall not exceed seventy-five (\$75.00) dollars per month in all; provided, however, that in the event that any such widow remarries, she shall receive no further benefits under this law; provided, further, that said fund shall not be used for any other purpose than for the payment of service, disability or dependency pensions as herein provided.

The word "member" as used in this act shall include police women, police matrons and assistant police matrons. ('15, c. 68, §2; '21, c. 118, §1; '23, c. 54; Apr. 8, 1931, c. 118, §1.)

A city of the third class, such as South St. Paul, operating under home rule charter need not establish police pensions under §§1436 to 1442 but may establish pensions for all city employees under §254-23, et seq. Op. Atty. Gen. (785j), Aug. 19, 1936.

**1438. Payments — limitations.**—The pensions authorized by this act shall not be paid to any person while drawing salary in any amount from such city as an employe in any police department or from any department of the state or any county or municipality therein as an employe, provided, however, that this provision shall not affect the status as a pensioner of any person whose status as a pensioner has been fixed by retirement while another provision of law was in effect; and no member shall be entitled to said pension after he removes his residence from the United States or who shall have been convicted of a felony, provided, that no widow or child under sixteen years of age of any member who shall have been convicted of a felony, shall be deprived of their pension rights under this act by reason thereof unless such widow or child under sixteen years of age shall have been a party to the commission of such felony, and provided further that where such member so convicted of a felony is then receiving a pension, his wife or child under sixteen years of age who has not been a party to the commission of such felony shall receive the pension provided for herein in the event of the death of such member; and any person receiving the pension herein mentioned shall not receive or be entitled to receive any other or further pension or relief from said association. ('15, c. 68, §3; Apr. 8, 1931, c. 118, §2.)

**1440. Association to have charge of funds.**—Said association, through its officers, shall have full charge, management and control of the pension fund herein provided for, which said funds shall be derived from the following sources: From gifts of real estate or personal property, rents, money or from other sources. It shall also be the duty of the city treasurer of any city affected by this act to deduct each month from the monthly pay of each member of such police department, a sum equal to two per cent of such monthly pay, and place the same to the credit of the said police pension fund; it shall also be the duty of every police officer receiving any reward for services in making arrests, or otherwise, to place to the credit of the police pension fund all such rewards, and it shall be the duty of the chief of police of any such city to place to the credit of the police pension fund all moneys falling into the hands of the police that shall remain unclaimed for a period of six months, and to sell all unclaimed property falling into the hands of the police when the same shall have been unclaimed for a period of six months and place the proceeds thereof to the credit of the said police pension fund.

An amount or sum sufficient to pay pensions due and payable in the following fiscal year, provided said sum shall not be less than three-fifths (3/5) mill, nor in excess of one (1) mill, in addition to the rate allowed to be levied by the charter of any city affected by this act, shall be annually assessed and levied at the time and in the manner that taxes for the other funds of such city are levied by the proper officers of each city where a police relief association now exists, upon each dollar of all the taxable property in such city as the same appears on the tax records of such city and such levy of said sum for the benefit of such police relief association shall be collected and apportioned by the proper officers of any county in which such city is located, in the same manner as are all taxes of such city, and all annual surpluses shall remain in said police pension fund. ('15, c. 68, §5; '21, c. 118, §2; '25, c. 197; Laws 1929, c. 311, §1; Apr. 8, 1931, c. 118, §3; Mar. 29, 1935, c. 76.)

**1442. Not to repeal existing acts.**

Requirement of amended law for local consent is functus officio and without effect on amendment, city having given consent before amendment. State v. City Council of Minneapolis, 188M447, 247NW514.

**1442-2. Pension system for disabled or retired employees in certain cities created.**—That every such municipal department or bureau of health now existing, or which may hereafter be organized, may and hereby is authorized to become incorporated pursuant to the provisions of the General Statutes of Minnesota, and to adopt articles of incorporation and by-laws as a relief association to provide and permit said department or bureau of health, relief association so incorporated or so organized, to pay out of and from any fund that it may have received from the State of Minnesota or from any other source, a service or disability pension in such sum and under such limitations and conditions as its articles of incorporation and by-laws shall provide and permit, to each of its pensioned members, who shall have reached the age of fifty years or more, and who shall have done active duty as a member of such health department or bureau for a period of twenty years or more in the city in which such relief association shall be so organized, or who having been disabled physically or mentally because of any injury or disability received or suffered while so employed as such member of such health department or bureau so as to render necessary his retirement from active service, and in addition thereto to pay out of and from any such fund funeral benefits for deceased members not exceeding the sum of \$100.00 and general administration expenses, in such sum and under such limitations and conditions as the articles of incorporation and by-laws shall provide and permit. Such member entitled to pension under the provisions hereof may be placed upon the pension list, and shall receive such pension, in such sum and under such limitations and conditions as the articles of incorporation and by-laws shall provide and permit, provided, however, that said funds shall not be used for any other purpose than for the payment of service and disability pensions as herein provided, funeral benefits for deceased members and general administration expenses. Such service or disability pension shall be a sum equal to one-half of the monthly compensation allowed to such member as salary at the date of his retirement when such member shall have arrived at the age of fifty years or more, and shall have served a period of twenty years or more in such health department or bureau in the city in which such relief association shall be so organized, or shall have been disabled, physically or mentally, because of any injury or disability received or suffered while in the employ of such health department or bureau, so as to render necessary his retirement from active service. Provided that no retired member shall receive a service or disability pension in an amount less than \$70.00 nor more than \$75.00 per month. Provided, further, that whenever it shall appear that any applicant for a service pension was a member of such relief association for a period of less than twenty years at the time of retirement, the amounts herein provided shall be reduced in such sum and under such limitations and conditions as its articles of incorporation and by-laws shall provide and permit. ('19, c. 430, §3; Apr. 18, 1929, c. 224, §1; Apr. 24, 1937, c. 414, §1.)

**Explanatory note.**—The title and enacting clause of Act Apr. 24, 1937, cited, purports to amend §2, 4 of c. 229, Laws 1929. Section 1 of the last named act amended sections 2 and 4 of Laws 1919, c. 430. The defect is perhaps technical and not fatal.

**1442-3. Right in increase or reduce amounts not to exceed fifty dollars.**—Every such association shall at all times have and retain the right to increase or reduce the amount of such pension whenever, because of the amount of funds on hand or for other good reasons, such increase or reduction may seem advisable or proper to the board of management of said relief association, provided the pension herein authorized shall never exceed \$75.00 per month for each person pensioned. ('19, c. 430, §3; Apr. 18, 1929, c. 224, §1.)

**1442-4. Not to be paid while drawing salary.**—The pension authorized by this act shall not be paid to any person who is only part time employed or while drawing salary in any amount from said municipality or who shall have been convicted of a felony for which he shall be adjudged to be imprisoned, or who is an habitual drunkard; and any person receiving the pension herein mentioned shall not receive or be entitled to receive any other or further pension or relief from said association. ('19, c. 430, §4; Apr. 18, 1929, c. 224, §1; Apr. 24, 1937, c. 414, §2.)

**Explanatory note.**—The title and enacting clause of Act Apr. 24, 1937, cited, purports to amend §2, 4 of c. 229, Laws 1929. Section 1 of the last named act amended sections 2 and 4 of Laws 1919, c. 430. The defect is perhaps technical and not fatal.

**1442-6. Association to have charge of funds—Tax levy.**—Said association through its officers shall have full charge, management and control of the health department or bureau pension fund herein provided for, which said fund shall be derived from the following sources; first dues of its members and from the gifts of real estate or personal property, rents or money or other sources; second, the Commissioner of Finance or Department of Finance of any city affected by this act shall deduct each month from the monthly pay of each member of such department or bureau of health a sum equal to one per cent of such monthly pay and place the same to the credit of the said health department or bureau pension fund; third, an amount or sum equal to one-twentieth of one mill shall be annually assessed, levied and collected by the proper officers of such city where a health relief association exists, upon each dollar of taxable property in such city as the same appears on the tax records of such city, which said sum shall by the proper officers of said city be placed to the credit of the health department or bureau pension funds, and shall not be used or devoted to any other purpose than for the purpose of the health department or bureau pension fund. ('19, c. 430, §6; Apr. 18, 1929, c. 224, §1.)

Health relief association may use funds for administrative purposes but cannot pay death benefits. Op. Atty. Gen. (59a-33), Nov. 12, 1935.

**1442-11. Retirement allowances to employees.**

Retirement allowances may be paid in certain cases. Laws 1939, c. 65.

Op. Atty. Gen. (335d), Aug. 22, 1934; note under §1358. This act has applied to the city of Minneapolis from the beginning and adopting of home rule charter did not affect it, and all amendments to the act apply to such city. Op. Atty. Gen. (335d), June 19, 1935.

**1442-13. Definitions.**—The following words and phrases as used in this Act, unless a different meaning is plainly required by the context, shall have the following meanings:

(a) "Service allowance" shall mean the allowance to which an employe may be entitled who retires from the city service after having attained the minimum established age for retirement.

(b) "Disability allowance" shall mean the allowance to which an employe may be entitled who retires from the city service as a result of disability before having attained the minimum established age for retirement.

(c) "Retirement allowance" shall mean either a service allowance or a disability allowance.

(d) "Annuity" shall mean payments for life derived from contributions made by an employe, as provided in this Act.

(e) "Pension" shall mean payments for life derived from credits allowed and appropriations made by the city, as provided in this Act.

(f) "Supplementary allowance" shall mean the allowance which may be granted to a present incumbent, division "B" in addition to a pension and an annuity.

(g) "Present incumbent" shall mean an employe who is in the service of the city at the date the pro-

visions of this Act become effective therein, who elects to become a beneficiary of the fund created by this Act and to comply with the provisions of the Act relative thereto, and who is not in the non-contributing class.

(h) "Future entrant" shall mean an employe who enters the service of a city at a date subsequent to the date when the provisions of this Act become effective therein, who becomes a contributor to the retirement fund.

(i) "Actuarial equivalent" shall mean the annual amount, determined by calculations based on mortality tables, purchasable with a given amount at a stated age.

(j) "Accumulated amount" shall mean the amount which any given installments or periodic installments of money would accumulate when increased by interest additions compounded at regular intervals.

(k) "Net accumulated credits" shall mean the amount standing to the credit of any employe in the contributing class after deducting all amounts debited the account of such employe from the gross credits to such account.

(l) "Established age" shall mean the minimum age for retirement on a service allowance as specified by the rules of the retirement board.

(m) "Separation refund" shall mean the amount returned to an employe who is separated from the service of the city prior to having become entitled to a retirement allowance, or to his or her heirs, executors or assigns.

(n) "Present worth" of an annuity, pension or retirement allowance shall mean the value or cost price thereof to the date of retirement or other date, when specified.

(o) "Actuarial deficit or surplus" of an allowance or of allowances shall mean the difference between the estimated cost of said allowance or allowances and the actual cost thereof.

(p) "Employe" as herein used shall mean each and every person not an elective officer of said city, paid by the city or any of its various boards, departments or commissions, and any person employed by any of the various boards, departments or commissions operating as a department of the city government or independently in care of any of its governmental activities the funds of which board, department, or commission are wholly or in part raised by taxation in such city, and each and all of the employes of such boards, departments, or commissions, the funds of which boards, departments, or commissions are raised wholly or in part by taxation upon the property in such city, shall be entitled to all of the privileges conferred by this Act to the same extent as persons employed directly by the municipality.

(q) The word "dependent" as herein used shall mean a spouse, child, or any person actually dependent upon and receiving his principal support from such employe.

(r) "Elective officer" as herein used shall mean and include only an officer elected by direct vote of the people, and "elective position" shall mean a position filled by direct vote of the people.

(s) "Conditional present incumbent" shall mean any employe of the city at the time this Act is adopted therein who continues in such employment without having submitted to the retirement board a written notice of a desire to accept the provisions of this Act except employes in the non-contributing class and officers and employes who are included in the exempt class for reasons other than a failure to submit such notice.

(t) The word "heir or heirs" wherever used in this Act, shall mean surviving spouse, child, and any person actually dependent upon and receiving his principal support from the employe concerned, provided that this definition shall not apply to any case in which an employe is a member of the pension

fund at the time this definition becomes effective. ('19, c. 522, §3; Apr. 20, 1933, c. 328, §1.)

(i).

See Act Mar. 2, 1937, c. 52.

**1442-14. When effective.**—Any person who shall have been employed by the city to which this Act applies, and who shall have fulfilled the conditions herein specified, shall be entitled to receive a retirement allowance therefrom, as set forth in the provisions of this Act; provided, that no retirement allowance shall be paid any retired employe of such city prior to the expiration of the calendar year next succeeding the date this Act becomes effective therein.

Any conditional present incumbent shall be entitled to participate in the benefits provided by this Act upon submitting to the retirement board a written notice of desire to accept the provisions of the Act and of such evidence of the right to so participate as the board may require; provided that any such employe who is less than 30 years of age at the date this provision becomes effective therein shall submit such notice before reaching that age, and any such employe who shall have passed the age of 30 at that date shall make written application for participation in the benefits of the retirement fund within 90 days after such date. All such applications not filed within the time specified herein shall be denied by the retirement board.

The minimum age for retirement on a service allowance except as otherwise provided, shall be established by the retirement board, may be greater for men than for women, may differ for different classes or grades of employment, but shall not be less than 60 years for men and 58 years for women, nor greater than 65 years for men and 63 years for women. The ages so established by the board shall not be subject to revision prior to the expiration of a five-year period from the establishment thereof, and shall apply to all persons who retire during the continuance thereof.

Subject to the limitations stated in this Act, any employe in the contributing class who shall have attained the established age for retirement shall be entitled to retire, and any such employe who shall remain in the service of the city for five years thereafter, shall be retired, and receive a service allowance as specified in this Act; provided, that if in not less than 90 days before the arrival of an employe at the age of compulsory retirement, the head of the department, branch or independent board of the municipality in which he or she is employed, certifies to the retirement board that by reason of his or her efficiency and his or her willingness to remain in the service of the municipality the continuance of such an employe therein would be advantageous to the public service, such employe may be retained for a term not exceeding three years upon certification by the retirement board, and at the end of the three years he or she may, by similar certification, be continued for one additional term not to exceed two years.

Any employe who retired prior to the passage of this amendment, and the designated beneficiaries of any such employe shall be entitled to a retirement allowance to be calculated, determined and payable in accordance with the provisions of Mason's Minnesota Statutes of 1927, Sections 1442-11 to 1442-34, inclusive, as amended. Any payments heretofore made and retirements heretofore approved, which would have been valid had this act been in force at the time of making the same, are validated to the same extent as if the same had been made subsequent to the passage of this amendment. ('19, c. 522, §4; '25, c. 335, §1; Apr. 20, 1933, c. 328, §1; Apr. 1, 1935, c. 93.)

A present conditional incumbent is entitled to make application and become an employe entitled to a service allowance without having paid into retirement fund full amount required by act. Op. Atty. Gen. (335d), June 19, 1935.

Conditional present incumbents who comply with 1935 amendment are entitled upon retirement to a pension

throughout period of their service, not to exceed 25 years, figured to time of retirement and not merely to age 72. Id.

**1442-15. Classification of employees.**—Employees of the city shall be divided into a contributing class, a non-contributing class and an exempt class.

The contributing class shall consist of all employees not included in either of the other two classes, and shall be subdivided into present incumbents, employees in the service of the city at the date this act becomes effective therein, who elect to become contributors to and prospective beneficiaries of the fund created by this act, and future entrants, employees who enter the service of the city subsequent to the date this act becomes effective therein.

The non-contributing class shall consist of all employees, including common laborers, whose individual pay or compensations do not exceed \$750.00 per annum, provided, however, that when the compensation of an employee who is paid on a monthly basis equals or exceeds \$62.50 per month on a 12-month basis, such employee shall be classified as a contributor and shall from and after such time contribute to the fund and assume all the obligations imposed upon and be entitled to all the benefits conferred upon members of the contributing class, as herein and in this act specifically set forth.

Provided, further, that from and after the end of the calendar year in which the average annual compensation of an employee who is paid on a day basis equals or exceeds \$750.00 per calendar year during his period of service with the city, such employee from and after such date shall be classified as a contributor and shall assume all the obligations imposed upon and be entitled to all the benefits conferred upon members of the contributing class, as herein and in this act specifically set forth.

Any employee in the non-contributing class may, upon written application filed with the retirement board prior to attaining the age of 50 years, elect to become a member of the contributing class, and shall then assume all the obligations imposed upon and be entitled to all the benefits conferred upon members of the contributing class, as herein and in this act specifically set forth. Provided, however, that any employee in the non-contributing class who has attained the age of 50 years at the time of the passage of this act shall have one year from and after its passage to make said election. Such election, when made, shall be final and irrevocable.

The exempt class shall consist of:

(a) Employees who are members of, or who are eligible to become members of, an organization or association on behalf of which a tax is levied against the city for the purpose of paying retirement allowances to disabled or superannuated employees.

(b) Persons filling elective positions. Provided, that any elective officer holding an elective position, as those terms are defined herein, who shall have filled such elective position for twenty years or more and who shall not have received as compensation for his services as such elective officer any sum or sums in excess of \$3000.00 per annum, shall be entitled to retire upon the completion of twenty years of service on a service allowance. Such service allowance shall be computed and determined as provided for herein. Before receiving said service allowance such officer shall contribute to the fund herein provided for an amount which shall be equal to the amount of contributions to said fund which said elective officer would have made had he been a contributor to said fund since January 1, 1922, in accordance with the method of contribution herein provided for, plus four per cent compound interest.

(c) Persons serving without pay.

(d) Persons serving on executive boards.

(e) Pupil nurses, internes and staff physicians employed at the city hospitals.

(f) Employees in the service of the city at the time this Act is adopted who, after its adoption, have

not given written notice of a desire to accept the provisions of this act.

(g) Persons not citizens of the United States.

('19, c. 522, §5; '25, c. 335, §1; Apr. 20, 1933, c. 328, §1; Jan. 13, 1936, Ex. Ses., c. 20; Apr. 17, 1937, c. 171, §1; Apr. 17, 1939, c. 288.)

Sec. 2 of Act Apr. 7, 1937, cited, provides that the Act shall take effect from its passage.

**1442-16. Retirement allowance for employees in the non-contributing class including common laborers.**

—A retirement allowance, payable in equal monthly installments shall be granted to any laborer or other employe in the non-contributing class who satisfies the conditions hereafter specified.

Such retirement allowance shall be the actuarial equivalent of the accumulated amount of monthly installments of \$12.50 throughout the period of service of the retiring employe, accumulated to the date of retirement at four per cent compound interest; provided, that no such allowance shall exceed \$500.00 per annum, nor be less than \$360.00 per annum.

Upon receipt of proof of death of any common laborer or other employe in the non-contributing class who has fulfilled the minimum age and service requirements for retirement on an allowance, (a) who is employed by the city, or (b) who is temporarily separated from the service of the city, or (c) who has been retired on an allowance, [there] shall be paid to the heir or heirs of such employe or to such trustee or trustees as the retirement board may select, the sum of \$150.00.

In order to be entitled to a retirement allowance, a common laborer or other employe in the non-contributing class shall be a resident of the city, shall have been employed thereby for a period of time which in the aggregate shall equal 20 or more periods of five months each, the last season of which shall have immediately preceded the date of retirement, and in addition thereto shall either (1) have attained the age of 55 years and have been declared by the medical board to be incapacitated for further service to the city or (2) shall have attained the age of 70 years.

(a) The retirement board may require any such beneficiary while still under the age of 70 years, to undergo a medical examination by the medical board once each year. Should the medical board report and certify to the retirement board that such beneficiary is no longer physically or mentally incapacitated for the performance of duty, such retirement allowance shall cease and the head of the department in which such beneficiary was employed at the time of this retirement shall, upon notification by the retirement board, re-employ said beneficiary.

(b) Should any such retired beneficiary, while under the age of 70 refuse to submit to at least one medical examination in any year by a physician or physicians designated by the medical board, his pension shall be discontinued until the withdrawal of such refusal, and should such refusal continue for one year, all his rights, in and to the retirement allowance shall be forfeited.

(c) Upon application of any such beneficiary under the age of 70, drawing a pension or a retirement allowance under the provisions of this Act, approved by the retirement board, said beneficiary may be restored to active service by the head of the department in which said beneficiary was employed at the time of his retirement. Upon the restoration of a beneficiary to active service, his retirement allowance shall cease. ('19, c. 522, §6; Apr. 20, 1933, c. 328, §1; Mar. 2, 1937, c. 53, §1.)

The word "there" in brackets was omitted from the amending act of Mar. 2, 1937, cited.

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

Employe remaining disabled from May, 1918, to May, 1921, ceased to be an employe for that period though he was receiving workmen's compensation during that

time, and he cannot claim a retirement allowance, having finally retired in December, 1921. 174M594, 219NW 924.

Employee of city of Minneapolis who applied for pension at age of 74 but who had contributed nothing to retirement fund, held not entitled to pension. Op. Atty. Gen., Nov. 28, 1933.

**1442-17. Service allowances to persons in contributing class—Annuity, pension and supplementary allowance—**(a) The service allowance for a present incumbent in the contributing class shall consist of an "annuity", a "pension" and a "supplementary allowance" as herein defined.

(b) The service allowance for a future entrant in the contributing class shall consist of an "annuity" and a "pension" as herein defined.

(c) The annuity shall be the actuarial equivalent of the net accumulated contributions of the retiring employes, calculated at his or her age at the date of retirement.

(d) The pension shall be the actuarial equivalent of the accumulated amount of such annual installments as may be now or hereafter fixed and designated by law throughout the period of service of the retiring employe, not to exceed 25 years, accumulated to the date of retirement at 4 per cent compound interest.

(e) The supplementary allowance shall be the actuarial equivalent of the difference between:

(1) The net accumulated amount at the time of retirement of the contributions which such employe would have been required to make during the period for which credit is claimed, had the provisions of this act been in force throughout such period, and

(2) The net accumulated amount of the contributions made and to be made by the retiring employe for all periods of service for the city subsequent to the adoption of this act therein, not exceeding 30 years.

(f) All members in the contributing class who, at the time of retirement, have been in the service of the city for fifteen years or over shall be entitled to a minimum retirement allowance of \$30.00 per month.

(g) In the event of the death of an employe in the contributing class while still in the service of the city, there shall be paid to the heirs thereof the net amount to the credit of said employe at the time of his or her death, provided that said employe shall have fulfilled all conditions as to age, service and participation requisite for retirement on a service pension. In the absence of heirs of such employe that portion of the amount to the credit of said employe on which the pension is to be based as defined in paragraph (d) hereof and that portion on which the supplementary allowance, if any, is to be based as defined in paragraph (e) hereof shall be cancelled and the city shall be liable for only the balance of such credits.

(h) Except as otherwise provided in this act, the service of each "present incumbent" shall be calculated from the date in service from which said employe elects to claim credit and the amount of service of each future entrant shall be calculated from the date of original appointment. Said service shall include periods of service at different times and service for one or more departments, branches or independent boards of the municipality. It is further provided that in computing length of service of contributing employes for the purpose of this act, periods of separations from the service shall not be included.

(i) Retirement allowances as herein provided shall be paid in monthly installments and checks shall be issued and mailed to the last known address of each beneficiary on the first business day of the month succeeding the month in which his or her allowance is authorized; provided, however, that where a beneficiary is laboring under legal disabilities said monthly installments in such cases may be paid to the duly appointed guardian. ('19, c. 522, §7; '25, c. 335, §1; Mar. 2, 1937, c. 51, §1.)

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

**1442-18. Disability allowances.**—Upon the application of the head of the department in which a contributing employe is employed, or upon the application of said contributing employe or of one acting in his behalf, the retirement board shall retire said contributor for disability; provided the medical board, after a medical examination of said contributor made at the place of residence of said contributor or at a place mutually agreed upon, shall certify to the retirement board that said contributor is physically or mentally incapacitated for the performance of further service to the city and that said contributor ought to be retired.

(a) Disability of an employe resulting from injury received in the performance of the duties of the city service shall be defined as accident disability. Disability incurred as a result of injury not connected with the performance of such service shall be defined as ordinary disability. In order to be entitled to a retirement allowance for ordinary disability an employe shall have rendered ten or more years of service to the city.

The ordinary disability allowance shall be the actuarial equivalent at the age when an employe retires on such disability allowance of the net amount to which the contributions already made by the employe and the credits allowed or contributions already made by the city on his or her behalf would accumulate if allowed to remain at 4 per cent compound interest until the earliest permissible date for retirement on a service allowance.

The accident disability allowance shall equal the actuarial equivalent at the age when an employe retires on such disability allowance of the net amount which would be accumulated to the credit of the employe if his or her annual contributions at the time of disability and the annual credits or contributions of the city were continued to the earliest permissible date for retirement on a service allowance, interest for such period being calculated at 4 per cent compound interest.

Payment of any disability allowance shall continue throughout the full period of the disability subject to the same optional selections as are provided for service allowances, provided that whenever a disability beneficiary shall have attained the minimum age for retirement on a service allowance said disability allowance shall be discontinued only as provided by the terms of the option selected.

Any employe eligible to an accident disability allowance who is also entitled to an allowance under a workman's compensation act shall be entitled to receive during the period of such compensation only that portion of the retirement allowance provided by this Act by which such retirement allowance exceeds said workmen's compensation.

(b) Once each year the retirement board may require any disability beneficiary while still under the established age for retirement to undergo medical examination by a physician or physicians designated by the retirement board, said examination to be made at the place of residence of said beneficiary or other place mutually agreed upon. Should the medical board report and certify to the retirement board that such disability beneficiary is no longer physically or mentally incapacitated for the performance of duty, his or her allowance shall be discontinued and the head of the department in which said beneficiary was employed at the time of his retirement shall, upon notification by the retirement board of such report of the medical board, re-employ said beneficiary at a rate of salary not less than the amount of his or her retirement allowance, but after the expiration of five years subsequent to the retirement of such beneficiary his restoration to duty, notwithstanding the recommendation of the medical board, shall be optional with the head of the department.

(c) Should any disability beneficiary while under the established age for retirement refuse to submit to at least one medical examination in any year by a physician or physicians designated by the medical board, his or her allowance shall be discontinued until the withdrawal of such refusal, and should such refusal continue for one year, all his or her rights in and to any retirement or disability allowance constituted by this Act shall be forfeited.

(d) Upon application of any beneficiary under the established age for retirement drawing a pension or a retirement allowance under the provisions of this Act, approved by the retirement board, said beneficiary may be restored to active service by the head of the department in which said beneficiary was employed at the time of his retirement. Upon the restoration of a beneficiary to active service his or her retirement allowance shall cease.

(e) The medical board shall consist of the city physician, a physician to be selected by the retirement board, and a physician to be selected by the employe. ('19, c. 522, §8; '25, c. 335, §1; Apr. 20, 1933, c. 328, §1.)

#### 1442-19. Same—service allowances—options.

City employe entitled to retirement allowance, who instead of electing to receive a retirement allowance payable only throughout his life, elects "to receive the actuarial equivalent at that time" of his retirement allowance "in a lesser retirement allowance" payable throughout life must on his retirement select one of the three first options specified in this section, and cannot thereafter change without consent of retirement board. 173M589, 218NW119.

1442-20. Refunds.—(a) In case of an employe to whom this Act applies who shall become absolutely separated from the service without being entitled to a retirement allowance the total net accumulated amount of deductions from his or her salary, pay or compensation, made for the purpose of accumulating a fund from which to pay retirement allowances, shall be returned to such employe with accrued interest.

(b) Upon the death of a contributor before retirement there shall be paid to his or her estate or to such person as he or she shall have nominated, the net accumulated salary deductions standing to his or her credit, provided that in case of the death of a contributor after ten years of service, there shall be paid to the dependents or heirs of such contributor, the present worth of the city's accumulated annual installments of \$60.00 then standing to the credit of such contributor, in addition to the net accumulated salary deductions as specified above. If there be no dependents or heirs of such contributing surviving him, then only the net accumulated salary deductions shall be paid to the estate of such contributor.

(c) Upon reinstatement of a former employe to the service, credit for such past service or for any part thereof shall be granted only upon repayment of the amount of the separation refund, with interest, from the time of separation; provided this provision shall not apply to service rendered prior to the date that this Act becomes effective. ('19, c. 522, §10; '25, c. 335, §1; Apr. 20, 1933, c. 328, §1.)

1442-21. Same—deductions from pay—amounts—retirement before full amounts have been deducted—increase, decrease or withdrawal of deductions.—(a) Beginning on the first day of the year next succeeding that in which this Act becomes effective in any city, and thereafter throughout the period of employment, there shall be deducted and withheld from the basic salary, pay or compensation of each employe in the contributing class except as hereinafter provided the following percentage of such salary, pay or compensation.

Employes who enter the service at 20 years of age or younger, 3 per cent of salary, pay or compensation; employes who enter the service at 45 years of age or older, 8 per cent of salary, pay or compensation; employes who enter the service after the age of 20 and

prior to age 45, a percentage of salary, pay or compensation, which shall be equal to 3 per cent, plus as many times 2/10 of 1 per cent as the age of the employe exceeds 20 at the time service begins.

Every employe to whom this Act applies who shall continue in the service after the passage of this Act, as well as every person to whom this Act applied who may hereafter be appointed to a position or place, shall be deemed to consent and agree to the deductions made and provided for herein, and payment with such deductions, for service, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such person during the period covered by such payment; except his or her claim to the benefits to which he or she may be entitled under the provisions of this Act.

(b) Any employe who becomes entitled to a retirement allowance, and who retires without having paid into the retirement fund the full amount required by this Act, shall have the option of electing to receive such allowance (a) on the basis of the actuarial equivalent of the net balance of debits and credits to his or her account at that time, or (b) on the basis of the actuarial equivalent of the total credits at date of retirement, initial and successive installments of the allowance to be applied on any indebtedness of such employe to the retirement fund until such indebtedness is paid, any installments so credited to be treated as if actually paid to the annuitant entitled to such allowance. Any payments heretofore made which would have been valid had this amendment been in force at the time of making the same are hereby validated in the same manner as if the same had been made subsequent to the passage of this amendment.

(c) No employe shall be required to contribute to the retirement fund for a period in excess of 30 years; all contributions made thereafter to said fund shall be voluntary.

(d) Subject to such terms and conditions and to such rules and regulations as the retirement board may adopt, any contributor, from time to time may:

(1) Increase or decrease his or her rate of contribution to the retirement fund, but in no event shall the contribution be less than the minimum contribution specified in the provisions of this Act.

(2) Withdraw from his or her individual account in the retirement fund the amount in excess of the minimum accumulation resulting from the deductions specified in the provisions of this Act.

(3) Withdraw, after having become eligible for service retirement, such part of his or her net accumulated contributions as shall be in excess of the amount necessary to procure the minimum annuity to which he or she would be entitled at the expiration of 30 years of service. ('19, c. 522, §11; '25, c. 335, §1; Apr. 20, 1933, c. 328, §1; Jan. 9, 1934, Ex. Sess., c. 73, §1; Jan. 13, 1936, Ex. Sess., c. 21.)

Sec. 2 of Act Jan. 9, 1934, cited, provides that the act shall take effect from its passage.

Act Jan. 9, 1934, cited, purports to amend subd. (b) only, but sets forth the other parts of the section as it was amended Apr. 20, 1933.

1442-22. Individual record of credits required.—The city comptroller or other person having supervision of the payment of salaries to employes shall cause the deductions to be withheld from all specific appropriations for the particular salaries or compensation from which the deductions are made and from all allotments out of lump sum appropriations for payments of such salaries or compensation for each fiscal year; and a record of said sums shall be entered to the credit of the various employes from whose salaries deductions have been made. The amount of said deductions shall be deposited with the city treasury and credited to the retirement fund.

At the close of each fiscal year there shall be distributed to each contributing employe in proportion to the accumulated amount then to the credit of said

employe as accumulated salary deductions the amount of the income from interest earned on the accumulated funds in possession of the board, after having deducted from the total of such income (1) the amounts otherwise required as interest for various allowances and/or purposes specified in the Act, (2) an amount to be set aside to apply on the cost of disability allowances and (3) an amount to be set aside to liquidate actual or to amortize prospective losses on investments. The net balance of said interest earnings to be so distributed shall be distributed at the greatest multiple of one-tenth (1/10) of one per cent of the total of all such accumulated amounts from salary deductions. Any excess then remaining from such interest earnings shall be credited to a reserve fund and be added to and distributed with the interest earnings of the next succeeding year. The amount that shall be deducted from the gross interest earnings to apply on the cost of disability allowances shall be not more than one-half (½) the cost of disability allowances for contributing employes. The amount that shall be set aside to liquidate past losses on investments or to create a reserve from which to liquidate future losses shall be such amount as the board may deem necessary for such purpose but not in excess of one mill on the dollar of the gross amount received as interest on the cash and investments in the fund.

At the end of each calendar year and throughout the first 300 months of actual employment there shall be entered to the credit of each employe from whose salary or compensation deductions are made, a credit of \$60.00 per employe, the accumulated amount of which shall be charged to the municipality and payable by the municipality. It shall be the duty of the proper authorities to levy from time to time a sufficient sum in addition to all other sums to be levied by taxation to meet the liabilities against the municipality created thereby. ('19, c. 522, §12; Apr. 20, 1933, c. 328, §1.)

See Act Mar. 2, 1937, c. 52.  
Sec. 2 of Act Apr. 20, 1933, cited, provides that the act shall take effect from its passage.

**1442-26. Same—Board as trustee of funds—Investment—Payments from—Special funds.—**(a) The members of the retirement board shall be the trustees of the several funds created by the act, and shall have exclusive control and management of said funds, and shall have power to invest the same, subject, however, to all the terms, conditions, limitations and restrictions, imposed by law upon savings banks in the making and disposing of their investments; and subject to like terms, conditions, limitations and restrictions, said trustees shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which any of the funds created by the act shall have been invested as well as the proceeds of said investments, and of the money belonging to said funds, except that any reserve built up from the city's contributions shall be invested in bonds of that city in preference to other bonds paying an equal or a less rate of interest.

(b) Said board shall have authority: (1) To make such loans and advances of credit and purchases of obligations, representing loans and advances of credit, as are insured by the Federal Housing Administration, and to obtain such insurance; (2) To make such loans secured by mortgages on real property, which the Federal Housing Administrator has insured or made a commitment to insure, and to obtain such insurance; (3) To enter into any and all agency agreements necessary to enable it to invest its funds in loans, advances of credit and obligations insured by the Federal Housing Administrator, or which he has made a commitment to insure, and to enter into any agreement or arrangement with any other of the pension and retirement systems of the city of Minneapolis for the joint handling of said securities; (4) to provide for the prorating of part or all the cost of making, handling or

foreclosing of such mortgages against the earnings of such mortgages and to establish reserve accounts from such earnings to liquidate losses or future losses on such mortgages; (5) To employ and dismiss agents, attorneys, appraisers and others necessary for the proper handling and/or servicing of such mortgages and to fix their compensation or fee on such basis as it may see fit for such services rendered in connection with such mortgages; (6) To do any and all things necessary to carry out the provisions of this act in the best interest of the funds.

The board shall, upon the request of any contributing employee who has borrowed from the retirement fund under the Federal Housing Administration insured mortgage system, provide for the repayment of such loan by deductions from such employee's monthly compensation.

(c) All payments from the funds created by this act shall be made by the treasurer of the city only upon warrant signed by the president of the retirement board and countersigned by the executive secretary, and no warrant shall be drawn except by order of the retirement board duly entered in the record of its proceedings.

(d) The retirement board is hereby authorized and empowered in carrying out the provisions of this act, to establish special funds supplementing individual contributions by the employees and to receive, invest and disburse for such purpose all moneys in the form of donations, gifts, legacies, bequests, or otherwise, which may be contributed by private individuals or corporations or organizations for the benefit of the city employees generally, or any special employee or class of employees of the city. (As amended, Mar. 17, 1939, c. 66.)

**1442-30. Same—Application—Approval.—**No disability or service allowance shall be granted to any employee who may become eligible for retirement as provided in this act until the said employee, or one authorized to act in his behalf, shall have filed with the retirement board, in such form as may be prescribed by said board, an application for such allowance; no installment or installments of any such allowance shall be paid for any period prior to the effective date of retirement.

The pension board shall be allowed a period of 60 days from and after the filing of the application within which to approve the same and compute the amount of service or disability allowance to which the applicant is entitled. In the event a service or disability allowance is granted the same shall commence with the effective date of the retirement of the person entitled thereto.

All installments of service or disability allowance heretofore paid for any period commencing prior to 60 days subsequent to the filing of the application therefor are hereby fully legalized and validated.

The pension board is hereby authorized and directed to pay any employee who has prior to the passage of this act retired on the service or disability allowance and who has not been paid said allowance for a period of 60 days from and after the filing of his application therefor, a sum or sums equal to an installment of disability or service allowance for said period of 60 days. ('19, c. 522, §20; Apr. 11, 1935, c. 146, §1.)

**1442-37. Same—Payments to widows of deceased employees—Amount.**

Laws 1925, c. 200, is still in force and effect. Op. Atty. Gen. (335d), June 19, 1935.

**1442-40a. Retirement allowance in certain cases.—**In all cases where the retirement board of any city which has adopted a plan of, and is paying, retirement allowances to employees pursuant to Mason's Minnesota Statutes of 1927, Sections 1442-11 to 1442-34, inclusive, and acts amendatory thereto, is required to refund the net accumulated credits of any contributing employee standing to his or her credit on date of death, or to refund the balance remaining to the



credit of a retired employee at the date of his or her death, who has retired under the Option 1 plan of retirement, the retirement board shall, at the written request of such employee filed with the retirement board prior to his or her death, or at the written request of a beneficiary filed with the retirement board after the employee's death, provide for the payment of such credits or balances or any portion thereof in monthly installments until such credits or balances are exhausted; provided, however, that such beneficiary shall be of the class of persons now permitted to receive a sum or sums standing to the credit of the employee at the time of his or her death. (Act Mar. 17, 1939, c. 65, §1.)

**1442-40b. May pay interest on balances.**—The retirement board shall provide for the payment of annual interest on the credits or balances remaining on deposit at the same rate that is paid to contributing employees on accumulated salary deductions. (Act Mar. 17, 1939, c. 65, §2.)

**1442-40c. Application of act.**—Nothing in this act shall be construed to alter the method of determining the person or persons entitled to receive such refunds or the amount to be paid. (Act Mar. 17, 1939, c. 65, §3.)

**1442-40d. Compulsory retirement of certain employees of police and fire departments.**—Every employee, officer or person on the payroll of any fire or police department in any city of the first class shall retire upon reaching the age of 65 years; provided, that any such employee, officer or person on the payroll of any such fire or police department, serving as such on or before January 1, 1939, who has attained the age of 65 years and who has not served a sufficient length of time to entitle him to benefits under the terms and provisions of any pension act now in effect providing for benefits for such firemen and policemen, employees, officers or persons on the payroll of the fire or police department in such city, may, subject to the provisions of any charter of any such city providing for a civil service commission and the rules and regulations of said civil service commission enacted pursuant thereto, remain in the service of any such city as an employee, officer or person on the payroll of such fire or police department until he has served a sufficient length of time to entitle him to such benefits. This proviso shall not apply to substitutes and persons employed irregularly from time to time, in either the fire or police departments of such city. (Act Apr. 1, 1939, c. 136, §1.)

**1442-40e. Same—Effective September 1, 1940.**—This act shall take effect and be in force from and after September 1, 1940. (Act Apr. 1, 1939, c. 136, §2.)

**1442-41. Retirement of employees—credit on time.** This section held not to apply to cases where an employee retired from service for the city more than five years before its passage, and at the time of his retirement was not entitled to any pension or retirement allowance. 174M594, 219NW924.

**1442-42. Disability allowances in certain cities.**—That every city of the state now or hereafter having over 50,000 inhabitants, including each such city now or hereafter operating under a home rule charter adopted pursuant to the provisions of Section 36, Article IV, of the Constitution of the State, which adopts or has adopted a system of paying pensions or retirement allowances to retired municipal employees pursuant to Chapter 522, General Laws 1919 [§§1442-11 to 1442-34], and the retirement board in control of such system are hereby authorized to pay pensions or retirement allowances to each and every employee who at the time of ratification of the system provided by said Chapter 522, General Laws 1919, was, is or shall be then receiving compensation from the city under the provisions of Chapter 467, General Laws 1913 [§4330], and acts amendatory thereof

[Workmen's Compensation Act], and (a) who, at the time of the injury for which such compensation is paid, was, is or shall be receiving salary or pay as an employe in excess of \$750.00 per annum, or (b) who, at the time of retirement from the city service, had been or shall have been employed by the city for periods which in the aggregate equal 20 or more seasons of five or more months each in not to exceed an equal number of years, at rates of pay which did not provide an average amount in excess of \$750.00 per annum, and has attained the age of 55 years. (Act Mar. 28, 1929, c. 106, §1.)

**1442-43. Amount of allowance.**—The pension or retirement allowance to which any such employe shall be entitled who at the time of the adoption of such plan had been receiving in excess of \$750.00 per annum shall be of the same amount and shall be calculated in the same manner as would have been pursued if the plan as provided by Chapter 522, General Laws 1919 [§§1442-11 to 1442-34], and acts amendatory thereof, had been in effect at the time when the injury was received for which such compensation is paid as provided by Chapter 467, General Laws 1913 [§4330], and acts amendatory thereof.

The pension or retirement allowance to which any such employe at rates of pay less than an average of \$750.00 per annum shall be entitled shall be of the same amount and shall be calculated in the same manner as provided in Section 6, Chapter 522, General Laws 1919 [§1442-16]. (Act Mar. 28, 1929, c. 106, §2.)

**1442-44. Retirement board to determine amounts.**—It shall be the duty of the said retirement board to determine the annual amount of any such allowance and to provide for payment thereof; provided, that payment thereof shall not begin until the compensation as provided by Chapter 467, General Laws 1913 [§4330], and acts amendatory thereof, has ceased. (Act Mar. 28, 1929, c. 106, §3.)

**1442-45. Tax levy.**—The retirement board in any such city shall include in the financial statement required by Section 14 of said Chapter 522, General Laws 1919 [§1442-24], the amount, in addition to all other amounts, of the portion of any such disability or retirement allowance chargeable against the city, and it shall be the duty of the proper city officials in such city to levy a tax sufficient to provide such amount in addition to the amount to be levied pursuant to said Chapter 522, General Laws 1919, and amendments thereof. (Act Mar. 28, 1929, c. 106, §4.)

**1442-46. Payment of disability allowance.**—The retirement board provided by said Mason's Minnesota Statutes of 1927, Sections 1442-11 to 1442-34, inclusive, is hereby invested with all the rights, privileges and obligations relative to any such disability or retirement allowance, and is authorized to continue payment to the surviving spouse of any employee during the lifetime only of such surviving spouse, and to the funds from which installments thereof are to be paid that pertain to the allowances and funds authorized by Mason's Minnesota Statutes of 1927, Sections 1442-34, inclusive, including the right, privilege, or obligation to cancel any such allowance under conditions specified therein. (Mar. 28, 1929, c. 106, §5; Apr. 24, 1935, c. 250.)

**1442-47. Members of park board may resign.**—In each city of the first class of this state now or hereafter having a population of 50,000 inhabitants or more including each such city now or hereafter operating under a home rule charter adopted under and pursuant to Section 36, Article 4, of the State Constitution, the Board of Park Commissioners of said city, if any such there be, shall have full power and authority to accept the resignation of any member of said Board, anything in the charter of said city to

the contrary notwithstanding. (Act Apr. 11, 1929, c. 153, §1.)

**1442-47a. May fill vacancies in board of park commissioners in certain cities.**—In each city of the first class of this state now or hereafter having a population of 50,000 inhabitants or more, including each such city now or hereafter operating under a home rule charter adopted under and pursuant to Section 36, Article 4, of the State Constitution, if the Board of Park Commissioners of said city (if any such there be) shall fail to fill any elective vacancy on said Board ten days prior to the last day for filing for nomination to an elective city office, in advance of a general primary election held in said city, for the unexpired term of the person causing such vacancy, then the voters of said district wherein said vacancy exists in any such city shall fill such elective vacancy by nomination at such primary election and election at the general city election thereafter in the manner prescribed by law for nomination and election of elective members of said Board, anything in the charter of said city to the contrary notwithstanding. The President or Vice-President and the Secretary of said Board shall certify to the City Clerk ten days before said last day to file as a candidate for an elective city office the fact of an elective vacancy on said Board, and thereupon said Clerk shall list and receive filings of candidates to fill said elective vacancy, for such unexpired term. (Apr. 21, 1937, c. 323, §1.)

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

**1442-48. Pension and retirement allowances to surviving spouse, etc.**—Every city of this state now or hereafter having over 50,000 inhabitants, which has heretofore adopted or shall hereafter adopt a system of paying pensions and retirement allowances to retired municipal employes pursuant to Laws 1919, Chapter 522 [§§1442-11 to 1442-34], or said Act as amended, acting by and through its city council or chief governing body of the city, and the pension and retirement board in charge of such system are hereby authorized and empowered to pay pensions and retirement allowances to the surviving spouse, dependents, heirs or nominees of any employe of the city in the contributing class who has heretofore died or who may hereafter die, before attaining the minimum age for retirement on a service pension under the provision of said Act or said Act as amended, and who has rendered or shall have rendered services to and been in the employ of the city, for 20 years or more prior to the date of his or her decease, and whose death was not or shall not be caused by an accident which occurred or shall occur while such employe was or shall be engaged in the performance of his or her duties as such employe.

The amount of such pensions and retirement allowances hereby authorized shall be the net amount of personal contributions made by such employe under the provisions of said Act or said Act as amended, prior to his or her decease, and interest thereon, and the net amount of the contributions made by the city in respect to such employe, with interest thereon. Such pensions and retirement allowances shall be calculated and determined in the same manner as provided in said Laws 1919, Chapter 522, as amended, for the calculation and determination of pensions and retirement allowances becoming payable under the provisions of said Act and said Act as amended.

It shall be the duty of the governing body of the city to levy annually a tax on the taxable property in the city sufficient to pay all pensions and retirement allowances hereby authorized, in addition to all other taxes authorized to be levied by said Chapter 522 and said Act as amended; and it shall be the duty of the retirement board of the city to administer the proceeds of such additional taxes and cause the same to be paid to the person or persons entitled thereto under the provisions of this Act and said

Chapter 522 and said Act as amended. (Act Apr. 20, 1931, c. 244; Apr. 1, 1933, c. 146.)

**1442-49. Retirement boards may make loans to contributing members in certain cases.**—In every city of this state now or hereafter having over 50,000 inhabitants, which has heretofore adopted or shall hereafter adopt a system of paying pensions and retirement allowances to retired municipal employes pursuant to Laws of 1919, Chapter 522, or said Act as amended, the retirement board is hereby authorized to make loans to the contributing members of such retirement fund in amounts not to exceed fifty per cent of the amount of the salary deductions standing to the credit of any contributor. No loan shall be made except in case of necessity which in the opinion of the board is deemed sufficient to warrant the granting of such loan, nor without the approval of at least three members of the board. Loans may be granted in case of lay-off of employes where such lay-off is of indefinite duration and does not amount to a complete separation from the service.

Repayment of loans in all cases where the employe is still in service shall begin with the month following the making of said loan, and there shall be repaid on such loan each month an amount equal to the regular monthly deduction from the salary of such employe, which deduction for repayment of the loan shall be in addition to the deduction for credit to the retirement fund. In cases where loans are made to employes that have been laid off, the repayment shall begin with the first month in which the employe is reinstated in his regular employment.

All loans made under this Act shall bear a rate of interest which shall be one-half of one per cent higher than the rate of interest which may be credited by the retirement board to the credit of contributors on their credits from salary deductions. (Act Apr. 17, 1933, c. 304; Apr. 17, 1937, c. 246, §1.)

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

**1442-50. Applications and payments for retirement allowances validated.**—In all cases where the surviving spouse of any deceased employe of any city which has adopted the plan and is paying retirement allowances to employes, pursuant to Mason's Minnesota Statutes of 1927, Sections 1442-11 to 1442-34, inclusive, and acts amendatory thereof, has filed an application within 30 days after death of such employe with the retirement board of such city, said board is authorized to pay a retirement allowance to the person entitled thereto in the same manner and with the same force and effect as though the deceased employe had made and filed his application with such retirement board during his life time. Any payments heretofore made which would have been valid had this act been in force at the time of making such payments are hereby validated and legalized, and said board is hereby authorized to continue such payments until the full amount of benefits have been received as now provided for by law. (Act Apr. 11, 1935, c. 149.)

**1442-51. Retirement allowance may be left on deposit in fund.**—Any member of the contributing class who becomes permanently separated from the service of any city to which this act applies, after twenty or more years of service for such city, may, by an instrument in writing filed with the Municipal Pension and Retirement Board within thirty days after such separation becomes permanent, elect to allow his or her contributions to such fund to the date of separation to remain on deposit in such fund. (Mar. 2, 1937, c. 52, §1.)

**1442-52. Same—Retirement allowance to separated person leaving contributions on deposit.**—If a member of the contributing class makes the election herein and in the preceding section provided for, he, upon attaining the age of fifty-five years, or someone acting in his behalf, shall make application for such retire-

ment allowance in the manner provided for by Section 1442-19, Mason's Minnesota Statutes of 1927. In the event such contributing member, after twenty years of service, becomes separated from the city after having attained the age of fifty-five years, he or someone acting in his behalf shall make the application within the time and in the manner provided for herein. Such retirement allowance shall be the actuarial equivalent of the city's contribution and the member's deposit, as they were on the date the separation becomes permanent, plus interest, as provided for in Section 1442-22, 1934 Supplement to Mason's Minnesota Statutes 1927. (Mar. 2, 1937, c. 52, §2.)

**1442-53. Same—Payment to heirs.**—If such contributing member dies before reaching the age of fifty-five years, or having attained the age of fifty-five years without having made the election provided for herein, there shall be paid to his or her heirs, as defined in Section 1442-13, subdivision (t), 1934 Supplement to Mason's Minnesota Statutes 1927, the total amount to his or her credit on the date of his or her death. In the absence of heirs, that portion of the credit contributed by the city shall be cancelled, and the balance as it was on the date of separation shall be paid to the contributor's estate. The interest credit accrued from the date of separation to the date of death on such member's deposit shall be withheld and credited to the reserve for loss on investment account. (Mar. 2, 1937, c. 52, §3.)

**1442-54. Same—Withdrawal of deposits.**—Such contributing member may, after electing to receive a retirement allowance as provided herein, make application to withdraw his or her deposit before reaching the age of fifty-five years, at which time that portion contributed by the city shall be cancelled and one-half the interest credited on his or her deposit on date of separation to date application is made to withdraw such credit shall be withheld and shall be credited to the reserve for loss on investment account of such fund. (Mar. 2, 1937, c. 52, §4.)

**1442-55. Same—Rights forfeited on withdrawal.**—If such deposit is withdrawn before retirement, the retirement rights shall be forfeited unless such employee returns to the service of the city and again becomes a contributing member to the fund and re-deposits the amount withdrawn, plus four per cent compound interest from date of withdrawal to date of reinstatement to the service of the city. (Mar. 2, 1937, c. 52, §5.)

**1442-56. Same—Retirement allowance for disabled persons.**—If such contributing member, after becoming permanently separated from the service of the city and after electing to receive a retirement allowance as provided herein, becomes totally and permanently disabled for any cause before reaching the age of fifty-five years, he or she shall be entitled to receive such retirement allowance before reaching the age of fifty-five years, upon application to the Municipal Pension and Retirement Board and certified by the medical board provided in such act. Such retirement allowance shall be the actuarial equivalent of the total credit to his or her account on the date application for such retirement allowance is made. (Mar. 2, 1937, c. 52, §6.)

**1455. Civil service commission.**

Removal from public office in Minnesota. 20 MinnLaw Rev 721.

**1455-1. Employees to be classified.**—The employees of the board of education of any independent school district in any city of the first class in the state of Minnesota, the territorial limits of which school district coincide with the territorial limits of such city, and the government of such independent school district is not provided for in the charter of said city, shall be eligible to be classified and shall be classified as employees under the provisions of the charter of

any such city, whereby a civil service board has been or may be established.

Immediately after this act takes effect, and thereafter in each calendar year, the governing body of any such school district shall pay into the treasury of any such city a proportionate share of the annual expense of the civil service board of any such city, such share to be determined by the ratio in which the number of classified employees of any such board of education bears to the number of classified employees of any such city, as appears from year to year from the annual report of such civil service board. Within 30 days after the presentation by the secretary of the civil service board of such city of a written request for payment to the clerk or other recording officer of such board of education, it shall become the duty of the treasurer or other fiscal officer of such board of education to draw an order, draft or warrant upon the funds of such board of education in payment to such city of the amount specified in such written request. (Act Feb. 21, 1933, c. 35, §1; Mar. 4, 1939, c. 43.)

**1455-2. Who are employes.**—That the term "employes," as used in this act, shall not include members of the board of education, superintendent of schools, assistant superintendent of schools, clerk of the board, teachers, including principals and supervisors, chief engineer, recreational director, physicians, dentists and temporary employes. (Act Feb. 21, 1933, c. 35, §2.)

**1455-3. Clerk to certify list.**—That it shall be the duty of the clerk of the Board of Education of such independent school district to promptly furnish the secretary of any such civil service board a list of the employes of the Board of Education of said independent school district, together with a statement of the duties performed by them, and the salaries paid to them, and it shall thereupon become the duty of the civil service board to classify such employes under the rules of said civil service board, said classification to be subject to final approval of the Board of Education. (Act Feb. 21, 1933, c. 35, §3.)

Act contemplates that civil service board shall perform same duties with reference to employes of board of education which it performs with reference to employes of city and such board has obligation of paying all expenses incurred in classifying employes and performing other duties. Op. Atty. Gen., June 26, 1933.

**1455-4. Present employes to retain positions.**—That employes of any such Board of Education, who are regularly employed by such Board at the time of the classification of the employes by the civil service board as herein provided, shall retain their positions, unless removed for cause. (Act Feb. 21, 1933, c. 35, §4.)

Sec. 5 provides that the act shall be in force from its passage.

**1450-1. Civil service rules for unskilled labor.**—That no city of the first class located in any county having a population of not less than 275,000 inhabitants and not more than 350,000 inhabitants including any such city operating under a charter adopted pursuant to the provisions of Section 36, Article 4, of the Constitution of the State of Minnesota, shall require any person seeking employment or appointment as a common, unskilled or semi-skilled laborer to be placed in any classified service subject to civil service rules and regulations in relation thereto as a condition to any such employment or appointment. (Act Apr. 21, 1933, c. 372, §1.)

This act is constitutional. Op. Atty. Gen., May 3, 1933.

**1450-2. Inconsistent acts repealed.**—All laws and parts of laws, ordinances and charter provisions inconsistent herewith are hereby repealed. (Act Apr. 21, 1933, c. 372, §2.)

Sec. 3 of Act Apr. 21, 1933, cited, provides that the act shall take effect from its passage.

**1465. Removal of officers or employees.**

Reinstatement of illegally discharged civil service employees. 18MinnLawRev337.

**1465-1. Notice of discharge of employes.**—No regularly employed person having a classification under civil service regulation in cities of the first class operating under Article 4, Section 36 of the Constitution of the State of Minnesota, shall be discharged, suspended or demoted, because of inefficiency, breach of duty or misconduct, unless written notice specifically and fully stating the reasons for such discharge, suspension or demotion is served upon such employe by the officer, board or person whose duty it is or may be to appoint or employ such employe. (Act Apr. 22, 1933, c. 405, §1.)

Commissioner of public safety of city had no authority to indefinitely suspend from his position superintendent of bureau of police and fire alarm telegraph, on sole ground of a temporary deficiency in fund provided in city budget for all salaries and expenses of said bureau for that year, there being more than twenty employes in said bureau, and no other employes being suspended. *State v. Warren*, 195M180, 261NW857. See Dun. Dig. 6558a.

Inefficiency does not consist of a separate act, but embraces a course of conduct, a lack of integrity, or limitation of capacity. *Hughes v. D.*, 273NW618. See Dun. Dig. 6591, 8010.

Inefficiency denotes incapability for office, while misconduct denotes an improper discharge of duties of office, and while an officer may not twice be punished for same misconduct, act of misconduct may later be used against him to prove that he is unfit for office because of inefficiency. *Id.*

**1465-2. Hearing.**—Within ten days after the service of such notice such employes may demand a hearing before a board to be known as a Board of Appeals or Referees, said Board to consist of three members, one member to be appointed by the mayor from outside the City Service; one member to be appointed by the City Council from the administrative officials of the Municipality; and one member to be the chief civil service examiner, administrative head, or secretary of the Civil Service Department. (Act Apr. 22, 1933, c. 409, §2.)

**1465-3. Board to fix date of hearing.**—The Board of Appeal or Referees shall within ten days after their appointment serve a written notice upon such employe, setting forth the time of the hearing before them of said charges. The hearing of said charges shall be open to the public, and said employe may appear with an attorney.

(1) The Board of Appeal or Referees or a member thereof shall administer oaths to all witnesses, and, upon its or his own motion or the written request of any interested party, may issue subpoenas for the attendance of witnesses and the production of such books, papers, records and documents material in the cause as shall be designated in such request or required by the Board or member thereof. Provided, that the applicants for subpoenas shall advance necessary service and witness fees, which shall be the same as the service and witness fees provided by law for civil causes in the District Court. The Board shall pay for the attendance of all witnesses subpoenaed by it or its own motion. If any person refuses to comply with any order or subpoena issued by the Board, or any member thereof, or if any person refuses to permit an inspection of any place or premises or to produce any books, papers, records or documents material in the cause, or if any witness refuses to appear or testify regarding that which he may be lawfully interrogated, any Judge of the District Court in the County in which the cause is pending on application of the Board or member thereof, shall compel obedience by attachment proceedings as for contempt as in the case of disobedience of a similar order or subpoena issued by such Court. (Act Apr. 22, 1933, c. 409, §3.)

**1465-4. Board to make investigations.**—The Board, or member, thereof in making an investigation, or conducting a hearing under this Act shall make such

investigation, or inquiry, or conduct such hearings, in such manner as to ascertain the substantial rights of the parties, and all findings of fact shall be based upon reviewable evidence. (Act Apr. 22, 1933, c. 409, §4.)

Evidence before administrative tribunals. 23MinnLaw Rev68.

**1465-5. Employes shall be removed, when.**—If, after the investigation and hearing by the Board of Appeal or Referees as hereinbefore provided, such employe is found guilty of inefficiency, breach of duty or misconduct, he shall be removed, reduced or suspended, and his name may be stricken from the service register. If the Board of Appeal or Referees shall determine that the charges are not sustained, such employe, if he has been suspended pending the investigation, shall be immediately reinstated and shall be paid all back pay due for the period of suspension.

(A) Findings and determination hereunder and orders of suspension, reduction or removal shall be in writing and shall be filed within three days after the completion of such hearing with the secretary of the Board of Appeal or Referees, and it shall be the duty of the secretary to notify such employe of said decision in writing.

(B) Any person suspended, reduced or removed by the Board of Appeal or Referees after the investigation may appeal from the order to the District Court by serving written notice thereof upon the secretary within ten days after the filing of said order or the receipt by said employe of said order as above provided. Within five days thereafter the secretary shall certify to the clerk of District Court the record of the proceedings, including all documents, testimony and minutes. The case shall then be at issue and shall be placed upon the calendar of the clerk of District Court to be tried before the Court without jury at the next general term thereof to be held in the county where said city is located at the place nearest said city. The question to be determined by the Court shall be:

"Upon the evidence was the order of the Board of Appeal or Referees reasonable?" After trial in the District Court an appeal may be taken from the decision thereof to the Supreme Court by such employe or the Board of Appeal or Referees in the same manner as provided for in other Court cases. (Act Apr. 22, 1933, c. 409, §5.)

Only questions for determination by trial court upon an appeal from findings of board of appeal or referees are: (1) Was the decision of said board based upon legal evidence, and (2) if so, are findings of the board of appeal or referees reasonable? *Hughes v. D.*, 273NW 618. See Dun. Dig. 6591, 8010a.

Upon a hearing of charges of inefficiency, breach of duty, and misconduct in performance of duty preferred against a police officer, it was proper for board of appeal or referees to receive in evidence service record of officer as bearing upon question of his inefficiency, although such record would not be competent as evidence to prove charges of misconduct alleged to have been committed subsequent to passage of act and not included in service record offered as evidence. *Id.*

**1465-6. Board to serve without pay.**—Each member of the Board of Appeal or Referees shall serve without pay, but the Council may allow such compensation as it shall deem commensurate with the services rendered by said Board of Appeal or Referees. The Council shall pay from the Municipality treasury all expenses incurred by said Board of Appeal or Referees in connection with the performance of its duties and shall furnish said Board of Appeal or Referees with all supplies, stationery or equipment it may require. (Act Apr. 22, 1933, c. 409, §6.)

**1465-7. Limitation of act.**—Nothing in this act shall limit the power of any officer to suspend a subordinate for a reasonable period for the purpose of discipline or pending investigation of the charges when he deems such suspension warranted. (Act Apr. 22, 1933, c. 409, §7.)

**1465-8. Application of act.**—This act shall not apply to such cities of the first class operating under Article 4, Section 36, of the Constitution of the State of Minnesota whose Home Rule Charter or Civil Service Ordinances provide for the hearing and determination of charges against employees before a Civil Service Commission or Board established by such Charter or Civil Service Ordinances. Upon repeal of such local Charter provision or Civil Service Ordinances creating such Commission or Board this Act shall become effective also as to such cities. (Apr. 26, 1937, c. 434, §1.)

Sec. 2 of Act Apr. 26, 1937, cited, provides that the Act shall take effect from its passage.

**1478-1. Injured firemen or policemen may be reinstated.**—That in any city of this State now or hereafter having a population of more than 50,000 inhabitants the city council or other governing body in such city is hereby authorized and empowered to reinstate any injured fireman or policeman at any time within a period of five years after the date of an injury received in the course of his duties as such or the date of any sickness or incapacity which sickness or incapacity is traceable solely to his services as such fireman or policeman. (Act Apr. 24, 1931, c. 320, §1.)

**1478-2. Inconsistent acts repealed.**—All laws or provisions or parts thereof inconsistent herewith are hereby repealed. (Act Apr. 24, 1931, c. 320, §2.)

**1479. Contracts for lighting streets.**

In action, brought in behalf of all taxpayers of city of St. Paul, to recover damages from a public service corporation, for alleged unjust discrimination, in that it charged and received for electric current furnished city a rate higher than that charged and received for such current furnished other named patrons, complaint failed to state a cause for it shows that rate paid by city was within lawful rate fixed by city council and alleged that no one of those named as having paid a lower rate was a competitor of city. *Gallender v. N.*, 192M591, 257NW 512. See Dun. Dig. 2996c.

**1484. "Public utilities" defined.**

*Williams v. V.*, 187M161, 244NW558; note under §1229. This act has no application to river terminal property of Stillwater. Op. Atty. Gen. (63b-11), Feb. 2, 1939. Municipal ownership of public utilities in Minnesota. 16MinnLawRev503.

**1485. Acquisition and operation.**

When city is authorized to cut off premises from city water supply for default in payment of charges therefor, it may lawfully enforce payment by use of such means. *Prudential Co. v. C.*, 202M70, 277NW351. See Dun. Dig. 6680.

City was not estopped to recover from owner for water supplied to tenant because of delay in notifying owner of nonpayment or in shutting off water. *Id.* See Dun. Dig. 6682.

City owned electric light utility may purchase appliances, such as electric stoves, and sell them on installments to customers. Op. Atty. Gen., Mar. 26, 1934.

**1486. Limit of bonds and certificates.**

Majority vote of electors is sufficient to authorize issuance of certificates of indebtedness under this section for construction of a municipal light plant. Op. Atty. Gen. (59b-7), May 4, 1938.

**1491-2. Extension of water mains into and furnishing of water to contiguous cities, towns or villages.**

City has authority to extend its water mains beyond its limit, but must obtain consent if other communities are incorporated, and cannot assess benefits against abutting owners outside its own limits unless it is a city of the first class. Op. Atty. Gen. (624d-11), Aug. 2, 1934.

**1491-5. Cities may grant permits.**—Whenever in any city of the first class now or hereafter existing in this state, the franchise of any public service corporation supplying gas, or electric energy, or steam, for lighting, heating, or power purposes has expired, and the home-rule charter of any such city authorizes a limited number of temporary licenses of not more than one year each to use the streets and other public places for the purpose of supplying such service and all of such licenses have been given and have expired, and any such corporation thereafter continues to furnish such service and in doing so uses the streets

and other public property of any such city, the governing body of any such city is hereby authorized and empowered, notwithstanding anything to the contrary in the home-rule charter of such city, by ordinance, to permit such public service corporation to use the streets and other public property located in such city, and to prescribe from time to time, but not more often than once in each calendar year, reasonable rates which any such public service corporation may charge for such service within such city, and to determine the amount which any such public service corporation shall pay the said city for the use and occupancy of its streets or other public property which are located in and under the control of any such city and used by such corporation. Provided, however, that if the home-rule charter of any such city contains provisions fixing a minimum amount that any such public service corporation shall pay the city for the exercise of any franchise or privilege in, over, under, or upon any of the streets or public places in such city, whenever such public service corporation is not specifically relieved of such payment, the sum fixed by the governing body, pursuant to this act, for the use of such property and privilege, shall not be less than the minimum fixed by such charter to be paid in those cases wherein the grantee is not specifically relieved from such payment. (Act Apr. 24, 1935, c. 286, §1.)

**1491-6. Acts validated.**—That in all cases in which, during the 12 months immediately preceding the adoption of this act the governing body of any such city has, subsequent to the expiration of such franchises and licenses aforesaid, by ordinance, fixed rates for such services or any part thereof, and fixed the payment to be made to such city for the use of the streets and other public places in such city, and such ordinance has been accepted by any public service corporation operating in such city, the ordinance so fixing, all proceedings of the governing body relating thereto and the acceptance of said ordinance by any such public service corporation are hereby legalized and made valid and effectual for all purposes. (Act Apr. 24, 1935, c. 286, §2.)

**1491-7. Limitation of act.**—This act shall not be construed as authorizing any such governing body to change any rates for such service, or the amount of payment for the use of the streets and other public property aforesaid, whenever any such rates or payments have been embodied in an agreement now or hereafter existing between any such city and any such public service corporation, which agreement determines the amount of such rates and/or payment for a definite period of time. (Act Apr. 24, 1935, c. 286, §3.)

**1499-1. Directors of trusts to be created.**—That all rights, powers and duties of any city of this state of the first class having over 50,000 inhabitants, concerning all property and estate whatsoever, donated to any such city for the establishment or maintenance of a hospital or hospitals, the administration and management of which is now or shall hereafter become vested in or confided to such city, shall be exercised and discharged by such city through the instrumentality of a Board consisting of seven persons, to be called Directors of Trusts, who shall exercise and discharge all such rights, powers and duties and have control and management of any such hospital resulting from such charity or charities to the extent that the same have been or hereafter may be by grant, statute or otherwise vested in or delegated to such city. (Act Mar. 14, 1931, c. 56, §1.)

**1499-2. Trustees—terms.**—The Mayor of such city shall be ex officio a member of the Board of Directors of Trusts and the other six members shall be residents of such city and appointed by the Judges of the District Court of the State of the District in which such city is located, by concurrent action of a majority of such Judges, for the following terms be-

ginning with date of appointment; two for a term of two years; two for a term of four years and two for a term of six years, and thereafter as such terms expire the vacancies caused thereby shall be filled by appointment for six year terms. Said Judges by like concurrent action shall appoint members to fill out the unexpired term of any member who for any reason ceases to be a member before the expiration of his term.

The Judges of said District Court shall meet and take action upon any of the matters in this Section specified, upon call of the senior Judge of such District or upon the petition of the Mayor or any resident taxpayer of such city. (Act Mar. 14, 1931, c. 56, §2.)

**1499-3. Powers and duties.**—The Directors of Trusts shall have power: to make rules and by-laws for the proper conduct of their business; to appoint and remove from time to time such agents and employes as in their judgment may be required for the proper discharge of their duties, and to determine the duties and compensation of all such agents and employes; to make such contracts and agreements in accordance with the conditions of any such donation as in their judgment may from time to time be required in the administration and management of such property, and in conformity with the provisions of the city charter of such city and existing or future ordinances enacted by the common council relating to the award and conditions of contracts and generally, it shall be the duty of the Directors of Trusts, for and in the name of such city, to do, perform and discharge all and singular whatever acts and duties are or from time to time may become proper or necessary to be done by such city in discharge of its duties in connection with such use or trust, and to file with the City Clerk on or before February 15th of each year a report for the preceding calendar year showing all receipts and disbursements with sources and purposes thereof, together with a statement of assets under their control and property acquired or disposed of during such year, and such other general information as to the management and control of the trust property as in their judgment is proper. (Act Mar. 14, 1931, c. 56, §3.)

**1499-4. City Treasurer to be custodian.**—The Treasurer of such city shall have custody of and be responsible for the safe keeping of all cash, securities, title papers, records and documents appertaining to the property, the administration and management of which devolves upon the Directors of Trusts, and shall furnish such information as to such cash and other property held by him as may be requested by said Directors of Trusts. He shall keep the cash and other property of each trust separate and pay out and deliver the same from time to time upon order of such Board of Directors of Trusts made in accordance with their rules and regulations in carrying out their duties as such Board of Directors of Trusts. (Act Mar. 14, 1931, c. 56, §4.)

**1499-5. Directors to receive no compensation.**—The Directors of Trusts in the discharge of their duties and within the scope of their powers aforesaid shall be considered agents of the city, but no compensation or emolument whatever shall be received by such Director for such service, nor shall any such Director have or ever acquire any personal interest in any contract whatever made by such Directors of Trusts in carrying out their duties or powers as such; nor shall any such Director receive directly or indirectly any compensation for services rendered or material or supplies furnished to any person while an inmate of any institution conducted by such Directors of Trusts. Any such Director violating any of the provisions of this section shall thereby be disqualified from further acting as such Director and the vacancy so caused shall be filled under the provisions of Sec-

tion 2 hereof [§1499-2]. (Act Mar. 14, 1931, c. 56, §5.)

**1499-6. Application.**—This act shall apply to all cities of this state of the first class having over 50,000 inhabitants, including any such city operating under a charter adopted pursuant to Section 36, Article 4 of the State Constitution, except that it shall not apply to any city operating under a charter adopted pursuant to Section 36, Article 4 of the State Constitution providing for a department or Board with authority to exercise and discharge the rights, powers and duties herein provided to be exercised and discharged by the Board of Directors of Trusts, nor to any city which now has erected and/or now maintains any such hospital jointly with any county. (Act Mar. 14, 1931, c. 56, §6.)

**1504. Condemnation of land for harbors, etc.**  
Boundary dispute between claimants of land condemned. 176M512, 223NW767.

**1504-1. Public landings, wharves, docks, etc.**  
For creation of a commission known as "Port Authority" for certain cities over 50,000 population, see Laws 1929, c. 61, ante, §§1372-7½ to 1372-7½j.

**1531-1. Conveyance to university of discontinued water power sites.**—Any city of the first class operating under a home rule charter, and having and owning the fee title to any tract or piece of land with water power rights and facilities running with such land, the public use of which shall have been discontinued, shall in addition to all other powers granted such city, have the power and authority to sell, transfer, quit claim and convey such land and water power rights to the University of Minnesota for a nominal consideration in any case where the city council of such city shall deem such land and power rights of no further public use and such transfer and conveyance to the best interest of the city. Provided, however, that such transfer and conveyance shall require two-thirds vote of all members of the city council. (Jan. 13, 1936, Ex. Ses., c. 6, §1.)

**1537. Condemnation, how conducted, etc.**  
One obtaining market value of property was not entitled to an additional award for expense of removal from the premises. 176M389, 223NW458.

**1538-1. Streets and highways.**  
This section does not repeal or modify the provisions of the charter of the city of St. Paul, providing for condemnation of land for street and highway purposes. 177M146, 225NW86.

**1541-1. Cities may acquire exempt property.**—Each city of the first class now or hereafter having a population of 50,000 inhabitants or more, including each such city operating under a charter adopted pursuant to the provisions of Section 36, Article 4, of the Constitution of the State of Minnesota, is hereby authorized and empowered to acquire by purchase, condemnation, or otherwise any right or interest in land either platted or unplatted within the limits of said city, which interest in land consists of a right or privilege in the owner of said land to offset certain amounts against special assessments levied by the governing body, the city council or the board of park commissioners of such city for park or parkway purposes, or both. (Act Apr. 25, 1931, c. 385, §1.)

**1541-2. Right of eminent domain.**—In the event that the chief governing body, city council or board of park commissioners of such city shall exercise such right by condemnation such body may do so under any laws provided for the condemnation of real property or eminent domain or under any provision of the charter of such city granting to such body the right of condemnation or eminent domain; or, it being for the best interests of such city, such chief governing board, city council, or board of park commissioners shall have the power and authority to acquire said rights by purchase, taking into consideration the present worth of such right to exemption

and the probability or improbability that such exemptions would ever be used as an offset to future assessments for benefits. (Act Apr. 25, 1931, c. 385, §2.)

**1541-3. May issue bonds.**—In order to carry out the purpose of this Act each such city is hereby authorized to issue bonds, or certificates of indebtedness to secure funds for the amount necessary to acquire said right, and the city council or other chief governing body shall levy annually a tax on all the taxable property of the city sufficient to meet the interest and the principal about to mature on said bond. (Act Apr. 25, 1931, c. 385, §3.)

**1552. Designation of land for streets, etc.**

This act became a part of the Minneapolis Home Rule Charter, merely by reference to it. 177M122, 224NW 845.

Section 6552, Mason's Minn. Stat. 1927, which creates a cause of action in favor of a landowner for his expenses incurred in a condemnation proceeding under Chapter 41 of those statutes, does not apply to expenses incurred under the provisions of §1552 et seq. *Barmel v. M.*, 201M 622, 277NW208. See *Dun. Dig.* 3121, 3122.

**1553. Proceedings for acquisition of lands.**—After the adoption of the resolution it shall be the duty of the city engineer to make and present to the council a plat and survey of such proposed improvement, showing the character, course and extent of the same and the property necessary to be taken or interfered with thereby, with the name of the owner of each parcel of such property so far as the engineer can readily ascertain the same, and such statement as may in the opinion of the engineer be proper to explain such plat and survey and the character and extent of the proposed improvement.

When such plat and survey shall be finally adopted by the city council, it shall be filed with the city clerk, and it shall be held to show correctly the character and extent of the improvement actually agreed upon and ordered by the city council.

Said plat shall also show the amount of land taken from each owner, so far as the owners may be known, and the lands contiguous to such improvements.

The city council shall then or afterwards appoint five freeholders of said city, no two of whom shall reside in the same ward, as commissioners, to view the premises and to ascertain and award the amount of damages and compensation to be paid to the owners of property which is to be taken or injured by such improvement, and to assess the amount of such damages and compensation and the expenses of the improvement upon the lands and property to be benefited by such improvement, and in proportion to the benefits to be received by each parcel and without regard to a cash valuation.

Three or more commissioners shall constitute a quorum and be competent to perform any duty required of such commissioners; and they shall be notified of their appointment, and vacancies in their number shall be filled by the city council, and they shall be sworn to the faithful discharge of their duties. They shall give notice by two publications in the official paper of said city that such survey and plat is on file in the office of the city clerk, for the examination of all persons interested, and that they will on a day designated in such notice, which shall be at least ten days after the first publication of such notice, meet at a place designated in said notice on or near the proposed improvement, and view the property proposed to be taken or interfered with for the purposes of such improvements, and ascertain and award therefor compensation and damages, and view the premises to be benefited by such improvement, and assess thereon in proportion to benefits, amount necessary to pay such compensation and damage and the cost of making the improvement, and that they will then and there hear such allegations and proofs as interested persons may offer. Any such commissioners shall meet and view the premises pursuant

to such notice, and may adjourn from time to time, and, after having viewed the premises, may, for the hearing of evidence and preparation of their award and assessment, adjourn or go to any other convenient place in said city, and may have the aid and advice of the city engineer and of any other officer of the city, and adjourn from time to time. After viewing the premises and hearing the evidence offered, such commissioners shall prepare and make a true and impartial appraisal and award of the compensation and damages to be paid to each person whose property is to be taken or injured by the making of such improvement; but if the remainder of the same property, a part of which only is to be taken or damaged by such improvement, shall be benefited by such improvement, then the commissioners, in considering and awarding compensation and damages, shall also consider, estimate and offset the benefits which will accrue to the same owner, in respect to the remainder of the same property, and award him only the excess of the compensation or damages over and above such benefits.

The said commissioners shall then assess the amount of such compensation and damages so awarded upon the land and property benefited by such proposed improvements, together with the expense and cost of making the improvements as fixed by the city council, and in proportion to such benefits, but in no case shall the amount of such assessment exceed the actual benefit to the lot or parcel of land so assessed, deducting therefrom any damages or injuries to the same parcels which are less than such benefits, and assessing only the excess, and prepare and report to the city council their appraisal and award, and if in the judgment of said commissioners the whole amount of such compensation and damages, together with the cost of making such improvement, shall exceed the actual benefits to the specific property subject to assessment, they shall so indicate in their report and shall state the amount of such excess. Said commissioners shall also report to the city council an assessment list containing their assessment of such compensation, damages, and costs, or so much thereof as shall not exceed the actual benefits to the property so assessed, which list shall contain a brief description of each tract or parcel of property assessed, the name or names of the owners thereof, if known, and the amount assessed against each parcel of property and the amount of the excess of such compensation, damages and costs as aforesaid, which they shall return unassessed.

The commissioners may employ clerical assistance, and the cost thereof, as well as the commissioners' compensation, and the expenses of printing the notices required, including, among others, the notice of consideration by the city council, hereinafter referred to, estimated at the same rate per line as the cost of printing the prior notices, shall be added to the other amounts to be assessed and shall be assessed therewith. The city attorney shall represent the city before the commissioners and produce such evidence as the case may require.

The city council, may, however, provide by the resolution appointing such commissioners that a certain specified percentage, not exceeding thirty-three and one-third (33 1/3%) per cent, of the total damages and cost of improvements, shall in any case be payable out of the city's general funds, and in that case the city's share shall be added to the amount of the certificates to be issued and sold under Section 10, and the city council shall from year to year levy a sufficient tax upon the taxable property of the city to pay the same, with interest. In such case the amount provided to be paid out of the general funds shall not be assessed.

Said commissioners shall, upon the completion of their said report, file the same with the city clerk and thereupon it shall be the duty of said city clerk

to give notice to all interested parties by publishing, as soon as possible, in the official paper of said city a notice containing descriptions of the several lots and parcels of land taken for such proposed improvements, the amount awarded for the taking of each such lot or parcel, the names of the owner or owners of the same, descriptions of the several lots or parcels of land upon which benefits have been assessed, the amount assessed against each such lot or parcel and the names of the owner or owners of the same; the names of all owners referred to herein to be obtained from said commissioners, and, so far as may be necessary, from the records in the office of the county treasurer. Said published notice shall also designate and fix a place and time, not earlier than three weeks from date of publication of the same, at which a committee therein designated by the board of park commissioners or of said council will meet to hear and consider, from or on the part of the owner or owners of the several lots or parcels of land taken for such proposed improvement and of the several lots or parcels of land upon which benefits have been assessed, any and all objections to the making of such improvement, to the amount of damages awarded for the taking of or interference with the property involved, to the amount of the assessment for benefits to any property affected by such proceedings, and any and all claims of irregularities in the proceedings of the city council, board of park commissioners, or the commissioners so appointed by either thereof.

Immediately after the publication of such notice and at least two weeks prior to the time designated for the meeting of the committee specifically designated in said notice, the city clerk shall serve upon each of the owners of the several lots or parcels of land taken for such proposed improvement and of the several lots or parcels of land upon which benefits have been assessed, a copy of said published notice, by depositing the same in the postoffice of said city, postage prepaid in an envelope plainly bearing on its front in type no smaller than ten point the words "Notice of Tax Assessments for improvements affecting your property" directed to each of said persons at his last known place of residence, if known, to said city clerk, otherwise as obtained from the records in the office of the county treasurer; provided that the failure of any such owner or owners to receive such notice shall not in any wise operate to invalidate any of the proceedings covered by this act.

Any person whose property is proposed to be taken, interfered with, or assessed for benefits, under any of the provisions of this chapter, and who objects to the making of such improvement, or who deems that there is any irregularity in the proceedings of the city council, or on the part of the commissioners so appointed by it, by reason of which the award of said commissioners ought not to be confirmed, or who is dissatisfied with the amount of damages awarded to him for the taking of or interference with his property, or with the amount of the assessment for benefits to any property affected by such proceedings, shall appear at the hearing or file with said city clerk, designated in such published notice, at any time before said hearing or before the report and recommendation of said committee is filed, as hereinbefore provided, his written objection to the making of such improvement, or his objection to the damages awarded or benefits assessed, or his claim of said irregularities, specifically designating the same, and a description of the property affected by such proceedings.

At the time and place designated by such published notice for said hearing the city clerk shall present to said committee the report of the commissioner so appointed together with all written objections so filed with said city clerk and such committee shall then consider the same and hear said objectors, or their

representatives, in person, and shall adjourn said hearing from time to time as may be necessary.

Within ten days from the conclusion of said hearing or hearings said committee shall file with said city clerk its report and recommendation on the matter so submitted, and upon such filing the city clerk shall give notice that such report and recommendation has been filed and that the same, together with said report of said commissioners, will be considered by said city council at a meeting thereof to be designated in said notice, which notice shall be published in the official newspapers of said city once a week for two consecutive weeks, the last publication thereof being at least two weeks before said meeting of said city council.

Said city council, upon the day fixed for the consideration of said reports and recommendation or at any subsequent meeting to which the same may stand over or be referred, may by resolution annul and abandon said proceedings, or may confirm such awards and assessments or any or either thereof, or annul the same, or send the same back to said commissioners for further consideration; and said commissioners may in such case again meet at a time and place to be designated in a notice which shall be published by said city clerk once in the official newspaper of said city and copies of which shall be similarly mailed by said city clerk to all interested persons, at least two weeks prior to said meeting, and hear any further evidence that may be adduced by interested persons, and may adjourn from time to time, and may correct any mistakes in such award and assessment and alter and revise the same as they may deem just, and again report the same to said city council, who may thereupon confirm or annul the same.

Whenever the city council shall confirm any such award and assessment such confirmation shall make such award and assessment final and conclusive upon all parties interested, except as hereinafter provided, and the city council shall proceed, at the same or at any subsequent meeting, to levy such assessment or such fractional part thereof as the city council may deem necessary to pay the costs of the proceedings and making the improvements therein upon the several parcels of land described in the assessment list reported by the commissioners, in accordance with the assessments so confirmed or in proportion to such assessments as herein provided. The city council may in its discretion delay the levying of such assessments in any proceeding under this act until the completion or substantial completion of the improvements proposed to be made therein, and the actual costs of such improvements and proceeding have been determined, which cost may include interest at 5% per annum on moneys actually advanced by the city, and thereupon the city council shall proceed to levy assessments in such proceeding, aggregating the amount of such costs or such portion of such costs as the city council shall have determined in conformity with the provisions of this act, upon the several parcels of land described in the assessment list reported to the city council by the commissioners in such proceeding, and such assessments so levied shall be in amounts proportionate to and not greater than the several amounts theretofore confirmed upon such parcels of land respectively by the council or by the court upon appeal in such proceeding. The city council shall cause to be made and shall adopt an assessment roll of such assessments, which may be substantially in the following form, or any other form the council may adopt:

The city council doth hereby assess and levy upon and against the several lots and parcels of land below described the respective sums of money set against each lot or parcel. This assessment is made to defray the compensation and damages awarded for the taking of an injury to private property, and



estimated cost of improvement, and in and about the..... as shown on the plat and survey of the same on file in the office of the city clerk of said city. This levy is made conformably to the report and assessment of commissioners duly appointed to make such assessment and in proportion to benefits from such improvements to accrue to the parcels and not exceeding the benefits to the parcels so assessed.

Name of Owner,	Description	Amount
if known	of land Lot Block	Dollars Cents
"Done at a meeting of the council this.....		
day of .....		
A. D. 19 .....		
Attest .....		
City Clerk .....		Pres't of the Council."

('11, c. 185, §2; G. S. '13, §1567; '13, c. 345, §1; '25, c. 417, §1; Apr. 27, 1929, c. 419, §1.)  
171M297, 214NW30; note under §1554.

The amount of net award for compensation and damages incident to an improvement are to be added to the actual costs of doing the construction work, including incidental expense, in order to determine whether the total advancement exceeds the costs of the improvements. 172M454, 216NW222.

Refusal of temporary injunction held proper in view of right of appeal from order of confirmation. Peterson v. C., 172M604, 216NW228.

Although property devoted to railroad use may not be benefited for that purpose. It may be enhanced in market value by a public improvement for which it is assessed notwithstanding it is more valuable for railroad uses than for other purposes. Board of Park Com'rs v. E., 190M534, 253NW761. See Dun. Dig. 6860.

Supreme court will not review correctness of instructions or failure to give them to commissioners appointed by district court to reassess benefits in proceeding by city of Minneapolis for acquisition and improvement of property. Board of Park Com'rs v. E., 190M534, 252NW 451. See Dun. Dig. 3131.

Application of "unit rule" did not interfere with exercise of independent judgment by commissioners. Id. See Dun. Dig. 3097.

Fact that commissioners appointed to reassess benefits on land to be acquired and improved for park purposes arrive at identical figures assessed by a board of commissioners formerly appointed for that purpose is not fatal. Id. See Dun. Dig. 3097.

That phase of proceeding where court appoints commissioners for reappraisal and reassessment is not strictly judicial in character but court is acting for convenience of legislature, but time when appropriate action should be taken to determine whether commissioners have made erroneous awards or assessments is when it makes its report to the court. Board of Park Com'rs v. E., 190M534, 253NW761. See Dun. Dig. 6873.

Determination of commissioners as to property benefited and extent of benefits is final and not reversible by a court unless it appears that it was fraudulent, arbitrary or made upon a demonstrable mistake of fact. Id. See Dun. Dig. 6878.

Action of city in erecting a bridge with approach over a street amounted in fact to a change of grade pro tanto, and city was liable in damages to abutting owner for ensuing injury to his property. Bruer v. C., 201M40, 275 NW368. See Dun. Dig. 6639, 6647.

Where a city erected a bridge which had the effect of changing grade of central part of a street which abutted plaintiff's property and devoted bridge exclusively to street car traffic, street railway company was not liable to plaintiff merely because it contributed to cost of bridge or because city excluded other traffic. Id. See Dun. Dig. 6650.

Just compensation is market value at time of taking contemporaneously paid in money, to be arrived at upon just consideration of all uses for which land is suitable; and highest and most profitable use for which property is adaptable and needed, or likely to be needed, in reasonably near future, is to be considered to extent that prospects of demand for such use affect market value while property is privately held, but that value does not include any element resulting subsequently to or because of taking. Minneapolis-St. Paul Sanitary Dist. v. F., 201 M442, 277NW394. See Dun. Dig. 3054.

The fact that property being acquired by the Government cannot be assessed does not affect the validity of assessments of benefits against other property owners. Op. Atty. Gen., Mar. 17, 1931.

The State has no power to assess land belonging to the United States for benefits arising from local improvements, but land that is in process of being acquired by the Federal Government may be assessed subject to the condition of the title at the time the council is called upon to confirm the assessment. Op. Atty. Gen., Mar. 17, 1931.

**1554. Same—Objections to confirmation—Appeal—Reappraisal—Appeal to Supreme Court.**

Property owner has no right of appeal to district court unless he files objections as required by statute. 171M297, 214NW30.

District court not having acquired jurisdiction of appeal by reason of failure of property owner to file objections as required by statute, it had no authority to consider question whether city acquired jurisdiction in condemnation proceeding. 171M300, 214NW32.

The commissioners need not make a specific award to each person interested in the property, since the court, retaining jurisdiction, may by proper notice and procedure have a determination made of the portion of the whole amount of damages so awarded to which each of the owners of individual interests is entitled. 175M300, 221NW14.

**1555. Same—Awards—How paid—Assessments.**

171M297, 214NW30; note under §1554.

A city may, under certain circumstances, be called upon to pay more than one-third of the cost of a park. Op. Atty. Gen., Mar. 17, 1931.

**1556. Right to abandon—Effect of award—Payment.**

175M300, 221NW14.

**1557. Spreading of assessment installments.—**The city clerk shall transmit a certified copy of such assessment roll to the county auditor of the county in which the land lies and the county auditor shall include 5 per cent of the principal amount of such assessment with and as part of the taxes upon each parcel for each year for twenty years, together with annual interest at the rate ascertained, as hereinafter provided. The city council and board of park commissioners may, however, by such concurrent resolution, determine that the amount of such assessment shall be collected in five or ten equal annual installments instead of twenty, and in such case the county auditor shall include a corresponding per cent of the principal amount of such assessment with and as part of the taxes of each year, together with such annual interest until the whole is collected. The county auditor shall include in the taxes for each year one of such installments, together with one year's interest upon such installment and all subsequent installments at the same rate, each of which, together with such interest, shall be collected with the annual taxes upon such land, together with like penalties and interest in case of default, all of which shall be collected with and enforced as the annual taxes and credited to the proper city fund. Any parcel assessed may be discharged from the assessment at any time after the receipt of the assessment by the county auditor by paying all installments that have gone into the hands of the county treasurer as aforesaid, with accrued interest, penalties and costs, as above provided, and by paying all subsequent installments; or any parcel assessed may be discharged from the assessment by presenting certificates or bonds sold against such assessments as herein provided sufficient in amount to cover all installments due on such parcel and accrued interest, penalties and costs, and all installments yet to accrue, by surrendering such certificates or bonds to the county treasurer for cancellation or having endorsed thereon such installments, interest, penalties and costs. Said assessment shall be a lien on the land from the time of the making thereof as against the owner and every person in any way interested in the land. The owner of the land and any person interested therein may defend against such assessment at the time of application for judgment in the regular proceedings for the enforcement of delinquent taxes, but such assessment shall not be deemed invalid because of any irregularity, provided the notices have been published substantially as required, and no defense shall be allowed except upon the ground that the cost of the improvement is substantially less than the amount of the assessment, and then only to the extent of the difference between the assessment and the actual cost. Assessments made under this act shall be called special street and parkway assessments of the

city of . . . . . and numbered consecutively. Whenever an assessment is certified as aforesaid by the city clerk to the county auditor, a duplicate thereof shall be sent to the city comptroller, and all such assessments shall be sufficiently identified by the name and number as aforesaid. ('11, c. 185, §5; G. S. '13, §1570; '13, c. 345, §4; '17, c. 103, §3; Apr. 27, 1929, c. 419, §2.)

**1558. Same—Method of Improvements—Assessments.**

171M297, 214NW30; note under §1554.

172M454, 216NW222; note under §1553.

The six-year statute of limitations applies to an action to recover damages for an injury to real property caused by a municipality in grading a street. 172M565, 225NW816.

Where the injury is continuing, the owner may recover such damages as were caused within six years prior to suit. 177M565, 225NW816.

**1563. Same—Bonds for improvements.**

171M297, 214NW30; note under §1554.

**1566-9. Same—Regulatory ordinances.**

Act Apr. 10, 1933, c. 208, provides that the city council or park commissioners of any city of the first class may appoint five commissioners to determine the damage to property specially assessed for a parkway or boulevard resulting from abandonment of the improvement. On confirmation of the report of the commissioners the city treasurer is required to refund to the owners assessed the amount of the award. The limit of expenditure under the act is fixed at \$12,000. This limitation shows that the act is a piece of legislative jobbery, and is special legislation of the most vicious kind. The act is not entitled to a place in any statute compilation.

**1569. Residence districts—Council may designate.**

Aesthetics in zoning. 14MinnLawRev109.

**1580-1. Compromise and settlement of delinquent special assessments.**—That the governing body of any city of the first class that has special assessments for local improvements which are delinquent for the year 1934 and prior years and aggregate a total sum of not more than \$1,500,000, is hereby authorized and empowered to direct the city treasurer of such city to accept a reduction, settlement and payment of such delinquent special assessments upon the terms provided for in this act. (July 15, 1937, Sp. Ses., c. 53, §1.)

**1580-2. Same; resolution; amount of discount.**—That immediately after this act takes effect, said governing body may adopt a resolution authorizing and directing the city treasurer of such city to accept payment in full of such delinquent assessments upon the following basis:

(a) 60% of the amount of each of such assessments for the year 1930, and prior years.

(b) 80% of the amount of each of such assessments for the years 1931 to 1934, inclusive. (July 15, 1937, Sp. Ses., c. 53, §2.)

**1580-3. Same; time of payment; interest thereafter.**—That payment of any delinquent special assessment as provided for in this act be made on or before December 31, 1937, without penalty or interest, but that thereafter and beginning with December 31, 1937, there shall be added to any such payment, interest at the rate of 20% per annum from December 31, 1937, to the date of payment; provided that no payment of any delinquent special assessment shall be accepted by such city treasurer on and after December 31, 1938, and provided further that payment of any delinquent special assessment shall be accompanied with payment of all current special assessments due and payable to such city. (July 15, 1937, Sp. Ses., c. 53, §3.)

**1580-4. Same; computation of discount.**—That in computing the amount of an assessment reduced, settled and paid under the terms of this act, such amount shall be determined as of the date when the assessment was certified to and received by the county auditor of the county wherein such city of the first class is located; and there shall be excluded from the computation of any such assessment all penalties and interest that may accrue against any such assessment

after the date of its certification to and reception by said county auditor, except as provided in Section 3 of this act. (July 15, 1937, Sp. Ses., c. 53, §4.)

**1580-5. Same; receipt; certification to county auditor.**—That whenever any person shall make payment to said city treasurer of any delinquent special assessment, in accordance with the terms of this act, such treasurer shall accept such payment and issue his receipt or certificate to the person making such payment, and shall certify that such assessment has been reduced, settled and paid of record in the office of said treasurer; and in addition thereto, such treasurer shall forthwith certify to the county auditor of the county wherein such city is located the fact of such payment, together with a description of the real estate against which such assessment was levied. Immediately upon receipt of such certification, the county auditor shall make all necessary and proper entries upon his official records, evidencing the payment of such assessment, in accordance with the certification made by said city treasurer, and under the terms of this act. (July 15, 1937, Sp. Ses., c. 53, §5.)

**1580-6. Same; separability.**—That the terms and provisions of this act are hereby declared to be separable, and that if any part or provision of this act shall be declared unconstitutional by any court of competent jurisdiction, such judicial declaration shall not affect or invalidate any other part or provision of this act. (July 15, 1937, Sp. Ses., c. 53, §6.)

**1580-7. Same; power additional to charter powers.**—That the powers granted in and by this act are in addition to all existing powers of any such city, and may be exercised by such city, anything in any charter thereof to the contrary notwithstanding (July 15, 1937, Sp. Ses., c. 53, §7.)

**1580-8. Same; distribution of money collected.**—That payments of delinquent special assessments when and as made under this act, shall be for the benefit of the several funds of any such city in the following proportion:

(a) Payments on assessments covering water mains, gas mains or similar improvements made in connection with any utility operated or owned by any such city shall be immediately credited and paid over to the public utility fund in the whole amount received in settlement and payment of assessments described in subdivision (a) of this section.

(b) Except as provided in subdivision (a) of this section, all other payments of delinquent special assessments, as provided in this act, shall be immediately credited and paid over to the sinking fund, or other fund of any such city heretofore or hereafter established by such city for the purchase, or payment when due, of any bonds or any other funded debt of such city. (July 15, 1937, Sp. Ses., c. 53, §8.)

**1590-1. Expenditures for exhibition, etc.**

**Correction.**—The second paragraph of the note under this section in Mason's Minn. St. 1927 should appear under §1570.

**1593. Auditoriums—definitions.**

Laws 1927, c. 131 [§§1938-3 to 1938-13], does not repeal Laws 1923, c. 21 [§§1593 to 1600], as amended, and Minneapolis does not come within the operation of Laws 1927, c. 131. 174M509, 219NW872.

**1596. Same—Councils to have charge and control.**

City council of St. Paul may let a contract for the construction or alteration of an auditorium, notwithstanding adverse report of persons mentioned in St. Paul City Charter, section 312(a). Op. Atty. Gen., May 6, 1931.

**1598. Same—Bonds in excess of limitations.**

This section and not §§1938-3 to 1938-13 governs bonded indebtedness in Minneapolis. 174M509, 219NW872.

**1600-½. Certain cities of the first class may appropriate money to pay for pipe organ.**—Any city of the first class that has heretofore installed a pipe organ in its municipal auditorium, and has failed or refused to pay the full amount of the claim for

said organ is hereby authorized to appropriate not to exceed \$40,000 as a final payment therefor. This appropriation to be made from any moneys that may be available. (Act. Apr. 21, 1933, c. 384.)

**1600-1. Stone quarries and docks—Bond issue for Referendum.**

This act pledges the credit of the city to the payment of the bonds. 172M374, 215NW511.

The statute is not invalid because the project authorized involves the opening of a street. Id.

**1600-4. Same—Use of proceeds of sale of bonds—Quarry and dock fund.**

The statute does not require the city to remove and distribute rock by its own equipment and by labor directly hired, but it may do such acts under contract. 172M374, 215NW511.

**1607-1 to 1607-7. [Repealed.]**

Repealed by Act Apr. 19, 1933, c. 341, §19, post, §1607-27.

**1607-8. Sanitary district authorized.**—Whenever two or more contiguous cities of the first class shall directly or indirectly discharge sewage and/or industrial wastes into a common natural water course, and do, or may, so discharge sewage and/or industrial wastes into such water course as to endanger public health and/or to create a nuisance, such cities shall be organized and incorporated into a Sanitary District. (Act Apr. 19, 1933, c. 341, §1.)

Officers and servants of Minneapolis-St. Paul Sanitary District are not state officers or employees within act creating State Employees' Retirement Association. State v. King, 193M405, 258NW583.

**1607-9. Sanitary district to be organized.**—Immediately upon the passage of this Act and whenever any area in the future comes within the meaning of this Act, the State Board of Health shall proceed to investigate each and every area comprised of two or more contiguous cities of the first class coming within the meaning of Section 1 hereof, for the purpose of determining whether the discharge of sewage and industrial wastes into a common natural water course from said cities is likely to endanger or does endanger the public health and is likely to cause or does cause a public nuisance and that the removal and/or abatement thereof will be a benefit to such area. Should it be determined by the State Board of Health that the discharge of sewage or industrial wastes from that particular area does or is likely to endanger the public health and/or does or is likely to cause a public nuisance, and that its removal and/or abatement will be a benefit to such area, the State Board of Health shall so find and shall by written order declare said cities to be a single Sanitary District. The State Board of Health shall forthwith serve a copy of said findings and order in the manner provided by statute for the service of summons in civil action upon the Mayor of each of said cities. Such notice shall set forth all the facts and conditions causing the creation of such Sanitary District and the reasons why each particular municipality is included within the proposed district. The original findings and order of said State Board of Health shall be filed with the Secretary of State. A copy of said findings and order together with a notice specifying the time and place of a public hearing by the State Board of Health on its action shall be published by the State Board of Health in a legal newspaper in each of the cities of the first class once each week for two successive weeks. Such public hearing shall be held not earlier than 30 days after final publication of said notice and at a point convenient to the persons within the proposed District. Such hearing may be adjourned from time to time. At such hearing each city of the first class may appear and offer testimony and arguments either for or against the creation of the District. Likewise any citizen or taxpayer of any such city may appear and be heard in the matter. To carry out the purpose of this Act the State Board of Health shall have the

power to subpoena witnesses, to administer oaths, and to compel the production of books, papers, records, and other evidence. Witnesses shall receive the same fees and mileage as in civil actions. Disobedience of any subpoena in such proceedings, or contumacy of a witness, upon application of said Board, may be punished by the District Court in the same manner as if the proceedings were pending in such court. A complete record of each hearing shall be made. The Board may appoint any one or more of its officers, members or employes to hold any hearing herein provided for, with like power and authority as is herein vested in the Board with respect to the holding and conduct of such hearing and to the summoning of witnesses and production of evidence thereat, in which case the record of the hearing shall be reported to the Board, and the Board may take action thereon with like effect as if the hearing had been held before the Board. The Board may employ legal counsel and such other assistance as may be necessary for the purpose of making the investigations herein provided for and otherwise discharging the duties herein imposed upon the Board.

If after hearing and consideration the State Board of Health shall determine that the public health so requires, and the property in such area will be benefited by the elimination of such conditions, it shall so find and shall confirm its order creating said district. The State Board of Health shall file forthwith a copy of such confirming order with the governing body of each city of the first class and serve a copy of said order upon every person who appeared at said hearing, and shall file a copy of said order with the clerk of the district court of the county in which each city of the first class is located.

A copy of such order together with a notice addressed to all citizens, taxpayers, and each city and all other interested parties, stating that each city or person aggrieved by said order may appeal from such order in the manner provided in Section 3 hereof, shall be published in the same manner as is provided for the publication of the order creating such Sanitary District.

If after hearing and consideration the State Board of Health shall determine that the removal or abatement of the condition created by such two or more contiguous cities of the first class discharging sewage and industrial wastes into a common natural water course will not benefit such area it shall so find and shall by order annul and cancel its former order creating said district. (Act Apr. 19, 1933, c. 341, §2.)

**1607-10. Appeals to District Court.**—Within 30 days after the final publication of said order and notice as hereinbefore provided, each city or any citizen or taxpayer may appeal to the district court wherein the city or property of such citizen or taxpayer is located for exclusion of such city from such Sanitary District. The district court thus appealed to shall secure a judge from a judicial district not within or contiguous to such established Sanitary District to hear and determine said appeal. Said cause may be brought on for hearing by the city, citizen or taxpayer so appealing or the State Board of Health and said appeal shall be tried as other civil causes by the court without a jury. If the court finds that all the requirements of law in establishing said district have been complied with, and that the city or the property of such citizen or taxpayer appealing to said court be benefited by the elimination and/or abatement of said health menace and nuisance, it shall make its findings according to the evidence introduced before it, authorizing and directing the inclusion or exclusion of such city within the established Sanitary District, and the clerk of the district court where said cause is tried is directed to enter judgment in accordance with said findings. Said judgment shall be final and conclusive upon all the parties to such proceedings,

except an appeal may be taken to the Supreme Court, as in other civil actions, but any appeal therefrom shall be taken within 30 days from entry of said judgment. In any court action the State Board of Health shall be represented by the counsel employed by the Board, as hereinbefore provided, and the Supreme Court shall, upon application of such counsel, advance the order on the calendar. (Act Apr. 19, 1933, c. 341, §3.)

**1607-11. Board of trustees to govern district.**—The District shall be governed by a Board of Trustees who shall be appointed or selected as follows: Within 60 days after the filing of the order of the State Board of Health confirming the order creating said sanitary district, with the clerk of the District Court of the county in which each city of the first class is located, should there be no appeal by any municipality, citizen or taxpayer, or if there shall be such appeal, within 40 days after the order shall have been handed down by the District Court or by the Supreme Court affirming the establishment of a Sanitary District by the State Board of Health, the city councils, or other governing bodies of the cities within said sanitary district shall each elect one of its own members as trustees to said board, and also one trustee from the citizenry of each city or county wherein such cities of the first class are located; provided that no such appointee from said citizenry shall hold office under the state or any of its political subdivisions except that of notary public. The Mayor of each city or such other member of the governing body as he may name shall also be a trustee during his term of office as Mayor. The Governor shall also appoint one member to such board from the state at large. No person residing in any county partly or wholly within said sanitary district or in any county adjacent to such county shall be eligible to appointment by the Governor.

The city clerk of each such city shall immediately, upon the election of the two trustees by the city council of his city, file with the Secretary of State a certified copy or copies of the resolution or resolutions of the city council of his city electing the said trustees. At the same time, he shall also file with the Secretary of State the full name and address of the mayor of such city, or, in the event the mayor of such city has appointed some member of the governing body in his place, the city clerk shall immediately file with the said Secretary of State a certified copy of the order of said mayor appointing said trustee. Thereafter, the city clerk shall immediately transmit to the State Board of Health the names and addresses of the trustees elected by his city. Immediately upon receiving notification from the cities of the first class comprising the said District of the names and addresses of the persons selected by such cities as trustees, the Secretary of the State Board of Health shall call a meeting of the Trustees so selected, and shall give written notice by mail to each trustee so selected, at least 5 days before said meeting.

If the city council, or mayor, of any of said cities of the first class shall within the time specified herein fail to select, and cause to be certified, any of the trustees to be chosen as above provided, the Governor shall thereupon select and appoint such trustees as have not been so designated. Any trustee so appointed by the Governor shall be a citizen of the city whose mayor or council has so failed to act or the county wherein such city is located. (Act Apr. 19, 1933, c. 341, §4.)

Election of two trustees, to serve on board of trustees of sanitary district, by city council of city of St. Paul, is governed by this act. State v. May, 190M336, 251NW529. See Dun. Dig. 4149.

**1607-12. Election of first board.**—The first board of trustees so selected shall serve as follows: The member elected by each city council who shall not

hold public office other than that of notary public, for a term of four years, the member elected by each city council from its members, for a term of two years, and the member appointed by the Governor, for a term of four years. The mayor or the person appointed by the mayor shall serve for the term of office of the mayor, except that the mayor may, in the event said mayor shall appoint some member of the governing body to serve upon the board, terminate that person's membership as trustee at his will. Each of said periods of time is to be computed from the first Tuesday in July of the year in which the appointments are made, and each of said terms is to end on the first Monday in July. Thereafter the terms of all trustees shall begin on a first Monday of July and shall be for four years except as herein otherwise provided. Each trustee shall serve until his successor is duly appointed and qualified. The term of a trustee shall terminate when for any reason he ceases to hold the city office to which he was elected. A vacancy in the office of trustee occurring from any cause shall be filled for the unexpired term as herein provided; a successor to a trustee, whether to fill a vacancy or in succession to a trustee whose term has expired, shall be appointed in the same manner as is provided for an original appointment.

Each appointee before entering upon the duties of his office shall take and subscribe the oath of office prescribed by Section 8, Article 5 of the Constitution. Such oath duly certified by the official administering the same shall, in the case of first Board of Trustees appointed, be filed with the Secretary of State. After the Sanitary District has been organized the oaths of office of trustees shall be filed with the Secretary of said Sanitary District.

The removal of any trustee from the county in which he resided at the time of his selection shall operate as a resignation of his office. Any trustee may be removed from office by the Governor for misfeasance, malfeasance or nonfeasance in the manner provided for by the laws of the state for removal of state officers. No trustee or person holding appointment under such board shall be interested directly or indirectly in any contract entered into under the provisions of this act. Each trustee shall be reimbursed the actual and necessary expense incurred by him in the performance of his duty. No trustee shall receive compensation for his services, except that the trustee selected by the Governor shall receive the sum of \$1,000.00 per year and each trustee selected by the councils or other governing bodies of said cities of the first class and not holding public office other than that of notary public shall receive the sum of \$10.00 per diem or part thereof spent in attending meetings of the board, but such trustee shall not receive more than the sum of \$600.00 in any one year. (Act Apr. 19, 1933, c. 341, §5.)

**1607-13. Shall adopt official name.**—Immediately after the trustees shall organize, they shall adopt an official name for said Sanitary District. The names of the cities of the first class comprising said district shall be a part of the name of said district. Such sanitary district from the time said official name is adopted shall constitute a body corporate, and may sue and be sued, enter into contracts, adopt a common seal, and acquire and hold real and personal property for its corporate purposes. Said sanitary district shall not be subject to the provisions of Laws of 1925, Chapter 426, or Acts amendatory thereof or supplemental thereto. (Act Apr. 19, 1933, c. 341, §6.)

**1607-14. Quorums—meetings—officers and employees.**—Four-sevenths of the members of the board of trustees shall constitute a quorum for the transaction of business and an affirmative vote of four-sevenths of the entire membership of the board shall be required for the passage of any measure, except

as otherwise provided herein. As soon as the trustees first appointed enter upon the duties of their office, they shall organize by electing one of their members chairman, who shall hold office at the pleasure of the trustees. The trustees shall have power to appoint a secretary, a chief engineer, consulting engineers and other consultants, attorneys, and such other officers, agents and employes as they may see fit; provided, however, that whenever the board of trustees performs any work within the limits of a city of the first class or establishes a minimum wage for skilled and/or unskilled labor in the specifications of any contract for work within a city of the first class, the rate of pay to such skilled and unskilled labor shall be the prevailing rate of wage for such labor in such city. The State Treasurer shall be Treasurer of such District. The officers, agents and employes shall perform such duties and receive such compensation as the Board of Trustees may determine, and shall be removable at the pleasure of the Board. (Act Apr. 19, 1933, c. 341, §7.)

Employees of Minneapolis-St. Paul Sanitary District are state employes. Op. Atty. Gen., Feb. 5, 1934.

**1607-15. Board of trustees to adopt rules.**—The Board of Trustees may from time to time make, adopt, and enforce such rules, regulations and ordinances as it may find expedient or necessary for carrying into effect the purposes of this Act, and fix penalties for violation thereof, not exceeding for each offense 90 days imprisonment in jail or workhouse, or a fine not exceeding one hundred dollars, with imprisonment not exceeding 90 days if the fine be not paid. Prosecution may be in any municipal court sitting within the District. Every sheriff, constable, policeman and other peace officer shall see that all such rules, regulations and ordinances are obeyed, and shall arrest and prosecute offenders. All fines collected shall be paid into the treasury of the city or county from which the arresting officer draws his salary; and all persons committed shall be received into any penal institution within the District at the expense of the District Courts and all persons shall take notice of such rules, regulations and ordinances without pleading or proof of the same. The Board of Trustees shall also have power to adopt orders, resolutions, rules and regulations for the proper management and conduct of the business of said sanitary district for carrying into effect the objects for which such sanitary district is formed. All sessions or meetings of the trustees shall be public and all records shall be public records. The Board of Trustees shall prepare annually a comprehensive report of its official and financial transactions and shall mail a copy of such statement to the Governor of the State, the State Board of Health, and the governing body of each city of the first class included within such sanitary district. (Act Apr. 19, 1933, c. 341, §8.)

**1607-16. Powers of sanitary district.**—The sanitary district, in addition to the other powers vested in it, is empowered:

(a) To regulate and control the discharge of so-called factory or industrial wastes into the jointly used sewers or works of said sanitary district.

(b) To enter into contracts with the industry or industries producing wastes for the purpose of determining the amount of treatment that such industry or industries shall give the wastes at the point of origin, and to enter into contracts with such industry or industries providing for charge to be made annually or otherwise for the treatment which may be given such wastes at the works of the sanitary district.

(c) To require any occupant of any industrial premises inside or outside of the boundaries of any established municipality within the area of said sanitary district engaged in discharging factory or industrial wastes directly or indirectly into any river, canal, ditch or other waterway within the boundaries

of said sanitary district to discontinue such discharge or construct new sewage disposal plants or to so change or rebuild any outlet, drain or sewer as to discharge said factory or industrial waste into sewers of such municipality or into such intercepting sewers as may be established by said sanitary district under such regulations as said sanitary district may determine.

(d) To make, promulgate and enforce such reasonable rules and regulations for the supervision, protection, management and use of any system of jointly used intercepting sewers and treatment and disposal works as it may deem expedient, and such regulations shall prescribe the manner in which connections to the jointly used intercepting sewers shall be made, and may prohibit discharge into said sewers of any liquid, or solid waste deemed detrimental to the sewerage system or treatment and disposal works of said sanitary district.

(e) The Board of Trustees and the governing body of any municipality or territory adjacent to the sanitary district may by agreement provide for the treatment and disposal of the sewage of such municipality or territory at the sewage treatment and disposal works of said district; provided, however, that in the event said Board of Trustees has undertaken or shall undertake, by contract or otherwise, to convey, treat and dispose of the sewage of territory or municipality not included within the boundaries of such district, such territory or municipality shall pay the entire cost of any sewage collection, treatment and disposal works used exclusively by it and of such additional capacity of joint intercepting sewers and treatment and disposal works as may be necessary for, and the cost of operation, maintenance and repair incurred in the conveying, pumping, treatment and disposal of sewage from, such territory not included within the boundaries of such district, such additional cost to be determined by the Board of Trustees. Like agreements may be made by the Board of Trustees with the United States Government, the State of Minnesota and with person, firms, institutions, or corporations having plants or industries located adjacent to said sanitary district. The reasonableness of any rule and the factual determinations of the Board of Trustees may be reviewed by the district court on application of any municipality or person or corporation aggrieved in the district. (Act Apr. 19, 1933, c. 341, §9.)

Metropolitan drainage commission may not buy public liability insurance but may buy workmen's compensation insurance. Op. Atty. Gen., May 24, 1933.

**1607-17. Objects and purposes.**—The general purpose and object of any sanitary district organized under this Act shall be to promote the public health and welfare by providing an adequate and efficient system and means of collecting, conveying, pumping, treatment and disposal of all domestic sewage, commercial and industrial wastes and their products within its own territory, so that the pollution resulting from the discharge thereof into any water course within the sanitary district shall be so reduced that such river, stream or water course shall cease to be, and shall not become a nuisance, or offensive, or injurious to the health and well-being of the people of the State. To accomplish such purpose and end, the Board of Trustees of any sanitary district organized under this Act shall have power within or without the territorial boundaries of the district to construct, operate, maintain and reconstruct a sewage disposal system or systems and to obtain sites for, to lay out, establish, construct, operate and maintain, and may provide for the laying out, establishing, constructing, operating and maintaining of channels, drains, ditches, intercepting sewers, sewage treatment and disposal plants and works, pumping stations and other works necessary thereto and outlets for carrying off, treating and disposing of the drainage and

sewage of such district; provided, that no site within or without the territorial limits of any municipality included in such sanitary district shall be acquired or used for any sewage treatment or sludge handling or disposal works or that any such treatment or sludge handling or disposal works be located, maintained or operated upon such site except with the approval and consent of five-sevenths of the entire Board of Trustees expressed by resolutions to such effect.

For the purpose of this Act, an intercepting sewer and appurtenances thereto shall be considered as only such sewer, and appurtenances thereto that are not now or will not be required by any municipality within the sanitary district, if said municipalities continued to dispose of their sewage and industrial waste by discharging said sewage and industrial waste without treatment into a common natural water course. (Act Apr. 19, 1933, c. 341, §10.)

Sewage disposal plant is to be approved by state board of health. Op. Atty. Gen. (225m), June 1, 1936.

**1607-18. Board of trustees to adopt comprehensive plan.**—Before undertaking the construction or operation of any system of sewage disposal for the district including intercepting sewers, pumping stations, treatment works, and appurtenances, it shall be the duty of the Board of Trustees of such sanitary district to adopt a comprehensive plan and program of procedure and work, for the collection, treatment, and disposal of sewage and waste materials of said sanitary district, and the same may be modified from time to time, with necessary maps, plats, surveys, and estimates of probable cost of such system for the entire district based upon the probable needs and requirements of the district and of any adjacent territory likely to be annexed to such district, down to such time in the future as to the trustees shall seem most efficient and economical as well as proper and reasonable.

Notwithstanding any other provisions of this Act to the contrary or otherwise, any city included within any such sanitary district shall, after the Board of Trustees has adopted a comprehensive plan and program of procedure and work for the collection, treatment, and disposal of sewage and waste materials for the said Sanitary District, at its own cost and expense, and in accordance with such the comprehensive plan and program of procedure and work originally adopted or subsequently modified by the Board of Trustees, make provision for and construct and erect and maintain any and all drains, sewers, intercepting sewers and other structures necessary for and constituting, or to constitute, any portion or portions of such sewage disposal system situated within or without the corporate limits of such city and used solely by such city for the conveying of its sewage and other industrial waste and the sewage and industrial waste of territory served by such city; provided, that if any such city shall fail within six months after demand therefor by the Board to begin construction by said city of such portions of the sewage disposal system situated within the corporate limits of the city and to be used solely for the conveying of such sewage and industrial waste, or shall fail to complete such construction within a reasonable time thereafter, then the Board shall have full power and authority to undertake and complete such part of the sewage disposal system as provided by Sections 10 to 13 herein and, to provide the funds for such construction shall, subject to the provisions of Section 17 hereof, have authority to levy upon the taxable property within said city such annual taxes as may be required, said levy to be certified to the county auditor, as provided in Section 17 hereof.

No taxes shall be levied upon the taxable property in such city, and no bonds or indebtedness of such city shall be sold or incurred in any manner whatever by or on behalf of any such sanitary district to defray

the cost of like drains, sewers, intercepting sewers or structures constructed within or without the limits of, and used or to be used, solely by any other city or municipality or district within such sanitary district, and nothing contained in the provisions of any local charter or general or special law shall limit or curtail the power of any city to issue bonds to meet the cost of the construction authorized by this section, and the amount of bonds issued and sold for such purposes shall not be included in computing the net indebtedness of such city under the provisions of any local charter or general law (Act Apr. 19, 1933, c. 341, §11.)

**1607-19. Cities may construct own sewers, etc.**—When any city located within said sanitary district as established shall determine to erect and construct at its own cost and expense those drains, sewers, intercepting sewers, pumping stations, and other structures to be used exclusively by such city and territory served by such city, as set out in Section 11, said intention shall be expressed by a resolution adopted by a majority vote of the members elect of its governing body, and thereafter such municipality may, notwithstanding any provision to the contrary included within the charter of such city, or any general law of the State of Minnesota, issue and sell its bonds for the cost thereof, subject to the limitations of Section 17, without a vote upon said question by the electors of such city. All bonds issued under the provisions of this section shall be payable serially in annual installments as determined by the governing body of the city, the first thereof to become due and payable in not more than three years from the date of such obligations, and the last installment thereof to become due and payable not more than thirty years from their date. No annual maturing installment of principal of any issue of such obligations shall be more than two and one-half times the amount of the smallest installment thereof maturing in any one year. (Act Apr. 19, 1933, c. 341, §12.)

**1607-20. May enter land for purposes of surveys and construction.**—Such sanitary district may, through its officers, agents and employes, enter upon land within or without the territorial limits of such district for the purpose of making surveys and examinations whenever the Board of Trustees shall deem it necessary or expedient in connection with the performance of its duties or functions. Such sanitary district may likewise enter upon any state, county, town or municipal park, street, road, alley or any public highway within or without its territorial limits, whenever it shall be reasonably necessary or expedient for the purpose of constructing, maintaining or operating its sewage disposal system; and it may lay out and construct in any such park, street, road, alley or public highway, main and intercepting sewers and necessary appurtenances and connections thereto and connect thereto any sewer, drain, or outlet now in place or thereafter constructed by any municipality within the territorial limits of such sanitary district. Before proceeding with any such work, it shall notify in writing the public body or authority having charge or control of such park, street, road, alley, public highway, sewer, drain or outlet, and no permit or payment of fee or charge shall be required. Such sanitary district shall proceed with all due diligence with its work, and after completing the same it shall restore at its own expense such park, street, road, alley or public highway, and the public structures which may occupy such park, street, road, alley, or public highway, such as water mains, water connections and appurtenances, sewers, manholes, catchbasins and sewer connections, ornamental light poles and cables, and the property of municipal or public utility companies as gas mains and appurtenances, electric light and power cables or ducts, telephone cables or ducts, to as good condition

as is reasonably possible as it or they existed before the commencement of said work.

Such sanitary district shall have power to lay out, construct, operate and maintain, without compensation to the State or to any of its subdivisions, any part of said system of channels, drains, ditches, sewers and outlets, or any other of its works over, upon or under any part of any river or stream flowing through or adjacent to any part of its territorial limits over, upon or under any land covered by any navigable waters of the State, which is owned or held by the State or any of its subdivisions, and over, upon and under canals and waterways, and under right-of-ways of railroads, interurban and street railways and other public utility companies. All persons, firms, trustees, and corporations having buildings, structures, works, conduits, mains, pipes, tracks, poles, wires, cables or other physical obstructions in, over or under the public lands, streets, roads, alleys or highways of said cities, towns or municipalities either within or without the territorial limits of such sanitary districts which interfere with the construction of such system of sewers, channels, drains, ditches, outlets and sewage treatment and disposal works, pumping stations and other works, when in process of construction or repair, shall upon reasonable notice given to them by the sanitary district, promptly shift, adjust, accommodate or remove the same at the cost and expense of said sanitary district, so as to comply reasonably with the needs and requirements of such sanitary district.

All contractor's bonds covering work to be done within the limits of any municipality within the district shall contain provisions indemnifying such city for loss, damage or injury to streets and public works or property resulting from such construction work, and saving the city or municipality harmless therefrom, and the Board of Trustees shall defend and save harmless such city in any action brought against said municipality for loss, injury or damage arising out of such construction. (Act Apr. 19, 1933, c. 341, §13.)

**1607-21. May acquire lands, etc.**—The trustees may from time to time acquire in the name of the district by purchase, deed, grant, lease, devise or condemnation every such right, title and easement in land within and/or without its corporate limits as it may deem expedient, at a cost per acre not to exceed twice the average yearly true and full value of such land as designated upon the tax rolls for a five year period preceding the year 1935 except by condemnation in a court of competent jurisdiction, including among others the right and easement to construct and maintain underground conduits with or without disturbance of the surface. It may sell and convey land found unnecessary for its purpose, provided, however, that no sale of land be made by said board of trustees without first obtaining an order from the District Court of the district in which such land is situated authorizing said sale, which order shall be filed with the secretary of said district, and the Clerk of said District Court.

Land, or any right, interest, estate or easement therein, may be acquired by the exercise of the right of eminent domain in the manner prescribed by Mason's Minnesota Statutes of 1927 as amended, Sections 1552 to 1556 inclusive, but without any assessment of benefits. All awards not set aside as therein provided shall be a charge upon the district for which its credit shall be pledged. The duties specified to be performed in said sections by the city council, the city clerk and the city engineer, respectively, shall be performed by the trustees, the secretary and the chief engineer of the district. Appeals to the district court shall be taken to the district court of the county in which the land lies. The notices required to be published shall be published in every case in a newspaper of general circula-

tion published in the county or counties wherein the land lies. All reports and papers required by said sections to be filed with the city clerk shall be filed with the secretary of the district. Unless a lesser estate be designated, an absolute estate in fee simple, unqualified in any way whatsoever, shall vest in the district in every case of taking by the exercise of the power of eminent domain, and such estate shall not be limited or qualified in any way by construction. (Act Apr. 19, 1933, c. 341, §14; Feb. 5, 1935, c. 3; Feb. 8, 1935, c. 7.)

Section 6552, Mason's Minn. Stat. 1927, which creates a cause of action in favor of a landowner for his expenses incurred in a condemnation proceeding under Chapter 41 of those statutes, does not apply to expenses incurred under the provisions of §1552 et seq. *Barmel v. M., 201M 622, 277NW298.* See Dun. Dig. 3121.

Sanitary district in conducting a condemnation proceeding does so as an arm of state in discharge of a sovereign legislative function, and is not liable in tort for alleged malicious prosecution of such proceeding. *Id.* See Dun. Dig. 3122.

Just compensation is market value at time of taking contemporaneously paid in money, to be arrived at upon just consideration of all uses for which land is suitable; and highest and most profitable use for which property is adaptable and needed, or likely to be needed, in reasonably near future, is to be considered to extent that prospects of demand for such use affect market value while property is privately held, but that value does not include any element resulting subsequently to or because of taking. *Minneapolis-St. Paul Sanitary Dist. v. P., 201M442, 277NW394.* See Dun. Dig. 3054.

**1607-22. Construction work to be done by contract.**—All construction work and every purchase of equipment, supplies or materials necessary in carrying out the purposes of this Act, that shall involve the expenditure of \$1,000.00, or more, shall be awarded by contract as hereinafter provided. Before receiving bids under the provisions of this Act the Board of Trustees shall publish, once a week for two consecutive weeks in the official newspaper of each city in said sanitary district a notice that bids will be received for such construction work, and/or such purchase of equipment, supplies or materials, stating the nature of the work, and the terms and conditions upon which the contract is to be let, naming therein a time and place where such bids will be received, opened and read publicly, which time shall be not less than seven days after the date of the last publication. After such bids have been duly received, opened and read publicly and recorded, the Board of Trustees, shall award such contract to the lowest responsible bidder, the Board of Trustees reserving the right, however, to reject any or all bids, each such contract to be duly executed in writing and the person to whom said contract is awarded shall give sufficient bond to the Board for its faithful performance. If no satisfactory bid is received the Board may re-advertise or, by an affirmative vote of five-sevenths of its members, may authorize such sanitary district to perform any part or parts of any construction work by day labor under such conditions as it may prescribe. The Board of Trustees shall have the right to set up reasonable qualifications to determine the fitness and responsibility of bidders, and to require bidders to meet such qualifications before bids are accepted by the trustees. If the Board of Trustees by an affirmative vote of five-sevenths of its members shall declare that an emergency exists requiring the immediate purchase of any equipment or material or supplies at a cost in excess of \$1,000.00, but not exceeding \$5,000.00 in amount, or making of emergency repairs, it shall not be necessary to advertise for bids, but such material, equipment or supplies may be purchased in the open market at the lowest price obtainable, or such emergency repairs may be contracted for or performed without securing formal competitive bids. An emergency, as considered in this Act, shall be understood to be unforeseen circumstances or conditions which result in the placing in jeopardy or human life or property.

In all contracts involving the employment of labor, the Board of Trustees shall stipulate and embody in

the terms thereof such conditions as it deems reasonable, as to the hours of labor, wages and may stipulate as to the residence of workmen to be employed by the contractors.

Bonds shall be required from contractors for any works of construction as provided in and subject to all the provisions of Mason's Minnesota Statutes of 1927, Section 9700 to 9705 inclusive. (Act Apr. 19, 1933, c. 341, §15.)

**1607-23. May contract with adjacent municipalities.**

—Any city of the first class comprising said Sanitary District, may contract with any of its adjacent municipalities, villages, governmental functions, institutions, persons, or firms, for the conveying, treatment and disposal of their sewage and industrial waste. (Act Apr. 19, 1933, c. 341, §16.)

Village of Edina may pay for cost of general sewage out of general fund, and may enter into contract with City of Minneapolis providing for disposal of sewage of village. Op. Atty. Gen., (387g), Oct. 14, 1938.

Section permits villages to contract with cities as well as cities with villages. Op. Atty. Gen. (387g-9), August 8, 1938.

Contracting parties may by mutual consent modify terms of contract, making provision for any vested rights which may have accrued. Id.

Village of Edina creating a joint sewer district and constructing a sewer main to connect its system with a Minneapolis trunk sewer, outlet for which is the Metropolitan Sewage Disposal Plant, may levy an assessment against benefited property under §1885. Op. Atty. Gen., (387g-1), August 21, 1939.

**1607-24. Financing of project. (a) Preliminary annual tax based on assessed valuation—Service to outlying territory—Allocation to cities after preliminary period—Untreated sewage—Unmeasured sewage.**—Except as herein otherwise provided, all costs of operation, maintenance and repair of joint or common sewers, and of all treatment and disposal works and appurtenances thereto for a period of ten years from and after commencement of construction of said disposal system, and all costs of land and right-of-way, construction or joint or common sewers, and of all treatment and disposal works and appurtenances thereto shall be a uniform charge upon the entire district, on the basis of assessed valuation exclusive of money and credits to be paid by a uniform annual tax upon the property of such district; provided, however, that in the event any such city of the first class has undertaken or shall undertake, by contract or otherwise, to convey, treat and dispose of the sewage of territory not included within the boundaries of such district, such city shall pay the entire cost of such additional capacity of joint intercepting sewers and treatment and disposal works as may be necessary for, and the cost of operation, maintenance and repair incurred in the conveying, pumping, treatment and disposal of sewage from such territory not included within the boundaries of such city, such additional cost to be determined by the Board of Trustees, and included in such city's proportion of the budget, as provided herein. From and after the ten year period from the commencement of construction, the costs of operation, maintenance and repair of joint and common sewers, and of all treatment and disposal works and appurtenances thereto shall be allocated in proper proportion to each city within the sanitary district, upon the basis of the total annual volume of sewage contributed by each city as the same shall be measured or estimated and each such city shall pay such share of the total cost thereof as the volume of sewage contributed by said city and the territory served by such city under contract or otherwise bears to the total volume of sewage. In such estimate of the costs to be borne by each city, there shall be taken into account not only the sewage and wastes of each such city that are intercepted and treated, but an estimate shall be made of the sewage wastes of each city which enter or are discharged directly or indirectly into any stream or water course flowing through or adjacent to such district or any

part thereof, and such untreated sewage and wastes shall be considered as contributed by such city. Provided that the board of trustees shall make such allowance for infiltration, conveyance, losses, leakage, etc., into or out of the joint or common intercepting sewers after the point of measurement by any city of the first class, as it may deem just and equitable.

**(b) Budget for preliminary construction cost—Bonds—Objections to budget—Tax levy—Bond sales—System of rental charges.**—The board of trustees when and as soon as the same shall be organized, in order to provide funds to carry out the purpose of this act and for the expense and disbursement of such Sanitary District for the period before any tax moneys shall become available, shall prepare a detailed budget of its needs and certify the same to the governing bodies of the respective cities which governing bodies shall review said budget, and the board of trustees, upon notice from any such city of the first class, shall hear objections to said budget and may after such hearing modify or amend the budget, and shall give due notice to the cities of the first class of such modification or amendment, and thereupon said governing bodies shall issue and sell bonds in the amount of said budget, as herein provided, and pay the proceeds of such bond sale into the treasury of said district. Thereafter the board of trustees shall, on or before the first day of July of each year, prepare a detailed budget of its needs for the next calendar year, specifying separately in said budget the amounts to be expended for construction, operation and maintenance respectively, and shall certify the same on said date to the governing body of each city of the first class within said sanitary district, together with a statement of the proportion of said budget to be provided by each such city as herein provided. The governing body of each such city of the first class shall review said budget, and the board of trustees, upon notice from any such city of the first class, shall hear objections to said budget and may after such hearing modify or amend the budget, and shall give due notice to the cities of the first class of such modification or amendment. It shall be the duty of the governing body of each city of the first class within the district to provide the funds necessary to meet its proportion of the total cost for construction, operation and maintenance as finally certified by the board of trustees, such funds to be raised by the tax levies, bond sales or by any other means within the authority of said cities of the first class, and to pay the same into the treasury of said district in such amounts and at such times as the treasurer of said district may require, and said city is hereby authorized to issue and sell such bonds as may be necessary to meet its obligations under this section, irrespective of any limitation in any home-rule charter or special or general law, without a vote upon said question by the electors of said city, and bonds so determined to be issued and sold shall be issued and sold in the manner provided by Section 12; but for the purpose of providing all or a part of the funds necessary for the current operating and maintenance charges of said sewage disposal system and to pay the interest and principal of any bonds issued or indebtedness incurred for the construction of said system, the board of trustees, as soon as the sewage disposal system shall come into operation, shall adopt a resolution, uniform in its application to all cities of the first class within the sanitary district, establishing reasonable rental charges and providing for the collection of the same by the respective cities from the owners or occupants of the property, which is served directly or indirectly by the system. For the purpose of making such rental charges equitable the board of trustees may classify the property benefited thereby, taking into consideration the volume and character of the sewage and wastes, and the nature of the use made of such facilities. Such rental may be based upon either the



metered consumption of water on the premises connected with the sewer system, making due allowance for the commercial use of water and for the use of water from private sources of supply; or the number and kind of plumbing fixtures connected with the sewer system; or said rental charges may be determined by the board of trustees upon a combination of such methods, or upon any other equitable basis.

(c) **Resolution by trustees for collection of rentals—Lien—Priority.**—The board of trustees of said sanitary district shall, in its resolution, provide for the billing and collecting of sewer rentals from all persons and corporations whose premises are served directly or indirectly by its sewage disposal system, including premises which derive their water supply in whole or in part from sources independent of the city or public water department. Upon the adoption of the terms of this resolution by [sic] governing body of such city of the first class all such sewer rentals shall constitute a lien upon the real property served by the sewage disposal system, and such lien shall be prior and superior to every other lien or claim, except the lien of an existing tax or local assessment.

(d) **Same—Objections—Adoption by cities.**—A copy of this resolution shall be transmitted to the governing body of each city of the first class within the sanitary district. Upon notice from any such city of the first class the board of trustees shall hear objections to said resolution and may after such hearing amend or modify such resolution. The governing body of any such city of the first class may then by ordinance adopt such resolution providing for the establishing and collection of such rentals from the respective owners or occupants of property, provided that any such city may raise such portion of its required funds from such rental charges as its governing body may determine.

(e) **Cities to determine basis of rentals—Collection by water department—Fund—Disbursement.**—In the event the governing body of any city of the first class shall by ordinance adopt the method prescribed [sic] by this resolution of the board of trustees the governing body of such city shall on or prior to August first of each year, by resolution determine the basis of rental to be charged property within said city served either directly or indirectly by the sewage disposal system and shall transmit forthwith a copy of said resolution to the water department of said city, and it shall be the duty of such water department to add such charges to the next water bills rendered to the owners, lessees, or occupants of property for water service and to render bills to owners or occupants of property for water service and to render bills to owners or occupants of property using private sources of supply. The sewer rentals may be charged and collected in two equal semi-annual installments. Said amounts so charged except against owners or occupants of property using private sources of supply, shall be collected in connection and in addition to the water charge for water service; and no part of the charge for water service shall be accepted without including therewith the sewer rental charge. The funds received from the collection of sewer rentals shall be kept by the comptroller or proper official of such city of the first class, as a separate and distinct fund, and shall be known as the sewer rental fund. This fund shall be used by any such city of the first class for the payment of its portion of the cost of operation and maintenance of the sanitary district system, as hereinbefore described, and for the payment of the interest on any debt incurred for the construction of such sewage disposal system and for retiring such debt, and shall not be used for the extension of a sewage system to serve unsewered areas or for any purpose other than one or more of those specified above.

(f) **Failure of cities to provide funds—County auditor to spread tax—Collection.**—If any such city of the first class shall fail to take the necessary action

to provide the funds required by the board of trustees as hereinabove provided, the board of trustees shall, subject to the limitations herein on or before October 10th of each calendar year, certify to the county auditor of the county in which such city so failing to comply shall be located the amount determined by the board of trustees to be raised by said city for operation and maintenance, and the county auditor shall extend, spread and include the same with and as a part of the general taxes for state, county and municipal purposes, to be collected and enforced therewith, together with penalties and interest and costs, and the county treasurer, upon the collection of the same, shall transfer the same to the treasurer of the sanitary district.

(g) **Same—Trustees may issue bonds—Liability of defaulting city.**—Whenever any such city shall fail to provide the funds required by the board of trustees as hereinbefore provided, for construction purposes, the board of trustees shall adopt a resolution setting forth the particular construction purposes for which it deems it necessary for said city to provide funds, the amount of money required for such purposes and that said city is [sic] default for failure to provide said funds. A copy of said resolution shall be served upon said defaulting city by delivering a copy to the mayor or to the governing body. If after 30 days after the service of said resolution, said defaulting city fails to provide such funds in such amount equal to said default as set forth in said resolution, such sanitary district through its board of trustees by a five-sevenths vote of the board, shall have power to incur indebtedness in the amount set forth in the resolution and may issue bonds therefor. The bonds issued by said sanitary district pursuant hereto shall bear interest at a rate not exceeding five per cent per annum, payable semi-annually, shall be of such date, denominations, form and place of payment, and shall be executed as determined by the board of trustees issuing them, shall be secured by pledge of the full faith, credit and resources of the defaulting municipality, shall comply with the provisions of Mason's Minnesota Statutes 1927, Section 1938-5, as to the maturity thereof, and such bonds shall be paid from tax levies made in conformity with Mason's Minnesota Statutes 1927, Sections 1938-7 and 1938-10, and such bonds shall be sold in the manner prescribed by Mason's Minnesota Statutes 1927, Section 1943. Said sanitary district each year in addition to any other taxes authorized to be levied for it under this Act shall have power to cause to be levied a sufficient tax on the taxable property of such defaulting city to pay the interest and several installments of the principal of said bonds as they shall become due.

(h) **Payment by city—Effect—Erroneous estimates—Bonds—Tax levy.**—Whenever any such city of the first class within the said district shall have made the payments provided herein, such payment shall fully acquit and discharge such city and all the taxable property therein from all further liability or duty to pay for the work or improvements or portion thereof contemplated to be made or the indebtedness incurred, and for which such charge has been so allocated to such city; provided, however that if such allocation be based upon a preliminary estimate and the actual cost of such work or improvement, or portion thereof, shall thereafter be found to exceed the amount so allocated and charged to such city, such excess shall be charged to and paid by such city or by the taxable property therein as hereinbefore provided, and if upon completion of the work or improvement, or portion thereof, the cost of which has been so allocated and charged, it be found that the sum so paid by such city from the proceeds of a bond issue is excessive, such excess shall be returned to such city and shall be placed in the sinking fund of such bond issue, and shall be used solely for the purpose of paying the principal and interest of such bonds issued hereunder by such city. The bonds issued by

any municipality pursuant hereto shall bear interest at a rate not exceeding five per cent per annum, payable semi-annually, shall be of such date, denominations, form and place of payment, and shall be executed as determined by the governing body of the corporation issuing them, shall be secured by pledge of the full faith, credit and resources of the municipality, shall comply with the provisions of Mason's Minnesota Statutes 1927, Section 1938-5, as to the maturity thereof, and such bonds shall be paid from tax levies made in conformity with Mason's Minnesota Statutes 1927, Sections 1938-7 and 1938-10, and such bonds shall be sold in the manner prescribed by Mason's Minnesota Statutes 1927, Section 1943.

(i) **Limitation of indebtedness and tax levies.**—The total aggregate indebtedness for all purposes under this act shall not exceed three and one-half per cent of the assessed valuation of the taxable real and personal property within said district, excluding money and credits, and the taxes levied against the property of any municipality in any one year shall not exceed two mills upon the assessed valuation thereof, exclusive of the taxes it may be necessary to levy to pay the principal or interest on any bonds or indebtedness of said municipality issued or incurred under the provisions of this Act.

(j) **Same—Inconsistent laws inapplicable.**—No provisions of any existing law or special or home-rule charter under which any such municipality may be acting shall be deemed or construed to impair, curtail or limit in amount, form or manner the power to issue such bonds pursuant to this act, and the bonds issued by any municipality pursuant to this act shall not be included in computing the net indebtedness of such municipality under any applicable law or charter. (Act Apr. 19, 1933, c. 341, §17; July 14, 1937, Sp. Ses., c. 29, §1; Apr. 12, 1939, c. 202.)

Act July 14, 1937, Sp. Ses., cited, amends only the fourth paragraph of this section.

**1607-25. Municipality may levy special assessment.**—Any municipality within or without the district whose sewage or industrial waste is discharged by contract or otherwise into the sewage disposal system of said sanitary district, shall have authority to levy special assessments upon any property within said municipality, not subject to real estate taxes, which is benefited by the sewage disposal system located therein. Said special assessments may be levied and collected in the same manner as other special assessments for local improvements authorized by local charters, or general laws. (Act Apr. 19, 1933, c. 341, §18.)

**1607-26. Contiguous municipalities shall treat sewage.**—Within one year after any such sanitary district shall begin treating sewage and industrial waste, any municipality contiguous thereto that is grossly polluting a watercourse common to such district and such municipality, shall treat its sewage to the same degree and extent as does such sanitary district, and the State Board of Health is hereby authorized, empowered and directed to establish such rules and regulations as will make this requirement effective. Whenever any such municipality shall determine or be directed to erect and construct at its own cost and expense the drains, sewers, intercepting sewers, pumping stations, treatment plant, and other structures to be used by it, said intention shall be expressed by a resolution adopted by a majority vote of the members elect of its governing body, and thereafter such municipality may, notwithstanding any provision to the contrary included within the charter of such municipality or any general law of the State of Minnesota, issue and sell its bonds for the cost thereof without a vote upon said question by the electors of said municipality and outside of any limitation established upon the amount of bonds that may be issued by such municipality. Such bonds shall be issued and sold in the same manner and

under the same conditions as any other bonds that may be issued and sold by such municipality. It is further provided that the cost of such construction may be paid in whole or in part out of tax levies and the cost of operation and maintenance shall be met out of annual tax levies and such levies for such purposes may be over and above any limitation now established in any general law of the State of Minnesota or by the charter of such municipality. (Act Apr. 19, 1933, c. 341, §18a.)

Sewage into river by contiguous municipality must be treated so that effluent will be equivalent to that of sanitary district. Op. Atty. Gen. (387a-3), Aug. 23, 1937.

City may issue bonds without vote of electors notwithstanding provisions of city charter. Op. Atty. Gen., (387b-2), Sept. 6, 1938.

Bonds or certificates of indebtedness may be issued payable out of earnings of sewage plant less cost of operation, replacements, and reserve for depreciation. Id.

Soldiers' Home is a state agency which is subject to rules and regulations of state board of health in so far as its disposal of sewage is concerned. Op. Atty. Gen. (387G-9), May 9, 1939.

Minnesota River into which cities of Chaska and Shakopee discharge their sewage is a water course common to said sanitary district. Id.

Village of Newport is contiguous to sanitary district, but cities of Anoka, Chaska and Shakopee are not contiguous. Id.

**1607-27. Law repealed.**—Laws 1927, Chapter 181, is hereby repealed. The proceeds of any taxes heretofore levied by any city of the first class for any metropolitan drainage commission created under said Act whose territorial limits are included within any regular sanitary district that may be organized under this Act, whether the funds are in the hands of the State Treasurer or in the process of collection, shall, as soon as the funds are available therefrom, be duly transmitted and paid over by the State Treasurer or by the several city treasurers as the case may be, to the treasurer of such Sanitary District, for credit to the respective cities, when and as soon as the same shall be organized. Such transfer shall be made upon the written request of such sanitary district by a resolution adopted by its trustees, certified copies of which shall be presented, one to the State Treasurer and one to each of the city comptrollers of said cities. Such sanitary district as may be created under this Act shall likewise succeed to and become vested with title and all right, estate, and interest in and to any property, real or personal, belonging to any metropolitan drainage commission organized under said Chapter 181, whose territorial limits are included within such sanitary district that may hereafter be organized; and the proper officers of such metropolitan drainage commission are hereby authorized and directed forthwith to transfer and deliver to such sanitary district whenever the same shall be organized, any or all property of every nature and description in the possession or control of such metropolitan drainage commission, including all maps, plats, records and reports, and all furniture, laboratory material, fixtures and equipment. Such sanitary district shall likewise assume and be obligated to pay all legal outstanding obligations of such metropolitan drainage commission at the time such transfer of property is made. Any metropolitan drainage commission created and existing under said Chapter 181 shall, however, continue to exist and operate until a sanitary district, that may be organized under this Act shall succeed to all the property rights of such drainage commission as set forth in this section. Said drainage commission shall thereupon cease to exist, and no further taxes for its support shall be levied. (Act Apr. 19, 1933, c. 341, §19.)

**1607-28. Appropriation to State Board of Health for expenses.**—The sum of \$15,000.00 or so much thereof as may be necessary, is hereby appropriated out of any funds in the State Treasury, not otherwise appropriated, to the State Board of Health to defray necessary expenses in the execution of the duties enjoined upon said Board under this Act, provided

however, that upon the establishment of a regular sanitary district under the provisions of this Act, all moneys so paid out of the State Treasury shall be refunded to the State with interest at 4% by such sanitary district and the amount thereof shall be included in the budget costs and collected in the manner provided in Section 17 of this Act. (Act Apr. 19, 1933, c. 341, §20.)

**1607-29. Inconsistent acts repealed.**—All Acts or parts of Acts inconsistent herewith are hereby repealed; provided, that nothing in this Act contained shall be held or construed to repeal, supersede, or abrogate any of the laws of the State or any present or future regulations or requirements of the State Board of Health, adopted according to law, forbidding any pollution of any waters of the State. (Act Apr. 19, 1933, c. 341, §21.)

Sewage disposal plant is to be approved by state board of health. Op. Atty. Gen. (225m), June 1, 1936.

**1607-30. Provisions separable.**—If any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair nor invalidate any other part or provision in the remainder of the Act. (Act Apr. 19, 1933, c. 341, §21a.)

Sec. 22 of Act Apr. 19, 1933, cited, provides that the act shall take effect from its passage.

**1607-31. Equitable charges for sewage facilities.**—Any city of the first class operating under home rule charters, and not embraced within the limits of any sanitary district which is authorized to provide a method or system for establishing and collecting equitable sewage service charges, which has installed and is operating, or which is proceeding to establish and install, a system of sewers, sewage pumping station, or a sewage treatment or disposal plant or plants for public use, in addition to all other powers granted to it shall have authority, by an ordinance duly adopted by the governing body thereof, to charge just and equitable rates, charges or rentals for the use of such facilities and for connections therewith by every person, firm or corporation whose premises are served by such facilities either directly or indirectly. Such charges, shall be, as nearly as reasonably possible equitable and in proportion to the service rendered, and may take into consideration the quantity of sewage produced and its concentration, strength or river, lake, bay or other body of water, pollution qualities in general and the cost of its disposal. The charges may be fixed on the basis of water consumed or on some other basis of measuring the use made of the aforesaid facilities. In case of arrangements with other municipalities, districts or private parties for the supplying of sewers aforesaid, such rates, charges or rentals may also be levied the same as in independent operations. (Dec. 28, 1933, Ex. Sess., c. 30, §1.)

Whether an owner of premises has the same directly connected with sewer main or connects them to sewer main by indirect means such as by easement in other premises that are directly connected, he may be required to pay rental charge. Op. Atty. Gen. (387b-9), Nov. 20, 1934.

This act is constitutional. Id.  
City of Duluth may adopt ordinance declaring sewage disposal plants to be a public utility and issue bonds to pay cost of completing same payable out of rentals or charges for use of such plants, without an election, and sell them to the state. Op. Atty. Gen. (387b-9), Sept. 23, 1937.

**1607-32. Same—general sewer fund—disposition.**—The moneys received from the rates, charges or rentals as herein authorized shall be kept separate from the general or other revenues of the political subdivision, and when so collected shall be placed in a separate general sewer fund. Also, any moneys received from the sale of any by-products arising out of sewage treatment or disposal shall be credited to this fund. The moneys so received shall be recorded, deposited, secured and paid out as other funds of the political subdivision are; provided, that upon

establishing and fixing the charges aforesaid the receipts therefrom shall be used first to meet the costs of operating and maintaining the said facilities, and any additional sums collected shall be applied to capital charges represented by bonds, certificates of indebtedness, or otherwise, and to the reasonable requirements for replacements and obsolescence. In determining the amount of capital costs to be met, the amount charged to special assessments, and also any amount of such cost properly chargeable to other than sanitary sewers, shall be deducted therefrom; and no such rate, charge or rental shall include any amount therefor or be applied thereto upon their collection. (Dec. 28, 1933, Ex. Sess., c. 30, §2.)

**1607-33. Same—Charges as the tax lien on land—delinquent rentals.**—The rates, charges or rentals for the aforesaid sewer service shall be a charge against the owner, lessee or occupant of the premises, or against any or all of them; and any such claim for unpaid rates, charges or rentals which have been properly billed to the occupant of the premises may be collected in a civil action in any court of competent jurisdiction, or, in the discretion of the governing body of the municipality, may be certified to the county auditor (or auditors of the counties) with the taxes against such property served and shall be collected as other taxes are collected. Payments of delinquent rentals shall be credited to the same fund as current funds for that purpose are, deducting therefrom any cost of collection accruing to the political subdivision. (Dec. 28, 1933, Ex. Sess., c. 30, §3.)

**1607-34. Same—fixing rates—hearing.**—Before any rate for the service aforesaid is fixed under authority of this chapter, a public hearing with due posted or published notice thereof shall be held by the governing body at which hearing interested persons shall be given an opportunity to be heard on the question. A similar hearing shall be held before the establishment of any change in such rates, charges or rentals. (Dec. 28, 1933, Ex. Sess., c. 30, §4.)

**1614. Height of buildings in cities regulated.**—That for the purpose of promoting the public health, safety, order, convenience, prosperity and general welfare, any city in the state of Minnesota now or hereafter having 50,000 inhabitants or over, acting by and through the governing body of such city, may by ordinance regulate the location, size and use of buildings, the height of buildings, the arrangement of buildings on lots, and the density of population therein, may make different regulations for different districts thereof, and may acquire or prepare and adopt a comprehensive city plan for such city or any portion thereof for the future physical development and improvement of the city, in accordance with the regulations made as aforesaid, and may thereafter alter said regulations or plan, such alterations, however, to be made only after there shall be filed in the office of the city clerk a written consent of the owners of two-thirds of the several descriptions of real estate situate within 100 feet of the real estate affected, and after the affirmative vote in favor thereof by a majority of the members of the governing body of such city; provided, however, that notwithstanding any resolution, ordinance or law conflicting herewith, the governing body of any such city, by an affirmative two-thirds vote in favor thereof, may by resolution grant a permit for the construction of additions, extensions or improvements to any hospital which is being actually operated and maintained on the premises which it occupies on the date of the passage of this act; provided, further, that whenever the city planning commission or board shall make recommendation in writing to the governing body of any such city for altering said regulation or plan, with respect to a more restricted use of any real estate within 1000 feet of a public park, which part contains

not less than 50 acres, located near or adjacent to the waters of a navigable lake, covering an area of not less than 1000 square miles, said governing body, by a two-thirds vote of all its members, may alter said regulation or plan in accordance with said recommendation of the city planning commission or board. (As amended Apr. 17, 1937, c. 239, §1.)

This section is valid. *American Wood Products Co. v. Minneapolis* (DC-Minn), 21F(2d)440, aff'd 35F(2d)657.

Legislative powers with respect to zoning in cities stated. *American Wood Products Co. v. Minneapolis* (DC-Minn), 21F(2d)440, aff'd 35F(2d)657.

The mere fact that a zoning ordinance is harsh and seriously depreciates the value of property is not enough to establish invalidity. *American Wood Products Co. v. Minneapolis* (DC-Minn), 21F(2d)440, aff'd 35F(2d)657.

Ordinance passed under this section creating multiple dwelling district and prohibiting enlargement of factories erected therein, held valid. *American Wood Products Co. v. Minneapolis* (CCA8), 35F(2d)657, aff'g 21F(2d)440.

This act, including the consent clause, does not permit the taking of property without due process of law, and is not an unlawful delegation of legislative power. *Leighton v. C.* (USDC-Minn), 16FSupp101.

Contention that the consent clause deprives city council of power to act except with consent of required number of property owners, held without merit. *Id.*

Owner seeking reclassification of property, and who had been unable to obtain requisite consent of adjoining owners, held entitled to challenge validity of this act. *Id.*

City of Minneapolis had power to fix setback lines in a zoning ordinance. 171M231, 213NW907.

Setback lines in zoning ordinances may cast an uncompensated burden on property, under the police power. 171M231, 213NW907.

Action of city council in vacating a granted permit to erect a building in disregard of a setback line was not arbitrary or unlawful. 171M231, 213NW907.

The building restrictions imposed under the 1916 [§§1618 to 1624] law were not affected by the "zoning laws" of 1921 and 1923 and the ordinances adopted thereunder; such restrictions are in full force and effect. 182M77, 233NW831. See *Dun. Dig.* 6525.

Refusal of building inspector to permit repair of a building, damaged by fire and deterioration to extent of more than 50% of a similar new building, rested upon a sufficient fact basis, as shown by undisputed facts. *Zalk & Josephs Realty Co. v. S.*, 191M60, 253NW8. See *Dun. Dig.* 6525.

Building inspector, an administrative officer, was not required to make findings of fact, where no statute or ordinance so required. If he erred in his opinion or conclusion as to the facts, there was adequate remedy by appeal or other proceeding. *Id.*

Ordinance was not invalid because it authorized building inspector to refuse a permit when, in his "opinion," the building was damaged to the extent stated, instead of using the word "judgment," or the word "conclusion." *Id.*

"Several descriptions of real estate" means several lots as platted. *Op. Atty. Gen.* (59a-32), July 10, 1937.

"Owners" whose consent must be obtained includes federal government, state, city, or other governmental bodies owning property. *Op. Atty. Gen.*, (59a-32), Aug. 25, 1938.

#### 1615. May pass ordinances for enforcement.

171M231, 213NW907, note under §1614, ante.

**1617-1. Grant of Power.**—In order to provide for the proper and reasonable enforcement of regulations adopted pursuant to Chapter 217, Laws of Minnesota, for 1921 [§§1614-1617] governing the location, size and use of buildings, and to provide for such reasonable determinations of such regulations as will eliminate practical difficulties in the enforcement of such regulations and to provide for such reasonable variations in the terms of such regulations as will eliminate unnecessary hardship in the way of carrying out the strict letter of such regulations, the local governing body is hereby empowered to appoint a board of adjustment. (Act Apr. 24, 1929, c. 340, §1.)

**1617-2. Board of adjustment.**—Such a local governing body may provide for the appointment of a board of adjustment, and in conformity with the provisions of this act may provide that the said board of adjustment may determine and vary the application of regulations adopted pursuant to the provisions of Chapter 217, Laws of Minnesota for 1921 [§§1614-1617], as amended, in harmony with their general purpose and intent, and the local governing body may provide by ordinance for the enactment of general or

specific rules governing the determination and variation of such regulations.

Where an officially established city planning commission already exists under the city charter it shall be the board of adjustment, otherwise the powers of the board of adjustment shall vest in the governing body who may delegate all or part of such powers to a committee of the governing body. The terms of the members of the board of adjustment shall be concurrent with their terms as members of the governing body or city planning commission. The board shall adopt rules in accordance with the provisions of any ordinances adopted pursuant to this act.

Appeals to the board of adjustment may be taken by any person aggrieved.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, giving public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person, or by agent, or by attorney.

The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of this act or of any ordinance adopted pursuant thereto.

2. To hear and decide all matters referred to it or upon which it is required to pass under such ordinance.

3. In passing upon appeals, where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance to vary or modify the application of any of the regulations or provisions of such ordinance relating to the use, construction, or alteration of buildings or structures or the use of land so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.

In exercising the above mentioned powers such board may, in conformity with the provisions of this act, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The majority vote of the members of the board shall be sufficient to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance. (Act Apr. 24, 1929, c. 340, §2.)

**1617-3. Application.**—The provisions of this act shall not apply to any city now or hereafter having provided for the establishment of a board of adjustment in conformity with the provisions of the city charter of such city. (Act Apr. 24, 1929, c. 340, §3.)

**1618. Restricted residence districts.**—Any city of the first class may, through its council, upon petition of fifty (50) per cent of the owners of the real estate in the district sought to be affected, by resolution, designate and establish by proceedings hereunder restricted residence districts and in and by such resolution and proceedings prohibit the erection, alteration, or repair of any building or structure for any one or more of the purposes hereinafter named, and thereafter no building or other structure shall be erected, altered or repaired for any of the purposes, prohibited by such resolution and proceedings, which may prohibit the following, to-wit: hotels, restaurants, eating houses, mercantile business, stores, factories, warehouses, printing establishments, tailor shops, coal yards, ice houses, blacksmith shops, repair shops, paint shops, bakeries, dyeing, cleaning and launder-

ing establishments, billboards and other advertising devices, public garages, public stables, apartment houses, tenement houses, flat buildings, any other building or structure for purposes similar to the foregoing. Public garages and public stables shall include those, and only those, operated for gain.

Nothing herein contained shall be construed to exclude double residences or duplex houses, so-called, schools, churches, or signs advertising for rent or sale the property only on which they are placed.

No building or structure erected after the creation of such district shall be used for any purpose for which its erection shall be prohibited hereunder.

The term "Council" in this act shall mean the chief governing body of the city by whatever name called.

Any district or any portion thereof created under the provisions of this act may be vacated and the restrictions thereon removed by the council upon petition of 50 per cent of the owners of the real estate in the original district. A portion of a restricted residence district may be vacated and relieved of the restrictions imposed thereon pursuant to this act by the council upon petition of the owners of the portion of the district sought to be relieved if such portion or lot sought to be relieved does not in any part lie between other portions of such restricted district, or if the portion sought to be relieved abuts upon a public street or alley along one border of such district and extends along said public street or alley the entire distance between cross streets, or if the portion or lot sought to be relieved is contiguous to, along one or both sides, or across a public street along its entire front from a parcel of land which shall be duly zoned under a valid municipal zoning ordinance for commercial, multiple dwelling or industrial purposes. The vacation of such district or portion thereof and the removal of the restrictions therefrom shall be accomplished in the same manner herein provided for the creation of any such district, and in the vacation of any such district or any portion thereof and the removal of such restrictions each and all of the provisions of this act as to allowance of damages and benefits to property affected and as to the appointment of commissioners to appraise such damages and benefits and the duties of such commissioners of the city clerk and of each and all of the other officers upon whom duties are herein imposed shall be complied with, and when such proceedings for the vacation of any such district or portion thereof shall have been completed the property included within such district or portion thereof so vacated shall be deemed relieved of each and all of the restrictions imposed in the proceeding creating such district. In the allowance of damages and benefits to property affected by any proposed vacation, no evidence shall be received, or consideration given to the existence of any other restriction or any restrictive or zoning ordinance, law, or regulation. ('15, c. 128, §1; '23, c. 133, §1; '25, c. 122, §1; Apr. 20, 1931, c. 290, §1.)

21F(2d)440; notes under §614.

The building restrictions imposed under the 1915 law were not affected by the "zoning laws" of 1921 [§§1614 to 1617] and 1923 and the ordinances adopted thereunder; such restrictions are in full force and effect. 182 M77, 233NW831. See Dun. Dig. 6525.

The decision in State ex rel. Twin City Building & Investment Co. v. Houghton, 144M1. 174NW885, 176NW159, 3ALR585, holding Laws of 1915, c. 128, constitutional, is adhered to. State ex rel. Madsen et al. v. Houghton, 182M77, 233NW831. See Dun. Dig. 6525(91).

**1619. Council given right of eminent domain.**—The council shall first, after causing the probable costs of the proceedings, if abandoned, to be deposited or secured by the petitioners, designate the restricted residence district and shall have power to acquire by eminent domain the right to exercise the powers granted by this act by proceedings hereinafter defined, and when such proceedings shall have

been completed, the right to exercise such powers shall be vested in the city. ('15, c. 128, §2; Apr. 20, 1931, c. 290, §2.)

**1620. Appraisal of damage \* \* \*.**

Fourth. The city clerk shall, after the first publication of such notice, and at least six days (Sundays excluded) prior to the meeting specified in said notice, serve upon each person having an interest as owner or mortgagee in each parcel of land in said district as shown by the records in the office of the register of deeds a copy of said notice by depositing the same in the postoffice of said city, with first class postage prepaid, in an envelope bearing on its front in type no smaller than ten point the words "Notice of Restricted Residence District Proceedings Affecting Your Property" or "notice of Proceedings to Vacate Restricted Residence Districts Affecting Your Property," as the case may be, directed to such person at his last known place of residence, if known to the city clerk, but if not known, then to his place of residence as given in the last published city directory of said city, if his name appears therein, or obtained from the records of such owner's address last given on tax receipts in the office of the county treasurer or auditor, or, in the case of mortgagees, to the address, if any, appearing in the mortgage.

After the first publication of said notice, and at least six days (Sunday excluded) prior to the meeting specified in said notice, a copy of the same shall also be served upon the person in possession of each of said tracts or parcels of land, or some part thereof, if the same be actually occupied, in the same manner as provided for the service of summons in a civil action in the district court. A copy of all subsequent notices relating to said proceedings which are required to be published, shall be mailed by said clerk in the manner above specified, immediately after the first publication thereof, to owners and mortgagees in the manner and to the address above provided and to such persons as shall have appeared in said proceedings and requested in writing that such notice be mailed to them. (As amended Apr. 20, 1931, c. 290, §3.) \* \* \*

Laws 1931, c. 290, §3, amends the fourth subdivision of this section.

**1626-4. Bond issue.**

The limitation as to amount of bonds is repealed by §1626-12.

**1626-5. Park commissioners authorized to establish but one flying field.**

The limitation as to number of flying fields is repealed by §1626-12.

**1626-8. Cities may establish municipal airports.**—

Each city of the first class now or hereafter having a population of 50,000 inhabitants or more, including each such city operating under a charter adopted pursuant to Section 36, Article 4, of the Constitution of the State of Minnesota, is hereby authorized and empowered to establish and maintain a municipal flying field and airport, to acquire land from time to time necessary for that purpose, and to erect thereon terminal and other buildings and structures necessary and suitable for the operation thereof. When deemed necessary land may be leased by any such city for the purposes hereof. (Act Apr. 25, 1929, c. 379, §1, superseding Act Apr. 3, 1929, c. 125, §1.)

**1626-9. Cities may establish airport.**—The land so to be used, or acquired and used, by each such city may be used, or so acquired and used, whether the land be located within or without the limits of such city. Such land may be acquired from time to time by purchase, gift, devise, condemnation or otherwise, and the title so acquired by condemnation or purchase shall be in fee simple absolute, unqualified in any way whatsoever. When the right of condemnation is to be exercised, such condemnation proceedings shall be exercised only under and pursuant to

the provisions of the statutes of the state of Minnesota relating to eminent domain; provided that wherever such city has already established an airport, such additional land should be contiguous thereto. (Act Apr. 9, 1931, c. 123, §1, amending Laws 1929, c. 379, §2, and superseding Laws 1929, c. 125, §2.)

**1626-10. To fix charges.**—Each such city shall have the authority to determine the charges for the use of said municipal flying field and airport and the terms and conditions under which the municipal flying field and airport and its facilities may be used, provided that such charges shall be reasonable and uniform for the same class of service, to lease parts thereof to individuals, co-partnerships or corporations, to any municipal or state government or to the national government or to foreign governments or any department of either thereof for flying purposes or any purpose incidental thereto, and to determine the terms and conditions of said leasing by said lessees and any lands acquired, owned, controlled, or occupied by such cities as herein provided shall and hereby are declared to be acquired, owned, controlled and occupied for a public purpose and as a matter of public necessity. (Act Apr. 25, 1929, c. 379, §3, superseding Laws 1929, c. 125, §3.)

**1626-11. Disposition of revenues.**—The revenues obtained from the ownership and operation of any such municipal flying field and airport shall be used to finance the maintenance and the operating expenses thereof and to make payment of interest on and current principal requirements of any outstanding bonds or certificates issued for the acquisition or improvement thereof, and to make payment of interest on any mortgage heretofore made. That portion of revenue in excess of the foregoing requirements may be applied to finance the extension or improvement of said flying field and airport. (Act Apr. 25, 1929, c. 379, §4, superseding Laws 1929, c. 125, §4.)

**1626-12. Bond issue.**—The limitation of bonds to the amount of \$150,000 for airport purposes and the limitation of one airport only to each city of the first class found in Chapter 62 of the Laws of Minnesota for 1927 [§§1626-4, 1626-5] are hereby expressly repealed, and each such city shall be authorized to issue bonds for the purposes defined in this act to an amount not to exceed \$450,000 in addition to all bonds heretofore issued for such purposes; except that in cities where a bond issue has been authorized in an ordinance approved by popular vote of the voters, the amount of such bond shall be limited to the amount authorized in said ordinance. No indebtedness, mortgage, lien or security shall be made, created, suffered, or incurred in the acquisition of land for such airport except as expressly authorized in this act. No land shall be purchased at an average price of more than \$600.00 an acre unless by condemnation proceedings. (Act Apr. 25, 1929, c. 379, §5, superseding Laws 1929, c. 125, §5.)

**1626-13. Issue of bonds—Rate of interest.**—In order to carry out the purpose of this act each such city is hereby authorized to issue municipal flying field or airport bonds or certificates of indebtedness to secure funds for the purchase and improvement of the specified land or to meet the cost of purchase or erection of designated buildings and structures. Said bonds or certificates of indebtedness shall be issued by each such city in the manner prescribed by law or by the charter thereof for the issuance and authorization of issuance of bonds.

In any city having a board of estimate and taxation the bonds hereby authorized may be issued from time to time by vote of five-sevenths of all the members of the board after request thereto by vote of two-thirds of all the members of the city council and in no other manner and if so authorized shall be issued by said board of estimate and taxation. In cities

not having a board of estimate and taxation such bonds may be issued and sold from time to time by vote of two-thirds of all the members of the city council or other chief governing body subject to the right of referendum where provided in the charter of any such city. Such bonds shall bear interest at not exceeding 5% per annum payable semi-annually. The principal shall be payable serially in not more than 30 annual installments as nearly equal as may be. The city council or other chief governing body shall levy annually a tax on all the taxable property of the city sufficient to meet the interest and principal about to mature. The bonds or certificates hereby authorized, or any part thereof, may be issued and sold by each such city notwithstanding any limitation contained in the charter of said city or in the law of this state prescribing or fixing limitations upon the bonded indebtedness of the city, but the full faith and credit of such city shall at all times be pledged for the payment thereof at maturity and for the payment of current interest thereon.

In case the jurisdiction of said airport be under a board of park commissioners in the cases provided in Section 7 [§1626-14] thereof, such board shall first request the city council that it request the issuance of bonds for such purposes.

The amount of all bonds heretofore or hereafter issued by any such city for the acquisition or improvement of a flying field or airport shall not be counted or included in the net indebtedness of the city or in any computation of the city's outstanding indebtedness for the purpose of determining the limit of net indebtedness of the city. (Act Apr. 25, 1929, c. 379, §6, superseding Laws 1929, c. 125, §6.)

**1626-14. Authority may be exercised by governing body or board of park commissioners.**—The authority hereby granted may be exercised by the city council or chief governing body thereof, by whatever name designated, or may be exercised by the board of park commissioners or other body in charge of the park system of the city. When said authority shall have been so vested in said latter body either under the provisions of this act or under the provisions of Chapter 62 of the Laws of Minnesota for 1927 [§§1626-1 to 1626-7], said authority shall continue to be exercised by said body in control of the park system of such city, and whichever body shall be vested with such authority shall have full and complete authority to govern said field so acquired and to regulate by general ordinance the use of said land for flying and for other aviation purposes. (Act Apr. 25, 1929, c. 379, §7, superseding Laws 1929, c. 125, §7.)

**1626-15. Proceedings legalized.**—In all cases where a city of the first class mentioned in this act has heretofore issued any bonds for the purpose of acquiring land and improving the same for a municipal flying field pursuant to an ordinance approved by the voters of such city, the proceedings heretofore taken in that regard are hereby in all respects validated and confirmed; any bonds already issued thereunder are validated and made legal obligations of such city, and such city is hereby authorized and empowered, pursuant to such proceedings, to issue further bonds for said purposes up to the limit fixed in such approved ordinance, which bonds, when issued, shall be legal obligations of such city according to their terms. (Act Apr. 25, 1929, c. 379, §8, superseding Laws 1929, c. 125, §8.)

**1626-16. Application.**—This act shall not apply to any city which has issued or shall issue bonds for municipal flying field and airport purposes as authorized by an ordinance referred to and approved by the voters of such city by popular vote. (Act Apr. 25, 1929, c. 379, §9, superseding Laws 1929, c. 125, §9.)

**1626-16a. Airports may be enlarged in certain cases.**—The governing body of any city of the first class in this State, now or hereafter existing, which city owns, maintains and operates an airport within its corporate limits, is hereby authorized and empowered, from time to time, as funds are available, to extend, enlarge and improve the facilities of said airport. Land necessary therefor may be acquired in the manner provided by the charter of any such city. (Act Apr. 24, 1937, c. 388, §1.)

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

**1626-17. Tax levy for Municipal airport.**—Each city of the first class of this State now or hereafter having a population of 50,000 inhabitants or more, including each city now or hereafter operating under a Home Rule Charter adopted under and pursuant to Section 36, Article 4 of the State Constitution, acting through its City Council or Chief Governing Body thereof by whatever name known or Board of Park Commissioners, is hereby authorized and empowered to levy annually on real and personal property of said City the tax not exceeding 1/20th of a mill on each dollar on the assessed valuation of said City for the purpose of operating and maintaining the municipal airport of said city. (Act Apr. 20, 1931, c. 273, §1.)

**1626-18. To be additional powers.**—The provision of this Act shall be in full force and effect notwithstanding any provision in the Charter of said City to the contrary hereof. But no such levy shall be made unless authorized by the Board of Estimate and Taxation of said city, according to the provisions of the Charter of said city establishing said Board of Estimate and Taxation. (Act Apr. 20, 1931, c. 273, §2.)

**1626-19. Provisions separable.**—If any provision of this Act shall be held to be unconstitutional, it shall not affect the balance of said Act. (Act Apr. 20, 1931, c. 273, §3.)

**1630-2 ½. Limitation in use of proceeds of bonds.**—That where bonds have been or may hereafter be issued, by a city of the first class having a population of 50,000 inhabitants or more, including all such cities operating under home-rule charters adopted under and pursuant to Section 36, Article 4 of the State Constitution, which bonds have been authorized by the voters of such city voting upon a proposition providing for the issuance of an aggregate amount of bonds for two or more distinct improvements, with a definite amount provided therein for each improvement, no part of the proceeds of such bonds shall be used until the governing body of the city has by resolution determined the projects and the amount of the proceeds of such bonds for such projects under each bond issue. (Act Apr. 3, 1929, c. 126, §1.)

**1630-2 ½ a. City to give notice of intent.**—Whenever any City Council, or other governing body, or official board of any city of the first class in the State of Minnesota, operating under a Home Rule Charter which has now or may hereafter have a population of 350,000 or more shall determine by the exercise of the right of eminent domain or pursuant to any general or special law or proceedings or pursuant to authority granted by Home Rule Charter to lay out, extend, widen, straighten or open any street, avenue, alley, roadway, parkway or boulevard which may now or hereafter exist or to acquire lands or easements in lands therefor or to improve the same by grading, laying of water mains, constructing sewers, sidewalks, curbs and gutters, or to establish or construct subways, overhead railways or crossings, building line easements or boulevards in, upon or along the same or to acquire easements or rights in lands for the purpose of constructing bridges or viaducts or drains or ditches or to change the course of or divert any stream of water (except the Mississippi River) or who shall determine to acquire lands or buildings for pub-

lic purposes for which there shall be levied a special assessment on any property for such purposes or who shall determine to regulate or restrict the use of buildings or lands by zoning pursuant to any law now or hereafter enacted authorizing the same shall give notice of such intent in accordance with Section 3 hereof. (Act Apr. 25, 1929, c. 383, §1.)

**1630-2 ½ b. Who served.**—Whenever any official of any such city shall, pursuant to any authority given him by law, ordinance or provision of the City Charter issue any order, decree, notice or warning in connection with any specific building or land not public property and including lands and buildings used or occupied by public service corporations shall serve a copy of such order, decree, notice or warning upon the owner of such lands or building, or both, affected by such notice in the manner provided in Section 3 [§1630-2 ½ c] hereof. The notice herein provided for shall include notices given by the Commissioner of Health affecting the sanitary condition of buildings or property, also those with respect to the existence of communicable diseases. (Act Apr. 25, 1929, c. 383, §2.)

**1630-2 ½ c. Form of notice.**—The notices required in Sections 1 and 2 hereof shall be served upon the owner of such lands or buildings in the manner prescribed by Statute for serving notices in civil actions, in case the owner is a resident of such city and is known to the officer charged with the duty of making such service. In case the owner is not a resident of said city or is not known or cannot be found by reasonable investigation a copy of such notice shall be mailed to said owner if known and not a resident of such city or if not known to the person whose name appears on the records of the County Auditor or the Register of Deeds in the county in which such city is located as the person who last paid the taxes on such property by depositing a copy of such notice in the postoffice postage prepaid, and addressed to the person above specified in an envelope plainly bearing on its front in type no smaller than ten point the words "Important notice affecting your property." Such notice shall be general in its character, but shall include a statement of the nature of the proceeding which affects the property of the person to whom such notice is sent; the officer or department of the city from whom further information may be secured and the address to which written communications or personal requests may be made. (Act Apr. 25, 1929, c. 383, §3.)

**1630-2 ½ d. Application.**—It is the intent of this act to provide only the manner in which notices shall be served upon owners of property in connection with official proceedings or actions above specified. It shall not affect provisions of any law only in so far as it relates to the giving of notice to owners. All other requirements, stipulations and provisions of each and all of said laws in so far as they are not inconsistent with this law shall be and remain in full force and effect. (Act Apr. 25, 1929, c. 383, §4.)

**1630-2 ½ e. Act paramount.**—This act shall be paramount to and supersede any provisions of any law or charter which are inconsistent herewith. (Act Apr. 25, 1929, c. 383, §5.)

Sec. 6 provides that the act shall take effect from and after its passage.

**1630-2 ½ f. Cities may reimburse for certain expenses.**—That any city of the first class is hereby authorized and empowered to reimburse any person, or the representative of the estate of any decedent, for actual expenses incurred for hospital, medical care, treatment, and for funeral services of any person who died as a result of personal injuries sustained through the act or acts of any agent, servant or official of such city in the performance of a governmental duty, and such city of the first class shall

have the right to reimburse and pay such person, or the representative of any such decedent, upon the passing of a resolution by the Council authorizing such payment, at any time within thirty days from and after the passage of this act. (Act Apr. 4, 1933, c. 158, §1.)

**1630-2½g. Inconsistent acts repealed.**—All laws and parts of laws, ordinances and charter provisions inconsistent herewith are hereby suspended and made inoperative for a period of thirty days from and after the passage of this act, after which time this act shall become and be suspended and inoperative and all laws and parts of laws, ordinances and charter provisions inconsistent herewith and hereby suspended shall again become operative and be in full force and effect. (Act Apr. 4, 1933, c. 158, §2.)

**1630-2½h. Purchase of land from federal government for civic center or public park.**—Any city of the first class in the State of Minnesota and/or any such city and the county in which it is located, acting jointly, are hereby authorized to buy from the federal government, upon such terms as may be agreed upon between the proper officials of any such city and/or county and said federal government, by written contract, any property owned by said federal government which is needed for a civic center and/or public park purposes, in such municipality. (Act Dec. 21, 1933, Ex. Sess., c. 6, §1.)

Sec. 2 of Act Dec. 31, 1933, cited, provides that the act shall take effect from its passage.

**1630-2½i. Bonds for construction of waterworks and municipal market.**—The governing body of any city in this state, now or hereafter having a population of more than 50,000 inhabitants, including any such city operating under a home-rule charter adopted pursuant to the Constitution of the State of Minnesota, Article 4, Section 36, and which city operates its waterworks system by means of a Board of Water Commissioners created by Act of the Legislature, and which city owns, maintains and operates its own Municipal Market, is hereby authorized and empowered, for the purposes herein designated, to issue from time to time as needed the negotiable bonds of their respective cities to an amount in the aggregate not exceeding \$550,000; said bonds to be in such denominations and payable at such places and at such times, not exceeding 30 years from the date thereof, as may be deemed best. Said bonds shall be in serial form and bear interest at a rate not to exceed six per cent per annum, payable semi-annually, at such place or places as shall be designated therein, and such governing body is further authorized to negotiate and sell such bonds from time to time to the highest bidder or bidders therefor, and upon the best terms that can be obtained therefor; provided, however, that no such bonds shall be sold for a less amount than the par value thereof and accrued interest thereon. (Act Jan. 9, 1934, Ex. Sess., c. 63, §1.)

**1630-2½j. Same—Limitation of indebtedness—tax levy.**—The bonds authorized by Section 1 of this Act, or any portion thereof, may be issued and sold by any such city notwithstanding any limitation contained in the charter of such city or in any law of this state prescribing or fixing any limit upon the bonded indebtedness of such city. The governing body of any such city issuing said bonds shall set aside annually from the revenues of the operation of projects for which the bond issue herein is authorized, a sufficient amount to pay the interest on said bonds and the principal of any such bonds maturing in any such year; and in the event such revenue is insufficient for this purpose, the governing body of any such city issuing said bonds shall include in the tax levy a sufficient amount for the payment of such interest as it accrues and for the accumulation of a sinking

fund for the redemption of such bonds at their maturity. (Act Jan. 9, 1934, Ex. Sess., c. 63, §2.)

**1630-2½k. Same—proceeds, how used.**—The proceeds of any and all bonds issued and sold under the authority of this Act shall be used for the following purposes and none other, viz.:

(a) For acquiring by gift, purchase, or condemnation a site or sites for municipal waterworks projects or extensions and improvements thereof; provided, however, that no bonds in excess of the sum of \$350,000.00 shall be issued for such projects under the provisions of this Act.

(b) For acquiring by gift, purchase, or condemnation a site or sites for city markets or the expansion and improvement of existing city markets and equipping the same; provided, however, that no bonds in excess of the sum of \$200,000.00 shall be issued for such projects under the provisions of this Act. (Act Jan. 9, 1934, Ex. Sess., c. 63, §3.)

**1630-2½l. Same—authority additional.**—The authority granted in this Act is in addition to all existing power and authority of any city operating under a home-rule charter adopted in pursuance of the State Constitution, Article 4, Section 36. (Act Jan. 9, 1934, Ex. Sess., c. 63, §4.)

**1630-2½m. Same—separability clause.**—If any provision of this Act shall be held invalid the remainder of this Act and the application thereof shall not be affected thereby. Act Jan. 9, 1934, Ex. Sess., c. 63, §5.)

Sec. 6 of Act Jan. 9, 1934, cited, provides that the act shall take effect from its passage.

**1630-2½n. Proceedings legalized.**—That in all cases where the governing body of a city of the first class by a majority vote has heretofore adopted any proceedings pursuant to authority contained in the charter of such city, for the issuance of certificates of indebtedness against the permanent improvement revolving fund of such city, such proceedings and all permanent improvement revolving fund certificates of indebtedness so issued under authority of such charter, are hereby legalized and declared to be valid and binding obligations, notwithstanding any defect or defects which may have occurred in such proceedings or certificates. (Act Feb. 8, 1935, c. 5, §1.)

**1630-2½o. Bonds issued, legalized and validated.**—That all proceedings heretofore taken by majority vote of the governing body of any such city, providing for the issuance of bonds to refund any or all of such permanent improvement revolving fund certificates of indebtedness are hereby validated and legalized, notwithstanding any defect in such proceedings, and such refunding bonds shall be the valid and legal obligations of such city when same shall have been sold and delivered pursuant to such proceedings; provided, however, that such refunding bonds shall not be sold or negotiated for less than par and accrued interest. (Act Feb. 8, 1935, c. 5, §2.)

**1630-2½p. Tax levy.**—That prior to the issuance of any of such refunding bonds, the governing body of any such city shall levy an ad valorem tax sufficient to pay the principal and interest on such bonds when same shall fall due, in the manner provided by Section 5, Chapter 131, of the 1927 Laws of Minnesota [§§1938-7], which tax shall be in addition to all other taxes levied by such city, and shall be without limitation. (Act Feb. 8, 1935, c. 5, §3.)

**1630-2½q. Act remedial.**—That it is hereby expressly found and determined that this act is remedial in nature, being necessary to protect the financial credit of such cities, and this act shall take effect and be in force from and after its passage. (Act Feb. 8, 1935, c. 5, §4.)

**1630-2½r. Bonds for municipal market.**—The governing body of any city of the first class in this state, now or hereafter existing, which city owns,



maintains and operates its own Municipal Market, is hereby authorized and empowered, for the purposes herein designated, to issue from time to time as needed the negotiable bonds of their respective cities to an amount in the aggregate not exceeding \$200,000; said bonds to be in such denominations and payable at such places and at such times, not exceeding 30 years from the date thereof, as may be deemed best. Said bonds shall be in serial form and bear interest at a rate not to exceed six per cent per annum, payable semi-annually, at such place or places as shall be designated therein, and such governing body is further authorized to negotiate and sell such bonds from time to time to the highest bidder or bidders therefor; and upon the best terms that can be obtained therefor; provided, however, that no such bonds shall be sold for a less amount than the par value thereof and accrued interest thereon. (Act Apr. 24, 1935, c. 284, §1.)

**1630-2½s. Limitations not to apply.**—The bonds authorized by Section 1, of this Act, or any portion thereof, may be issued and sold by any such city notwithstanding any limitation contained in the charter of such city or in any law of this state prescribing or fixing any limit upon the bonded indebtedness of such city. The governing body of any such city issuing said bonds shall set aside annually from the revenues of the operation of projects for which the bond issue herein is authorized, a sufficient amount to pay the interest on said bonds and the principal of any such bonds maturing in any such year; and in the event such revenue is insufficient for this purpose, the governing body of any such city issuing said bonds shall include in the tax levy a sufficient amount for the payment of such interest as it accrues and for the accumulation of a sinking fund for the redemption of such bonds at their maturity. (Act Apr. 24, 1935, c. 284, §2.)

**1630-2½t. Use of proceeds.**—The proceeds of any and all bonds issued or sold under the authority of this act shall be used for the purchase or condemnation of a site or sites for the expansion, improvement and equipment of such municipal market, owned, maintained and operated by any such city; provided, however, that no bonds in excess of the sum of \$200,000.00 shall be issued for such purposes. (Act Apr. 24, 1935, c. 284, §3.)

**1630-2½u. To be additional powers.**—The authority granted in this Act is in addition to all existing power and authority of any city operating under a home-rule charter adopted in pursuance of the State Constitution, Article 4, Section 36. (Act Apr. 24, 1935, c. 284, §4.)

**1630-2½v. Provisions severable.**—If any provision of this Act shall be held invalid the remainder of this Act and the application thereof shall not be affected thereby. (Act Apr. 24, 1935, c. 284, §5.)

Sec. 6 of Act Apr. 24, 1935, cited, provides that the act shall take effect from its passage.

**1630-2½x. Sinking fund committee to invest funds.**—Whenever, in any city of the first class, now or hereafter existing, the right and duty of investing sinking fund moneys of such city is vested in a sinking fund committee or similar body, as distinguished from the governing body of any such city, such sinking fund committee or similar body, in addition to all other powers to make such investments in them vested, is hereby authorized to invest such sinking fund moneys in interest bearing promissory notes of any such city, heretofore issued, the payment of which is provided for by receipts of delinquent taxes accruing to such city, provided, however, that all receipts from delinquent taxes which are, at the time of the passage of this act, pledged to the payment of such notes shall be applied to the payment thereof until the same shall have been paid in full and to the extent that any such city shall have pledged its delinquent taxes to the payment of such notes said pledge is

hereby expressly authorized and validated. (Act Apr. 24, 1935, c. 285.)

**1630-2¾. Cities may establish municipal forest.**—Any city of the first class operating under Article IV, Section 36, of the constitution of the State of Minnesota by resolution of the governing body thereof may purchase or obtain by condemnation proceedings, any tract or tracts of land bordering any lake, for a municipal forest and manage the same on forestry principles and may reserve any part of such land for use as a public bathing beach. The selection of such lands and the plans of management thereof, shall have the approval of the state forester. (Act Apr. 17, 1935, c. 203, §1.)

Sec. 2 of Act Apr. 17, 1935, cited, provides that the act shall take effect from its passage.

## HOUSING ACT FOR CITIES OF FIRST CLASS NOT UNDER HOME RULE CHARTERS

### ARTICLE I GENERAL PROVISIONS

**1630-3. Citation of law—Cities to which law applies.**

Act is limited to dwelling erected after its enactment. *Miller v. P.*, 199M331, 271NW818. See Dun. Dig. 6525.

**1630-4. Definitions \* \* \***

(12).

See subd. (12½) modifying this subdivision as to definition of "basement."

(12½.) **Basement.**—In all cities of the first class which have heretofore or may hereafter adopt by charter or ordinance "The Housing Act" as provided in Chapter 137, Session Laws of 1917, as amended by Chapter 517, Session Laws of 1919, which regulates the space which must be left between a building and the adjoining building or between a building and the boundary line of the lot or lots on which it stands, by the number of stories in such building. A basement is a story partly underground but having at least one-half of its height above the curb level of the adjoining street and shall be counted as a story. (Act Apr. 22, 1929, c. 282, §1.)

See, also, §§3009, 4075.

### ARTICLE II DWELLINGS HEREAFTER ERECTED

#### Title 1

##### Light and Ventilation

**1630-16. Side yards, etc.**

See §1630-4(12½).

**1630-21. Buildings on same lot with a dwelling.**

This section is invalid for uncertainty. *State v. Parker*, 183M588, 237NW409.

#### Title 3

##### Fire Protection

**1630-44. Means of egress.**

In action for rent wherein defendant defended on ground that she moved out because apartment had only one exit, burden was upon defendant to prove that building inspector made "requirements," building having been constructed prior to passage of this act. *Miller v. P.*, 199M331, 271NW818. See Dun. Dig. 5425.

**1630-56. Outside stand pipes.**

This section is superseded by §5909 insofar as the latter refers to outside standpipes in hotels and lodging houses. *Op. Atty. Gen.*, July 24, 1933.

### ARTICLE V IMPROVEMENTS

**1630-107. Egress.**

In action for rent wherein defendant defended on ground that she moved out because apartment had only one exit, burden was upon defendant to prove that building inspector made "requirements," building having been constructed prior to passage of this act. *Miller v. P.*, 199M331, 271NW818. See Dun. Dig. 5425.

### ARTICLE VI REQUIREMENTS AND REMEDIES

**1630-110. Permit to commence building.**

Where city ordinance required application to city council for permits for erection or maintenance of build-

ings to be used for sale or storage of lumber and no application was made, question whether ordinance which is otherwise constitutional, is constitutional in its particular application to respondent, cannot be determined by court as discretion of city council has not been invoked or exercised. *State v. Clousing*, 198M35, 268NW844. See *Dun. Dig.* 6525.

Ordinance requiring permission from city council as condition precedent to erection and maintenance of buildings to be used for sale or storage of lumber held applicable to repair of already existing structures and erection of new structures as replacements of similar ones destroyed by fire. *Id.*

Ordinance giving to city council power to issue or withhold permits for erection and maintenance of lumber yards and buildings held constitutional as against attack that it was unlawful delegation of power to city council without restriction or limitation. *Id.*

Court cannot inquire into motives of city council except as they may be disclosed on the face of particular act in question or by reference to general existing conditions or other legislative acts. *Id.*

Ordinance requiring building permits from city council held not to be retroactive or retrospective in effect as applied to facts and circumstances of case. *Id.*

One does not have vested right to continue to maintain lumber yard free from restrictions or regulations imposed by municipal legislative authority pursuant to the lawful exercise of its delegated police power. *Id.*

In mandamus to compel issuance of building permit court is bound to consider situation as it exists as of time of hearing on question whether peremptory writ should issue, and where a city ordinance has been passed since issuance of alternative writ, its effect and validity are necessary and proper issues for determination. *Id.* See *Dun. Dig.* 5752b.

One operating a small automobile repair shop at rear of his home in a residential district was not guilty of violating city zoning ordinance, as he had obtained a special permit from city council, which was authorized by a provision in said ordinance to issue such permits in cases "where practical difficulties or unnecessary hardships occur." *State v. Gunderson*, 198M51, 268NW850. See *Dun. Dig.* 6525.

#### 1630-111. Certificate of compliance.

Illegal use and occupancy of a homestead does not render it subject to sale on execution. *Ryan v. C.*, 185 M347, 241NW388. See *Dun. Dig.* 4207.

#### 1630-114. Procedure.

See *Laws* 1929, c. 282, ante, §1630-4(12½).

#### 1630-117. Service of notice and orders.

See *Laws* 1929, c. 282, §2, post §1630-127.

**1630-127. Definitions—service of order.**—In all such cities of the first class the term "issue an order" where same appears in said Housing Act to be issued by the commissioner of health, shall be construed to mean "serve an order in the manner provided for the service of a summons in a civil action in this state." The person upon whom any such order affecting real property shall be served shall be the owner of the real estate if known, or the agent of such owner when registered under the provisions of said Housing Act, or if the owner is not known and his identity cannot be determined the person whose name and address last appears upon a receipt for taxes paid upon such real estate in the office of the county auditor or county treasurer. No such order affecting real property shall be deemed to have been issued or served under the provisions of said Housing Act unless appended to such order is a notice to the owner that if he feels aggrieved thereby he shall appeal to the district court of the county in which the real estate is situated, within five days after the service of such order. (Act Apr. 22, 1929, c. 282, §2.)

**1630-128. Appeal to District Court.**—Such owner may, within five days after the service of such order, appeal to the district court by the service of a notice so to do upon the commissioner of health or other chief health officer of said city and the filing of such notice with the clerk of the district court of the county where the real estate is situated. (Act Apr. 22, 1929, c. 282, §3.)

**1630-129. Court to try issues.**—Upon such appeal the district court shall try de novo the entire question of whether or not the facts claimed by the commissioner and on which he seeks to base his order are true and whether or not such order constitutes a taking of said real estate or any right therein or part thereof without compensation and whether or not the

changes or abatement ordered are reasonable in their nature and a reasonable time is allowed therefor and shall give judgment accordingly. (Act Apr. 22, 1929, c. 282, §4.)

**1630-130. Tenants not to be served.**—Prior to the hearing and final determination of such appeal or the expiration of the time allowed therefor no order or notice shall be posted or served upon or delivered to the tenants of said real estate in any way and no other interference with the rights of the owner or lessees shall be allowed. Any person violating any of the provisions of this act shall be personally liable to the person injured or damaged thereby. (Act Apr. 22, 1929, c. 282, §5.)

**1630-131. Inconsistent acts repealed.**—All laws or parts of laws and all charter provisions inconsistent herewith are hereby repealed. (Act Apr. 22, 1929, c. 282, §6.)

#### LAWS AFFECTING CITIES OF THE FIRST CLASS

**Correction.** "'07, c. 55" appearing in 1927 Statutes should be "'07, c. 57."

Act Feb. 26, 1929, c. 40, legalizes appropriations made within 12 months preceding passage of act.

Laws 1931, c. 255, authorizes reduction of special assessments under circumstances so limited as to require omission from the statutes.

Act Feb. 23, 1933, c. 37, legalizes bonds theretofore issued or ordered to issue under Laws 1919, c. 41.

Act Apr. 10, 1933, c. 201, authorizes cities of the first class to pay claim for personal injury, occurring within two months prior to Feb. 25, 1933, from stray bullet in gun battle between police and bandits.

Laws 1935, c. 251, authorizes first class cities to pay for municipal pipe organ.

Act Jan. 24, 1936, Sp. Sess., c. 74, authorizes cities of the first class to pay claims for burning any child, such payment to be made within 60 days after passage of the act.

Act Apr. 22, 1937, c. 357, authorizes cities of the first class to pay damage for personal injuries received on or about Jan. 27, 1937, incident to operation of motor vehicle by city officer or employee.

Act Apr. 24, 1937, c. 422, authorizes cities of the first class to pay claim for injuries to child suffered between Apr. 20 and May 10, 1936.

Act Apr. 24, 1937, c. 424, gives authority to pay claims arising within one year from date of act for injury from stray fired by police officer.

City of Minneapolis under home rule charter had power to reappropriation the city by changing the boundaries of its wards. *Granger v. City of Minneapolis*, 182M147, 233NW321. See *Dun. Dig.* 6893.

Laws 1921, c. 332, supersedes Mason's Stats., §3014, and applies to school district in city of Duluth created by special act. *Board of Education v. B.*, 192M367, 256NW 894. See *Dun. Dig.* 8669.

City of Duluth under §31 of its charter may purchase automobiles or trucks without advertising for bids where there is no old car to be turned in and advertising would be a mere waste of time. *Op. Atty. Gen.*, July 28, 1931. See *Dun. Dig.* 6707.

Under Laws 1921, c. 332, §1, par. 1, board of education of Duluth may make expenditures for library, including textbooks, magazines and instructional supplies, insofar as they comprise a part of school libraries, and equipment and furnishings of a more or less permanent character, but cannot under such paragraph levy taxes for fuel, water, light, power, janitor's supplies, telephone service and engineer's or janitor's salaries. *Op. Atty. Gen.* (519m), Oct. 10, 1934.

Board of education of Duluth may not contract any debts or incur any pecuniary liability for payment of either principal or interest of which during current or any subsequent years it shall be necessary to levy a rate of taxes higher than maximum prescribed by Laws 1921, c. 332 and Mason's Stats., §2062. *Op. Atty. Gen.* (161b-10), Dec. 3, 1934.

Under Laws 1921, cc. 332 and 357, Duluth School District having levied less than 30 mills for school operating purposes, was not entitled to participate in apportionment of proceeds of special school tax levied under Laws 1921, c. 357, §2, though such school district levied special taxes for such other purposes as building fund, fund for interest and retiring bonds, fund of teachers' retirement fund association, etc., amounting in all to 35 mills. *Op. Atty. Gen.* (519m), Jan. 8, 1935.

Under Laws 1919, c. 3, the city of Minneapolis may transfer, temporarily, money from the permanent improvement revolving fund to the board of public welfare for the care of the poor, duty of city to care for the poor being absolute, and any funds in the city may be used to care for the poor, where poor funds have been exhausted. *Op. Atty. Gen.* (339i), Nov. 25, 1935.

PROVISIONS RELATING TO CITIES OF  
SECOND CLASS

By the amendment of §1671, the provision as to primary elections is made applicable to cities of the second class.

**1639-1. Certain boards abolished.**—That in any city of the second class located on any navigable river where a Federal wild life game refuge has been created by the Federal government for the protection and propagation of wild life therein, the local governing body may by a two-thirds vote thereof, abolish any board created for the administration of city property held by such city for, among other things, animal, bird, fish, game and hunting preserves, and place the control and administration thereof in the hands of such governing body. (Act Apr. 13, 1935, c. 172.)

**1643-2. Association to fix pension.**—That every paid municipal police department now existing or which may hereafter be organized may and is hereby authorized to become incorporated pursuant to the provisions of any applicable law of this state, or adopt a constitution and by-laws as a relief association to provide and permit and allow said police relief association so incorporated or so organized to pay out of and from any funds it may have received from the State of Minnesota, or from any other source, a service pension in such amounts and in such manner as its articles of incorporation or the constitution and by-laws shall so designate, not exceeding, however, the sum of \$60.00 per month to each of its pensioned members who shall have arrived at the age of 50 years or more, and shall have done active police duty as a member of such paid municipal police department for a period of 20 years or more in the police department of such city in which such relief association has been or shall be so organized, or who having been disabled physically or mentally because of any injury received or suffered while in the performance of his duty as such police officer, so as to render necessary his retirement from active police service may be placed upon the pension list, and shall receive such pension as provided for in said articles of incorporation or constitution and by-laws; provided, however, that if any such police officer shall die leaving a widow surviving him she may be paid as long as she remains unmarried such amounts not exceeding, however, the sum of \$60.00 per month and in such manner as the articles of incorporation or constitution and by-laws of said police relief association shall provide; provided, however, that said fund shall not be used for any other purpose than for the payment of service pensions and a disability pension as herein provided. ('19, c. 152, §2; Feb. 20, 1929, c. 31; Mar. 31, 1939, c. 122.)

**1643-3. Same—Increase or decrease.**—Every such association shall at all times have and retain the right to increase or reduce the amount of such pension not to exceed \$45 per month whenever, because of the amount of funds on hand, or for other good reasons such increase or reduction may seem advisable or proper to the board of management of said relief association. ('19, c. 152, §3; Feb. 20, 1929, c. 31, §3.)

**1648-1. Fireman's relief associations in certain cities—Surcharge.**—Whenever the balance in the special fund of any Firemen's Relief Association in any city of the second class is less than \$50,000.00, as determined by any such association's board of trustees, which fact shall be duly certified to by the State Comptroller, such board of trustees may thereupon file its duly verified petition for relief, accompanied by such certificate, with the Commissioner of Insurance. The Commissioner of Insurance shall thereupon order and direct a surcharge to be collected of two per cent of the fire, lighting and sprinkler leakage gross premiums, less return premiums, on all direct business received by any foreign or domestic fire insurance com-

pany on property in such city of the second class, or by its agents for it, in cash or otherwise, until the balance in the special funds of such relief associations amounts to \$50,000.00 and for a period of 15 days thereafter. As soon as the balance in said special fund amounts to \$50,000.00 the board of trustees of such relief association shall certify that fact to the Commissioner of Insurance and the Commissioner of Insurance shall forthwith issue his order ordering and directing that the collection of such surcharge shall be discontinued after the expiration of said 15 day period and shall forthwith mail a copy of the order last mentioned to each insurance company affected thereby. Said surcharge shall be due and payable from such companies to the State Treasurer in semi-annual installments on June 30th and December 31st of each calendar year, to be kept by the State Treasurer in a separate fund and if not paid within 30 days after such dates a penalty of three per cent shall accrue thereon and thereafter such sum and penalty shall draw interest at the rate of one per cent per month until paid. (Act Mar. 25, 1937, c. 109, §1.)

**1648-2. Same—State auditor to issue warrant.**—The State Auditor of this state on July 31, 1938, and semi-annually thereafter, shall issue and deliver to the treasurer of such relief association in such city his warrant upon the State Treasurer for an amount equal to the total amount of said surcharge on said premiums within such city theretofore so collected and transmitted to the State Treasurer by such insurance companies. Said warrants shall be paid out of said separate fund hereinbefore provided for, and the payment in each case shall be made to the treasurer of the relief association presenting the warrant. (Act Mar. 25, 1937, c. 109, §2.)

**1648-3. Same—Funds to be kept in special fund.**—The treasurer of such relief association shall place the money received by him in payment of any such warrant in the special fund of such relief association. (Act Mar. 25, 1937, c. 109, §3.)

**1648-4. Same—Emergency declared to exist.**—An emergency exists and this act shall be construed as a relief measure for firemen's relief associations in any city of the second class. (Act Mar. 25, 1937, c. 109, §4.)

**1649. Sprinkling of streets.**

St. Cloud, now a city of the second class under home rule charter, may sprinkle streets and assess the cost thereof against benefited property. Op. Atty. Gen., Feb. 7, 1931.

**1650. Definition.**

City in flushing a paved street to keep it in proper condition was engaged in a corporate, as distinguished from a public, function, and was liable for the negligence of its employees. 174M184, 218NW892.

**1664-28. Same—Application of law.**

St. Cloud, now a city of the second class under home rule charter, may sprinkle streets and assess the cost thereof against benefited property. Op. Atty. Gen., Feb. 7, 1931.

City of St. Cloud has power to lease or purchase land outside of its limits for the purpose of constructing a municipal golf course. Op. Atty. Gen., Oct. 2, 1931.

**1664-42. Same—Use of proceeds of bonds.**

Laws 1933, c. 284, §16, repeals Laws 1919, c. 224. See §5997-4a to 997-4h.  
Laws 1933, c. 284. Amended. Apr. 12, 1937, c. 193; Apr. 26, 1937, c. 491.

**1664-43. Cities of second class may establish residence requirements and wage scale.**—That in all cities of the second class in the State of Minnesota the city council shall by ordinances duly enacted with appropriate penalty provisions for the enforcement thereof, have power and authority as follows:

(a) To establish residence requirements and require that in all construction or repair work on any roads, bridges, sewers, streets, alleys, parks, parkways, buildings, utilities, or any other public work involving the improvement of public property, includ-

ing schools, all labor, either skilled or unskilled shall meet those requirements.

(b) To adopt a scale of wages to be paid in all public works and to require that it be a part of the specifications in contracts or be effective in all construction or repair work on any roads, bridges, sewers, streets, alleys, parks, parkways, buildings, utilities, or any other public work involving the improvement of public property, including schools on which work public moneys are to be expended. (Act Apr. 9, 1931, c. 121, §1.)

**1664-44.** That these powers shall be in addition to all other powers now vested in such cities and in their city councils. (Act Apr. 9, 1931, c. 121, §2.)

**1664-45.** Waterworks, lighting plants and sewage pumping plants; Board of municipal works may be created.—That in each city in the State of Minnesota which now has, or hereafter may have, no more than 50,000, and not less than 20,000 inhabitants, there be and hereby is created and established a board of municipal works, which shall have the control and management of all such water-works systems, lighting plants, and sewage pumping plants of each such city as may be owned and operated by such city, with the powers and duties hereinafter designated, provided, however, that this act shall not apply insofar only as the pumping and disposal of sewage is concerned to any city situated upon a navigable river which now has or may hereafter have a municipal sewage disposal plant for the treatment and disposal of sewage in such city. ('03, c. 165, §1; '11, c. 236, §1; Mar. 29, 1935, c. 75, §1.)

**1664-46.** Same; authority to be exercised by board; appointment.—That all authority under this act, in each such city, shall be exercised by a board of six (6) commissioners to be known and designated as the "Board of Municipal Works," who shall be appointed by the mayor of such city, and whose terms of office shall be as hereinafter designated. ('03, c. 165, §2.)

**1664-47.** Same; appointment and tenure of board members; qualifications; vacancies; removal; president, vice president, and secretary; quorum; powers; contracts; employees; city electrician; by-laws and regulations; treasurer; legal adviser.—It is hereby made the duty of the mayor in each such city in this state, in which a water works plant, a lighting plant and a sewerage pumping plant, or any one or more of them, is being owned and operated by such city on the last Monday in April, A. D. 1903, to appoint on such last Monday in April, A. D. 1903, six (6) persons, residents of such city, commissioners, one of whom shall be appointed to serve for a term of one (1) year, one for a term of two (2) years, one for a term of three (3) years, one for a term of four (4) years, one for a term of five (5) years, and one for a term of six (6) years. These six persons, so appointed, shall constitute the first board of municipal works for the city in which so appointed. The said terms of office shall commence on the first Monday in May, A. D. 1903, and said commissioners shall on said day enter upon the performance of their duties and assume the control and management of the water works system, lighting plant and sewerage pumping plants of the city in which they have been so appointed, or such of said works as shall then be owned and operated by said city.

The mayor of each such city shall annually thereafter, on the last Monday in April, appoint one person, resident of such city, as a member of said board and as the successor of the commissioner whose term of office expires in that year, to serve for a term of six years from the first Monday in May of the year in which appointed and until his successor is appointed and qualifies. Provided, that all appointments made under the provisions of this act, including the filling of vacancies, shall be so made that no more than three (3) persons of those comprising said board, shall at any time belong to the same political party, and pro-

vided further, that a change in the political belief of any of the members after appointment, shall not disqualify any member for membership or for reappointment.

That in each city of this state which now has no more than 50,000 and not less than 20,000 inhabitants, and in which none of the municipal works designated shall be owned and operated by such city on the last Monday in April, 1903, but in which any one or more of the said municipal works shall thereafter be installed and established by such city, to be operated and controlled by such city, and in each city of this state which hereafter may have no more than 50,000 and not less than 20,000 inhabitants in which thereafter any one or more of the municipal works may be so installed and established by such city, and no such board having been theretofore appointed in or for any such city, it shall be the duty of the mayor of each such city, not more than thirty (30) days and not less than ten (10) days prior to the time that it is contemplated by such city to commence the operation of any such works to appoint the board hereinbefore designated, whose terms of office shall commence immediately upon such appointment, one of whom shall be appointed to serve until the first Monday in May following, one until one (1) year after the following first Monday in May, one until two (2) years after the following first Monday in May, one until three (3) years after the following first Monday in May, one until four (4) years after the following first Monday in May, and one until five (5) years after the following first Monday in May, and their successors shall thereafter be appointed at the times and in the manner hereinbefore designated for the appointment of successors.

Each such board shall assume the control and management of such works immediately after the same shall be installed or established by such city and be ready for operation.

That whenever it shall hereafter be shown by any official state census that any city in this state contains the number of inhabitants hereinbefore designated, and not theretofore shown, and there shall at that time be owned and operated by such city one or more of such municipal works, it shall be the duty of the mayor of such city, on the last Monday in April following the official notice of such census, to appoint the board hereinbefore designated, whose term of office shall commence on the first Monday of May following, and who shall be appointed to serve for the lengths of time first specified in this section, and their successors shall thereafter be appointed at the times and in the manner hereinbefore designated for the appointment of successors.

That whenever there shall hereafter be constructed, purchased or installed any one of the municipal works hereinbefore designated, by any such city in which such board of municipal works have been theretofore appointed and established, or extensions or additions made to any such works therein previously established, or machinery installed to be operated in conjunction therewith, such board shall thereupon assume the control, operation and management of such works, extensions or machinery, in addition to all works then under its control, immediately after the same shall be completed by such city and ready for operation.

All vacancies, by resignations or otherwise, shall be filled by the board, but every such appointment shall require an affirmative vote of a majority of all the members of the board.

The mayor may remove any of the commissioners for misconduct, incompetency or neglect of duty after opportunity shall be given him to be heard on written charges. Each member of said board shall before entering upon the discharge of his official duties take and subscribe the usual oath of office and deposit the same with the city recorder of such city, together with a written acceptance of his said appointment. All appointments herein provided for shall be made by the mayor in writing and filed by him with the city recorder of such city; and when made by the board, the

secretary of said board shall certify the necessary facts to such recorder, showing the cause of such vacancy and how filled.

The said board shall elect annually one of their number to be president and one to be vice president of the board, and may make by-laws and regulations for their government not inconsistent herewith. In the absence of the president from the city or when the president by reason of sickness or other cause is incapacitated from acting, the said vice president shall be the acting president of said board with all the powers and duties of said president. A majority of said board shall constitute a quorum, and all contracts and engagements, acts and doings of said board, within the scope of their duty and authority shall be obligatory and binding upon such city.

The members of said board shall receive no compensation for their services, but shall be allowed their reasonable official expenses, except that traveling expenses outside such city shall not be allowed any such members unless authority to make such trip be previously granted by such board and approved in writing by the mayor of such city.

The said board shall elect some suitable person as secretary, not a member of said board, who shall, as such secretary, be the general superintendent of the several municipal works under its control in such city.

The said board shall have power by an affirmative vote of a majority of all its members to remove him for cause, after opportunity shall be given him to be heard upon written charges.

Said board shall appoint some suitable person to have the care and superintendence of all poles and wires owned, by such city, and who shall be styled "city electrician," with such powers and duties as may be prescribed by said board. Such city electrician shall be ex-officio superintendent of the fire alarm system of such city.

Said board may appoint and employ all proper clerks, assistants and employes necessary or convenient for the operation and management of the several municipal works or departments in such city, and for accomplishing the purposes contemplated by this act.

The salary and compensation of all persons appointed and employed by said board in any of the departments under its control shall be such as may be fixed by such board, by an affirmative vote of a majority of all its members.

It shall be the duty of each such board within six months after its appointment and organization to make and establish general rules providing for the manner and method of appointing, employing and removing all persons in connection with the operation and management of the several municipal works under the care of such board and to define their duties and powers. Such rules shall, when practicable, provide that all appointments and employments, other than ordinary labor and transient assistants and employments, shall be made in accordance with the civil service or "merit system," and all such rules when so established shall be changed only by an affirmative vote of five-sixths of all the members of said board.

The treasurer of such city is hereby declared to be ex-officio treasurer of said board. The city engineer of such city, except when otherwise designated by said board for special purposes, shall be the engineer of said board.

The city attorney of such city, except when otherwise specially designated by said board, shall be the legal adviser of said board. ('03, c. 165, §3; '11, c. 236, §§2, 3.)

**1664-48. Same; duties of secretary and treasurer; books open to public inspection.**—It is made the duty of the secretary, under the direction of said board, to collect and receive and to pay into the city treasury all moneys due such board on account of the operation of said works, and to keep a set of books which shall at all times contain a full and complete statement of the condition and operation of each such municipal works or department, and of all matters in

connection therewith, and a detailed and exact account of all moneys received and paid out by order of said board, in each such department, and all debts due and owing said board for any cause whatever, together with an accurate account of all the expenses of and liabilities incurred by said board in each such department.

It is made the duty of the treasurer of said board to receive all moneys which may be paid into the city treasury on account of said board from any sources whatever, and place the same in a separate fund therefor to be designated "municipal works fund," which fund is hereby created for each city, and all moneys so received shall be retained by said treasurer and paid out only upon the order of said board, signed by the president and countersigned by the secretary thereof, and he shall keep a detailed and exact account thereof, in such manner as to show at all times the exact financial condition of said board.

The books of said board shall at all times be open to the examination of any taxpayer of such city, or to any member or committee of the city council; said board shall on the first Monday in April in each year make a full report in detail to the city council of the condition and operation of the works under their charge, and of each department, and of all receipts and expenditures, for the year then ending, on account of the same; and shall also, whenever desired by said council, transmit to said council a concise statement of the financial condition of any such department. ('03, c. 165, §5.)

**1664-49. Same; actions by or against board.**—Said board may sue and be sued, plead and be impleaded, answer and be answered unto, appear and prosecute unto final judgment in any court or elsewhere in the name of said board, have a common seal and alter the same at pleasure. They may prosecute any action in the name of said board against any person or persons for money due for the use of water or from any other cause; for the breach of any contract, express or implied, touching the execution or management of any of said works or departments, or of any promise or contract made to or for them; and also for the injury or trespass or nuisance done or caused or procured to be done to the water courses, pipes, machinery or any other apparatus belonging to or connected with any part of any of said works, or for any improper use or waste of the water. ('03, c. 165, §6.)

**1664-50. Same; use of railroad right of way or highways.**—The said board, in behalf of said city, and all persons acting under their authority, shall have the right to use the grounds or soil under any road, railroad, highway, street, lane, alley or public ground for the purpose of constructing, extending, enlarging, improving or repairing the works contemplated by this act, on condition that they shall, when not otherwise provided by any ordinance of said city, and when not the duty of some private person, company or corporation, causes the surface of such road, railroad, highway, street, lane, alley or public ground, to be restored to its original state, and all damages done thereto to be repaired. ('03, c. 165, §7.)

**1664-51. Same; records; annual estimate; fiscal year; tax levy; assessment against departments.**—Each such board shall keep and maintain an accurate and detailed record of the following annual accounts:

First—The current expense of operating and maintaining each of the water works, lighting and sewerage departments, or such of them as may be under their control.

Second—Interest on all outstanding water and light bonds.

Third—Extensions and improvements.

Fourth—Such other accounts, and such subdivisions of the foregoing named accounts as may be deemed desirable for the purpose of accurately showing the true financial conditions of each of said departments and all property belonging to the same.

On or before the second Monday in August of each year the secretary of said board shall present to the said board of municipal works of such city, in writing, an estimate of the probable receipts during the next ensuing fiscal year for each such department, from each and all sources other than municipal, such fiscal year to commence on the first day of April; together with an estimate of the several amounts required during the next ensuing fiscal year for the operation and proper maintenance of each of the departments under their control, and shall also make a special estimate of amounts required for the water works department of such city during the next ensuing fiscal year for each of the following purposes, to-wit:

First—For the current expenses of operating and maintaining said water works department.

Second—For interest on all outstanding water works bonds.

Third—For water works extensions and improvements.

Fourth—For the payment of outstanding water works bonds maturing during the next ensuing fiscal year, in the aggregate amount of not exceeding fifteen thousand (15,000) dollars.

The estimate for extensions and improvements in such water works department shall not, however, exceed ten (10) per cent of the said estimated probable receipts from all sources other than municipal, unless approved by an affirmative vote of a majority of all the members of the city council.

If said estimate of the probable receipts shall be less than the total of the amounts required for all of the purposes designated, said secretary shall thereupon prepare a detailed statement of all water which will probably be used and consumed for municipal purposes during the next ensuing fiscal year, excepting therefrom only public fountains, public drinking places, and public watering troughs, and shall equitably apportion the amount so required in addition to the estimated amount of receipts from other sources, to the said several municipal purposes for which said water is to be used, on the basis of the water rates prescribed and established by said board for like purposes, but shall not exceed such rates, and shall make as assessment of the several amounts so appropriated on the general fund of said city and on the funds of the several municipal departments so using said water.

Upon the completion of such estimate for all departments under the control of said board, said secretary shall present the same to said board, for the consideration and approval of said board.

Said board shall upon receipt thereof proceed to consider the same and shall make such corrections or changes as may be deemed necessary to perfect and equalize the same, and shall approve and establish the same on or before the last Monday in August following.

After such several estimates and the assessments for water works purposes upon the several municipal departments have been fully approved and established by said board, a duplicate of the same, duly certified to by the president and secretary of said board, under the seal of said board, shall be transmitted to and filed with the recorder of said city on or before the said last Monday in August, and at the same time a like copy shall be transmitted to and filed with each municipal department or board of said city against which an assessment for the use of water has been so made.

The city recorder shall thereupon include the amounts so established by said board and the amounts so assessed against the general fund of such city, in his estimate to the city council of the several sums which will be required to meet the expenses of such city during the next ensuing fiscal year; and said council shall establish the same in its tax levy for such year; and each board, or governing body, of the municipal department so assessed shall likewise include the amount so assessed against it in its estimate of the several sums required during the next ensuing

fiscal year, and such amounts shall in each instance be included in the respective tax levies for such year.

All amounts so assessed by said board and so included in the said tax levies, shall be paid to the treasurer of said board by each of said municipal departments respectively, in two equal installments, on the first day of July and on the first day of December of the year in which said taxes are collected.

If said estimate of the probable receipts shall be equal to or shall exceed the total of the amounts required for the next ensuing fiscal year, then no assessment shall be made for the use of water upon the several municipal departments as hereinbefore provided, and any and all surplus in the treasury of said department at the end of any fiscal year, and which said board shall by resolution determine not to be required for the next ensuing fiscal year, shall be ordered paid into the general fund of said city by said board. ('03, c. 165, §8.)

**1664-52. Same; sinking fund; duties of city treasurer, investment; redemption of bonds.**—The said board may at any time create and establish a sinking fund for the accumulation of a fund to be used for the redemption of outstanding water works bonds at their maturity. Such sinking fund shall be created by ordinance passed by an affirmative vote of two-thirds of all the members of said board. Moneys shall be paid into such sinking fund during such years only in which no water works bonds mature in an amount exceeding five thousand dollars. The moneys to be paid into such fund shall be obtained from the following sources, to wit: First. Such amount as may be designated each year by said board by resolution, shall be annually included by the secretary of said board in his estimate of the several amounts required during the next ensuing fiscal year, and shall be listed by him in his special estimate for the water works department as "for bonds sinking fund" under the "fourth" purpose designated and provided for in section 8 of this act, and shall be included in the amounts apportioned by said board to the several municipal purposes and included in assessment on the several municipal departments, if any be made, as provided for in said section 8 of this act; provided, that the amount included in such assessment and intended for such fund shall not in any one year exceed the sum of five thousand dollars. Second. Said board may annually transfer, by resolution in writing, to said sinking fund such portion of the surplus fund in the treasury of the water department at the end of any fiscal year, as said board may deem advisable, and as said ordinance may permit; provided, that such transfer of surplus shall not in any one year exceed the amount of ten thousand dollars, nor shall the total of all moneys paid into said fund in any one year exceed said sum of ten thousand dollars.

The city treasurer shall keep said fund separate and distinct from other funds, and shall keep, preserve and invest the same and pay orders drawn upon the same in the manner and as may be designated by the ordinance creating the same. The said board may at any time direct the city treasurer to invest a specified portion of said fund or the whole thereof in bonds of its said city or in certificates of indebtedness issued by said city, or in bonds or certificates of the State of Minnesota, or in certificates of deposit accompanied by bonds if indemnity of one or more banks located in said city, if in the opinion of said board the same can be done advantageously.

Said fund shall be used exclusively for the payment of maturing water works bonds, and only such amount shall be paid therefrom annually, for the redemption of such bonds, as the said board may annually, by resolution, authorize and designate. ('03, c. 165, §8a, added by '11, c. 236, §4.)

**1664-53. Same; transfer of money to municipal works fund.**—It shall be the duty of the city council of such city, immediately after the organization of such board, to direct the treasurer of such city to transfer from the general fund to the municipal works

fund, to be thereafter maintained by him and controlled by said board, all moneys theretofore levied for the departments under the control of said board, as the same may be received by such treasurer from the county auditor of such county, and all moneys in the city treasury of such city applicable to the needs of said departments, prior to the time that the first of the tax levies, hereinbefore designated to be made by and for said board, shall be collected, received and applied by said treasurer, for said board; and the city council of each such city shall also, hereafter, when not provided for in the board's estimate, cause to be transferred to the municipal works fund from the proper fund of such city the necessary means for maintaining and operating such works, or additions and extensions thereto as may have been installed by such city and which such board has assumed control, until the beginning of the fiscal year following the first tax levy which includes the board's estimate for the same. ('03, c. 165, §9.)

**1664-54. Same; payments from fund; orders, issuance.**—No moneys shall be paid out of the funds in the city treasury belonging to said board, except for principal or interest of water and light bonds, or either, unless such payment shall be specially authorized by an affirmative vote of a majority of all the members of such board, taken by a call of the ayes and noes, and then only upon order drawn by the secretary of such board, signed by the president and countersigned by the secretary, specifying the purpose and department for which, and the account upon which it is drawn, and made payable to the order of the person, firm or corporation in whose favor it is issued; provided, that orders in the form above prescribed may be issued at the proper time, without specific action by the board in each instance, for the payment of salaries or wages previously fixed and determined by the board, and made payable at certain definite times and in certain definite installments. ('03, c. 165, §10.)

**1664-55. Same; expenditures to conform to estimate; borrowing power.**—In all appropriations, and in all purchases made or liabilities incurred, said board shall not exceed in any fiscal year the amount of the estimate made therefor, as hereinbefore provided, and, except when otherwise authorized by law, no loans shall be made by said board at any time for any purpose, except when extraordinary expenditure shall be rendered unavoidable by fire or other unforeseen calamity, and such expenditure be approved by a majority vote of the city council of such city. ('03, c. 165, §11.)

**1664-56. Same; redemption of bonds.**—Whenever the city treasurer shall pay any principal or interest on any water or light bond he shall immediately transmit to the secretary of said board a statement of such payment, together with the bond or coupon so redeemed, and proper entry thereof shall be made by the secretary in the books kept for that purpose. ('03, c. 165, §12.)

**1664-57. Same; regulating distribution of water; rates, lien; hydrants; preventing waste of water.**—Each such board shall, if a water works system be under its control, regulate the distribution and use of the water in all places and for all purposes where the same may be required for either public or private use, and fix the price and rates therefor, and from time to time cause to be assessed the water rate to be paid by the owner or occupant of each house or other building having or using water, upon such basis as they shall deem equitable, and such water rate shall become a continuing paramount lien, until paid, upon each house or other building, and upon the lot or lots upon which such house or other building is situate, and they shall erect such new number of public hydrants and in such places as shall be ordered from time to time by the city council of such city. Said board is hereby authorized and required to restrain and prevent any and all wastage of water,

whether occurring under private or public use, and to that end may, when in its judgment necessary, turn off the water or take such other action as in its judgment may be proper. ('03, c. 165, §13.)

**1664-58. Same; enforcing payment of water rates.**—That each such board shall have the power and authority to require payment in advance for the use of water furnished by them in or upon any building, place or premises, and in case prompt payment for the same shall not be made, they may shut off the water from such building, place or premises, and shall not be compelled again to supply said building, place or premises with water until said arrears, with interest thereon, together with the cost and expense of turning said water off and on, as fixed by ordinance, shall be fully paid. ('03, c. 165, §14.)

**1664-59. Same; extension of system; establishing rates.**—That each such board may from time to time, for the purpose of furnishing a full supply of water to the inhabitants of such city for any and all purposes, extend the water works system under its control in such manner as said board may deem best, subject to all conditions herein contained.

That the said board of municipal works of each such city shall establish such reasonable water rates as will at all times insure to such city at least a sufficient income to pay all the expenses and costs of operation, maintenance and repair of said system and works, and the interest on outstanding bonds. ('03, c. 165, §15.)

**1664-60. Same; offenses by board or officers.**—It is hereby declared to be a misdemeanor, punishable by a fine not exceeding five hundred (500) dollars, or by imprisonment in the county jail not exceeding one year, or both, at the discretion of the court, for said board, or any of its officers, to knowingly omit the property of any person from assessment for water rates, or neglect or refuse to collect the same, or to give any person other or different credit for the use of water than that given the whole public, or those belonging to the same class. ('03, c. 165, §16.)

**1664-61. Same; regulation of lighting plants; extension.**—Each such board shall, if a municipal lighting plant be in operation in such city, regulate the distribution of lamps on the streets and public grounds of said city in such manner as to properly light such streets and public grounds, and shall determine the number and location of such lamps and provide for the proper operation, care and maintenance of the same, and of all poles, wires, fixtures and appliances pertaining to the same, and shall have the full control and management of such lighting plant, but no extensions for street lighting shall be made to the same nor additional lamps placed except upon an affirmative vote of a majority of all the members of such board. ('03, c. 165, §17.)

**1664-62. Same; by-laws, regulations, and ordinances; penalty for violation; publication.**—That each such board is hereby invested with full power to make and enforce such by-laws, regulations and ordinances applicable to any or all of the works under their control as may be deemed necessary to carry into effect the objects and intent of this act, and not inconsistent herewith, and to supply and define any power or mode not already specially designated herein, but contemplated by this act; said board may prescribe, as penalty for the violation of any ordinance or part thereof, the imposition upon the offender of a fine not exceeding one hundred (100) dollars, or imprisonment for a term not exceeding ninety (90) days; said board shall cause all such by-laws, regulations and ordinances to be entered in a book to be kept for that purpose, and signed by the president and secretary, which, when so entered and signed, shall be evidence in any court of this state. All such regulations and ordinances shall be published at least once in the official newspaper of such city. ('03, c. 165, §18.)

**1664-63. Same; contracts, writing; lowest bidder, advertisement.**—Every contract for material or for the construction of any part of any of said works under the control of said board, which shall involve the expenditure of a sum of two hundred (200) dollars or more, shall be in writing and shall remain on file with the secretary of said board. All work shall be let to the lowest responsible bidder therefor, except incidental repairs or minor improvements, after notice soliciting proposals for the doing of such work shall have been published in the official newspaper of such city, in at least two separate issues of the same; provided, said board shall have the right to reject any and all bids, and such rights shall be reserved in each advertisement soliciting bids; and provided further, that in the event on any extraordinary or sudden injury to any of (the) said works or any part of such system whereby damage or loss might ensue by reason of any delay, or in the event of the lowest bid submitted being no less than ten (10) per cent greater than the engineer's estimate therefor, the said board may cause the damage to be repaired or the proposed improvement to be made without contract and in such manner as the board may deem for the best interests of the city; and provided, further, that in all work of laying water pipe, said board may require all joints to be made by persons in the employ of said board. ('03, c. 165, §19.)

**1664-64. Same; purity of water; filters; increasing supply.**—That each such board shall have the power and authority to adopt any and all means, and to do any and all things by it deemed necessary to be done, to protect or to enhance the purity of the water supply of any such city and to supply the citizens of such with a pure and wholesome water for all purposes. Said board shall have the power and authority to decide upon, adopt, construct and install a system of filters or such other appliances, system or methods as it may determine for the purpose of filtering or purifying the water to be furnished by any such city to its citizens; or, if determined by it to be advisable, may provide or secure a new and additional supply of water from other sources than theretofore used; and may from time to time, as deemed necessary, increase the supply from the source theretofore employed. ('03, c. 165, §19a, added by '09, c. 121 §1; Am. '11, c. 236, §5.)

**1664-65. Same; interference with works, penalties.**—Any person who shall without authority from said board lay any main or service pipe or take water therefrom, or open or shut any service cock or fire hydrant, or remove or unscrew, wholly or partially, the cap from such fire hydrant, or enter or form any connection with or turn water into any tunnel excavated or used by said board for the purpose of laying its pipe, or who, being authorized by said board to take water from any main or service pipe into any specified building or upon any specified premises, or to be used for any specified purposes, shall, without authority from said board, use such water for any other than specified purpose or permit any other person to use the same for any other such specified purpose, or to take the same out of such building; and also such other person so using or taking such water, or who, without lawful authority, shall dig or excavate within six (6) feet of any main, pipe, gate, hydrant or blow-off of said works, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not more than one hundred (100) dollars, and not less than twenty-five (25) dollars, or by imprisonment in the county jail for a term of not more than three (3) months, nor less than twenty (20) days, or both such fine and imprisonment. ('03, c. 165, §20.)

**1664-66. Same; diversion or corruption of water; injury to works, civil liability.**—If any person or persons shall maliciously or wilfully divert the water or any portion thereof, from any such water works, or shall corrupt or render the same impure, or shall de-

stroy or injure any canal, aqueduct, pipe, conduit, machinery or other property used or required for procuring or distributing such water in any such city, or shall destroy or injure any of the machinery, fixtures or appliances used or required for operating the lighting plant or the sewerage pumping plant in such city, or do any act which shall cripple the operation of any such plant, or reduce its efficiency, such person or persons, and their aiders and abettors, shall forfeit to the said board of such city, to be recovered in a civil action, treble the amount of damages (besides cost of suit), which shall appear on the trial therefor to have been sustained; and all such acts are hereby declared to be misdemeanors, and the parties found guilty thereof may be further punished by a fine not exceeding one thousand (\$1,000) dollars, or by imprisonment not exceeding one (1) year, or both, at the discretion of the court. ('03, c. 165, §21.)

**1664-67. Same; commencement and scope of powers of board.**—The board of municipal works herein provided for, shall have no powers over, or duties of any kind in connection with, any of the municipal works herein designated until the same shall have been fully completed and installed and shall be in use and operation or ready to be put into use and operation, but such board shall be vested with and shall have the full power and authority after any such works shall have been constructed, installed and come under the control of such board to determine upon, make, construct and install any and all extensions thereto, except as in this act otherwise expressly provided; provided, that in case of lighting plants this act shall not repeal, amend or modify an act of the legislature of this state, entitled "An act to authorize and empower cities in this state having a population of not less than ten thousand (10,000) and not more than fifty thousand (50,000), to construct, erect or purchase electric light plants in such cities, and to authorize and empower such cities to issue their bonds for such purposes," approved April 10th, 1901, [ §§ 1325-1 to 1325-4 ], except in so far as this act vests such board with power and authority to control, operate and manage such plants after the same shall have been constructed, erected or purchased by the city, as in said act provided, and to make additions and extensions thereto for the uses and purposes for which such plants shall have been so installed by such city, and for which such plants are intended and directed by the council of such city to be used, but the power and authority to determine upon and make, construct and install additions and extensions to any such lighting plant for new and additional uses, not theretofore directed, shall be and remain as in said act provided, but when such additions and extensions for such new and additional uses shall have been determined upon, constructed and installed ready for use and operation, the control, operation and management thereof shall be immediately assumed by such board, and,

Provided, further, that this act shall not vest said board with any power or control over the sewer pipes of any such city, nor to abridge in any manner the powers of the city council of such city with reference to the laying or extensions of sewer pipes or constructing a sewer system or part of same in any such city, or to deprive such council of the supervision or control of such sewer pipes after construction, but such board shall have the full control and management of the pumping plant only of such system or systems of sewerage and of all machinery, appliances and flush tanks employed in the operation of such system or systems after the same have been erected, constructed and installed by such city. ('03, c. 165, §22.)

**1664-68. Same; repealer.**—All acts or parts of acts, whether general or special, inconsistent with the provisions of this act, are hereby repealed. ('03, c. 165, §23.)

Sec. 24 provides that the act shall take effect from its passage. Approved Apr. 10, 1903.



**1664-71. Improvement of lake and park—bonds or certificates of indebtedness.**—That the city council or other governing body of any city of the second class in this state located upon navigable boundary waters which now has or may hereafter have a population of not less than 20,000 or more than 50,000 inhabitants is hereby authorized and empowered by a vote of two-thirds of its members, by ordinance or resolution duly passed, to issue and sell bonds or certificates of indebtedness of such city with interest coupons attached in the amount of \$75,000 or so much thereof as said city council or governing body of said city may deem necessary for the purpose of dredging and beautifying any lake lying wholly within the boundaries of such city, and for the further purpose of creating, establishing, improving and beautifying of any park located within the boundaries of such city. (Jan. 13, 1936, Ex. Ses., c. 7, §1.)

**1664-72. Same—form, terms, and sale of bonds.**—Such said bonds to be made and issued in such denominations and payable at such place and at such times, not exceeding 30 years from the date hereof as may be deemed best by said council or governing body, notwithstanding any provisions contained in the charter of such city or any law of this state prescribing or fixing any limit upon the total amount of indebtedness of such city falling due in any one fiscal year, and to bear interest at a rate not to exceed six per cent per annum, payable semi-annually, with interest coupons attached, payable at such place or places as shall be designated therein. Said council or governing body is further authorized to negotiate and sell such bonds from time to time to the highest bidder or bidders therefor, and upon the best terms that can be obtained for said bonds; provided that no such bonds shall be sold for a less amount than par value thereof and accrued interest thereon, and provided further that all of said bonds shall be made for principal sum of not less than \$100.00 or more than \$1,000 each. (Jan. 13, 1936, Ex. Ses., c. 7, §2.)

**1664-73. Same—submission to popular vote—debt limit—levy of tax—sinking fund.**—The bonds hereby authorized, or any part thereof, may be so issued and sold, notwithstanding any provision contained in the charter of such city or any law of this state requiring approval of the voters of such city or any limitations contained in said charter or laws prescribing or fixing any limit upon the bonded indebtedness of such city.

The full faith and credit of any such city shall at all times be pledged for the payment of any bonds issued under this act, and for the payment of the current interest thereon, and said council or governing body of such city shall each year include in the tax levy a sufficient amount for the payment of such interest as it accrues, and for the accumulation of a sinking fund for the redemption of such bonds at their maturity. (Jan. 13, 1936, Ex. Ses., c. 7, §3.)

**1664-74. Same—execution of bonds.**—All bonds issued under authority of this act shall be sealed with the seal of the city issuing the same and signed by the mayor and attested by the city recorder or clerk of such city, but the coupons attached thereto may be signed with the lithographed signature of the recorder or clerk. (Jan. 13, 1936, Ex. Ses., c. 7, §4.)

**1664-75. Same—use of proceeds of bonds.**—Said council or governing body hereby is and shall be authorized and fully empowered, in addition to all other powers possessed by it, to use the said bonds or the proceeds of the sale thereof for the purposes herein specified, but neither the same nor any part thereof shall be used for any other purpose. (Jan. 13, 1936, Ex. Ses., c. 7, §5.)

**1664-81. Water terminals—acquisition of land.**—That any city in this state located upon navigable boundary waters which now has or may hereafter have a population of not less than 20,000 and not more than 50,000 inhabitants shall have the power to acquire and hold in fee simply by purchase or con-

demnation land for the establishment of docks, quays, levees, wharves, landing places, railroad or other land transportation loading and unloading places, land and water freight and passenger stations, terminals and terminal buildings for any and all kinds of carriers and necessary equipment and appurtenances on any navigable stream within the limits of such city and may set aside such portion of said land when acquired as the public may require for use for public travel and shall devote the remainder thereof to uses herein provided or if required by the United States government. (Jan. 13, 1936, Ex. Ses., c. 8, §1.)

**1664-82. Same—construction of works—tolls and charges.**—That all such cities shall have the power to construct, erect and maintain on any such land so acquired, docks, quays, levees, wharves, landing places, railroad and other transportation loading and unloading places, land and water freight and passenger stations, terminals and terminal buildings for any and all kinds of carriers and necessary equipment and appurtenances; and such cities shall have the power and are hereby authorized to charge a reasonable price for the use of such docks, quays, levees, wharves and landing places, railroad and other land transportation loading and unloading places, land and water freight and passenger stations, terminals and terminal buildings for any and all kinds of carriers and necessary equipment and appurtenances, such reasonable price to be determined and fixed by the common council or governing body of such city, and the making of such charge shall in no way be held to impair, affect or invalidate any bonds issued by such city to cover the payment of the construction thereof. (Jan. 13, 1936, Ex. Ses., c. 8, §2.)

**1664-83. Same—bonds or certificates—self liquidating—mortgage—foreclosure—regulation.**—That any such city may by written resolution or ordinance adopted by a two-thirds vote of all members of its common council or other governing body issue and dispose of interest bearing bonds or certificates to be known as River Terminal bonds or certificates which shall under no circumstances be and become an obligation or liability of said city or payable out of the general funds of said city, but shall be payable solely out of the specified portion of the revenues or income to be derived from such river terminal docks, quays, levees, wharves, landing places, railroad and other transportation loading and unloading places, land and water freight and passenger stations for the acquisition of which said bonds or certificates were issued. Such certificates shall not be issued and secured on any such river terminal property in an amount in excess of the cost to the city of such river terminal as hereinbefore provided and ten per cent of said cost in addition thereto. In order to secure the payment of such public utility certificates and the interest thereon the city may convey by way of mortgage or deed of trust any or all of the property thus acquired or to be acquired through the issue thereof; which mortgage or deed of trust shall be executed in a manner directed by the common council or other governing body of such city and acknowledged and recorded in the manner provided by law for the acknowledgment and recording of mortgages of real estate and may contain such conditions and provisions not in conflict with the provisions of this act as may be deemed necessary to fully secure the payment of the certificates described therein. Any such mortgage or deed of trust may carry the grant of a privilege or right to maintain and operate the property covered thereby, for a period not exceeding 20 years from and after the date such property may come in the possession of any person or corporation as a result of foreclosure proceedings; which privilege or right may fix the rates which the person or corporation securing the same as a result of the foreclosure proceedings shall be entitled to charge in the operation of said property, for a period of not exceeding 20 years. Whenever, and as often as default shall be made in the payment of such certificate issued or se-

cured by mortgage or deed of trust, as aforesaid, or in the payment of the interest thereon when due, and any such default shall have continued for the space of 12 months after notice thereof has been given to the mayor and financial officer of the city issuing such certificates, it shall be lawful for any such mortgagee or trustee, upon the request of the holder or holders of a majority in amount of the certificates issued and outstanding under such mortgage or deed of trust, to declare the whole of the principal of all such certificates as may be outstanding, to be at once due and payable, and to proceed to foreclose such mortgage or deed of trust in any court of competent jurisdiction. At a foreclosure sale, the mortgagee or the holders of such certificates may become the purchaser or purchasers and the rights and privileges sold, if he or they be the highest bidders. Any public utility acquired under any such foreclosure shall be subject to regulation by the corporate authorities of the city to the same extent as if the right to construct, maintain and operate such property had been acquired through a direct grant without the intervention of foreclosure proceedings. (Jan. 13, 1936, Ex. Ses., c. 8, §3.)

**1664-84. Same—accounts—publication of financial reports.**—Every such city owning, or owning and operating any such public utility shall keep the books of account for such public utility distinct from other city accounts, and in such manner as to show the true and complete financial results of such city ownership, or ownership and operation, as the case may be. Such accounts shall be so kept as to show the actual cost to such city of such public utilities owned; all cost of maintenance, extension and improvement; all operating expenses of every description, in case of such city operation; the amount set aside for sinking fund purposes. The common council shall cause to be printed annually, for public distribution, a report showing the financial results of such city ownership, or ownership and operation. (Jan. 13, 1936, Ex. Ses., c. 8, §4.)

**1664-91. Building and zoning regulations.**—That for the purpose of promoting health, safety, order, convenience, prosperity and general welfare, any city of the second class, including those operating under a home rule charter, may by ordinance regulate the location, size, use and height of buildings, the arrangement of buildings on lots, and the density of population within such city; may make different regulations for different districts thereof; and may acquire or prepare and adopt a comprehensive plan for the future physical development and improvement of such city, in accordance with such regulations, and thereafter, by ordinance adopted by a two-thirds vote of all the members of its governing body, may alter said regulations or plan. (Jan. 18, 1936, Ex. Ses., c. 35, §1.)

Where Zoning Ordinance is passed, but before it goes into effect state officers granted permit under old Code, right to construct the building depends upon whether any substantial part of the building is constructed before the new Ordinance goes into effect. Op. Atty. Gen. (59a-32), July 24, 1936.

**1664-92. May enforce regulations.**—The governing body of any such city is hereby authorized to pass ordinances for the enforcement of the provisions of this act and of such regulations and to provide therein penalties for the violation thereof. Such city is also hereby authorized to enforce such regulations by mandamus, injunction, or any other appropriate remedy in any court having jurisdiction thereof. (Jan. 18, 1936, Ex. Ses., c. 35, §2.)

**1664-93. To be construed as additional to existing laws.**—In any such city having a planning commission, the provisions of this act shall be construed as an addition to existing powers and not as an amendment to or a repeal thereof, and the governing body thereof may adopt a plan or plans prepared by such

planning commission. (Jan. 18, 1936, Ex. Ses., c. 35, §3.)

Sec. 4 of act Jan. 18, 1936, cited, provides that the act shall take effect from its passage.

**1664-94. Certain cities to maintain public playgrounds and skating rinks.**—That all cities in the State of Minnesota located upon navigable boundary waters having more than 20,000 and less than 50,000 inhabitants are hereby authorized and empowered to establish and maintain public playgrounds and public skating rinks within the corporate limits of such city, and for that purpose to acquire by grant, gift, purchase, lease or otherwise lands within the corporate limits of such city and to appropriate money therefor and for the maintenance of such public playgrounds and public skating rinks whenever the City Council of such city shall by a majority vote thereof deem the same necessary or advisable. (Apr. 12, 1937, c. 198, §1.)

Sec. 2 of Act Apr. 12, 1937, cited, provides that the Act shall take effect from its passage.

**1664-95. Unplatted land to be separated from cities in certain cases.**—The owners of seventy-five per cent or more of any contiguous unplatted tract or tracts or parcels of land containing not less than forty acres included within the corporate limits of any city in this State located on navigable boundary waters having a population of not less than twenty thousand or more than fifty thousand inhabitants, and used and occupied exclusively for agricultural purposes may petition the District Court of the county in which such tracts and parcels of land are situated for a decree detaching such tracts and parcels of land from such city. Upon the filing of such petition the Court shall fix a time for the hearing thereon which shall not be less than thirty days from the date of the filing of such petition; and the petitioner or petitioners shall serve or cause to be served a notice of such hearing upon the Mayor or City Recorder of such city at least twenty days before the time fixed for such hearing. (Apr. 12, 1937, c. 199, §1.)

**1664-96. Same—Court to make order.**—If upon the hearing the Court shall find such tracts and parcels of land are of the nature and quantity as hereinbefore set forth and that they may be detached from such city without unreasonably affecting the symmetry of the unsettled portion of such city it may grant such decree and said tracts and parcels of land shall thereupon become detached from such city for all purposes as exclusively as if they had never been a part thereof. (Apr. 12, 1937, c. 199, §2.)

**1664-97. Same—Land detached to become part of original townships.**—Such tracts or parcels of land which have become detached from such city under the decree of the Court shall thereafter form a part of the township in which such land was originally situated and where there is no organized town or township government in the town from which said lands were detached exclusive of the city government of such city it shall be the duty of the Board of County Commissioners of the county in which said lands are situated to attach any part or all of said lands so detached from such city by the decree of the Court made under the provisions of this act to any towns or townships adjoining said land and within said county and thereafter said lands shall at all times be subject to the government of the township to which they are so attached. (Apr. 12, 1937, c. 199, §3.)

Sec. 4 of Act Apr. 12, 1937, cited, provides that the Act shall take effect from its passage.

**1664-101. Annexation of territory to city; petition; ordinance.**—That whenever the majority of the owners in number and area of any property which has been platted into lots and blocks or outlets, or the owner of any tract, piece or parcel of land, abutting upon any city of the second class, whether such city is incorporated under general or special laws, or is operating under the terms and provisions of a home rule charter, shall petition the city council, city com-

mission, or other governing body of said city, to have such property annexed to the city, the city council or other governing body may by ordinance, and the city commission, acting under a home rule charter, may by resolution, declare the same to be an addition to such city, and thereupon such territory shall become a part of such city, as effectually as if it had been originally a part thereof. (July 15, 1937, Sp. Ses., c. 57, §1.)

**1664-102. Same; recording of ordinance; filing with county auditor.**—It shall be the duty of the city council, city commission, or other governing body of any such city to which such territory shall be annexed and added under this act, to cause a certified copy of the ordinance or resolution aforesaid to be duly filed and recorded in the office of the register of deeds of the county in which said city is located, or, in the event that said city is located in more than one county, in the office of the register of deeds of the county in which said territory thus annexed to said city is situated, and to also in like manner cause a certified copy of said ordinance or resolution to be filed in the office of the county auditor of said county; provided, that this act shall be construed to be distinct from and independent of any other law providing for the annexation of territory to cities of the second class, and not as repealing such law. (July 15, 1937, Sp. Ses., c. 57, §2.)

Sec. 3 of Act July 15, 1937, cited, provides that the act shall take effect from its passage.

**1664-103. Candidates to file affidavits.**—In all cities of the second class not having a Home Rule Charter, each candidate for nomination at the city primary election shall file his affidavit of candidacy in the manner now provided by law, except that such affidavit may be filed up to and including the 20th day before such primary election. (Act Jan. 17, 1939, c. 2.)

See §601-3(1)b.

Sec. 2 of Act Jan. 17, 1939, cited, repeals inconsistent acts, and Sec. 3 provides that the act shall take effect from its passage.

This provision may be impliedly repealed by the new Minnesota Election Law, being Laws 1939, c. 345. See, particularly Pt. 3, c. 1, §3, ante §601-3(1)b.

#### LAWS APPLICABLE TO CITIES OF SECOND CLASS

Laws 1931, c. 156, has not been wholly or partially repealed by Laws 1933, c. 407, or Laws 1935, c. 386, and neither subsequent law is applicable to laws affected by former laws. Op. Atty. Gen. (412a-13), Oct. 26, 1938.

Laws 1931, c. 156, provides for redemption from all delinquent taxes on land in cities of the second class by payment of amount of special assessments with 6% interest.

Form of conveyance provided for sale to cities of the second class under Laws 1931, c. 156. Op. Atty. Gen. (412a-8), Mar. 26, 1938.

Laws 1931, c. 156, providing for cancellation of general taxes and deed of land by city of St. Cloud, is constitutional. Op. Atty. Gen. (820), June 22, 1938.

#### PROVISIONS RELATING TO CITIES OF THIRD CLASS

**1665 to 1676. [Repealed Apr. 21, 1939, c. 345, Pt. 12, §1, ante §601-12, effective Aug. 1, 1939.]**

#### ANNOTATIONS UNDER REPEALED SECTIONS

**1665. Special elections.**

Reenacted as §601-11(3)a.

**1666. Candidates—Nomination.**

Reenacted as §601-11(3)b.

**1667. Fees—Ballots.**

Reenacted as §601-11(3)c.

**1668. Judges—Bonds of election.**

Reenacted as §601-11(3)d.

**1669. Compensation.**

Reenacted as §601-11(3)e.

**1670. General election law to apply.**

Reenacted as §601-11(3)f.

**1671. Cities of third class may hold primaries.**

Reenacted as §601-11(3)g.

Amended Jan. 20, 1931, c. 2.

Brainerd is a city of the third class, and general laws relating to city elections in cities of the third class are now applicable to that city, except as its charter may contain provisions inconsistent therewith. Op. Atty. Gen., Feb. 28, 1931.

**1672. Date—Notice.**

Reenacted as §§601-6(3)c, 601-11(3)h.

South St. Paul City election being April 4, primary election should be March 21. Op. Atty. Gen., Feb. 23, 1933.

When day for holding primary election would fall on a legal holiday, election should be held preceding day. Op. Atty. Gen. (64), Jan. 11, 1938.

**1673. Candidates shall file—Fee.**

Reenacted as §601-11(3)i.

Last date for filing in South St. Paul for primary on Mar. 21, would be Mar. 11. Op. Atty. Gen., Feb. 23, 1933.

When last day of filing as a candidate at primary falls on a legal holiday, last day for filing affidavits of candidacy is preceding secular day. Op. Atty. Gen. (911a-1), Jan. 27, 1937.

**1674. Manner of holding canvass.**

Reenacted as §601-11(3)j.

**1675. Vacancies.**

Reenacted as §601-11(3)k.

**1676. Registration.**

This section has been superseded by permanent registration act. Op. Atty. Gen., Feb. 23, 1933.

**1692. New charter.**

Brainerd is a city of the third class, and general laws relating to city elections in cities of the third class are now applicable to that city, except as its charter may contain provisions inconsistent therewith. Op. Atty. Gen., Feb. 28, 1931.

**1710-1. Soldiers' memorials.**

A soldier's memorial building may be used for holding public meetings, gatherings, conventions and a meeting place for educational and other purposes. Op. Atty. Gen. (59b-9), May 13, 1935.

This act is superseded by Laws 1923, c. 325 (§1933-10, et seq.). Op. Atty. Gen. (69b-9), Mar. 5, 1937.

**1713. Cities empowered to make local improvements, etc.**

City may dispose of old paving materials without applying to abutting property owners who paid therefor. Op. Atty. Gen. (396c-10), May 12, 1934.

City of Mankato may proceed under this and subsequent sections in constructing a white way, and it is proper to take care of expense of all rewiring or maintenance out of general revenue fund, and in assessing benefits it is proper to disregard matter of lamp posts per block, and to assess whole project as one unit according to front footage, since lots will benefit equally even though they do not have a light in front of their property. Op. Atty. Gen. (624c-15), July 26, 1939.

**1713-¼. Special assessments; intersections.**—The expense of any improvement mentioned in the foregoing section, except as otherwise specially provided in this act, shall be defrayed by an assessment upon the real estate benefited thereby, to be levied, enforced and collected in the manner hereinafter prescribed, except that all or any part of the expense of paving, repaving, graveling, macadamizing, filling and grading of the space occupied by street intersections may, if the city council of such city deems it expedient, be paid out of the general fund of such city. ('01, c. 379, §2.)

**1713-¼a. Several improvements in one contract.**—Two or more improvements upon one or more streets, either of paving, curbing, graveling, macadamizing, planking, grading or filling, or constructing retaining walls, protection fences, area walls, sewers, gutters or drains, or either or any of them, may be done at the same time under one resolution and may be included in one contract if deemed advisable by the city council of such city so to do. ('01, c. 379, §3.)

**1713-¼b. City engineer to make plans and specifications; estimate of cost.**—Prior to the passage of any resolution for the doing of any work or the making of any improvement hereinbefore specified, the expense of which is to be assessed upon property benefited, except as otherwise specially provided in this act for certain designated kinds of improvements, the city council of such city shall cause plans and specifications of such proposed work, together with an estimate of the probable expense thereof, to be made by the city engineer of such city, or by such other person as may be employed by the said city council for that purpose, and presented to said city council for its consideration and approval, and the same shall immediately upon the approval thereof by said council be filed with the city clerk or recorder of such city for the inspection of all parties interested.

Time and manner of receiving proposals, notice by clerk. The city council shall then designate a time, not less than twenty (20) days distant, and a place at which it will meet and act in relation to the doing of the proposed work and the making of the proposed improvement, and direct that notice be given by the clerk or recorder of such meeting, and the time, place and purpose thereof, and that in the meantime sealed proposals for the doing of such work and the furnishing of all material therefor, if required, will be received by said clerk or recorder, and opened in the presence of such council at such meeting.

Notice to state location and nature of improvements. In such notice shall be concisely stated the location of the proposed work, the general nature of the proposed improvement; that the said plans, specifications and estimate therefor have been so filed with the clerk or recorder, and that all persons interested will be heard at such time and place; the said notice shall be given by publication thereof in the official paper of such city, at least once in each week for two successive weeks prior to the time designated as aforesaid by the said city council. ('01, c. 379, §4.)

1713-¼ c. Shone-Hydro-Pneumatic system; sewer district; change of boundary lines; general fund; assessed to real estate benefited; when only portion of sewage district shall be constructed, cost divided.—Whenever the system of sanitary sewerage known as the Shone-Hydro-Pneumatic system, or any system other than a natural gravitation system, shall be adopted and established in and for any such city or for any portion of same, the city council thereof in each instance, when it proposes to cause such sanitary sewers or system of sewers to be constructed or laid, for the drainage of any given portion of such city, shall first determine and accurately describe, by ordinance, the area of territory to be made tributary to an ejector or pumping station to be constructed for such district, and in each instance such territory, so defined, shall be known as a sewer district in such city and shall be properly designated by number.

After sewers or sewer pipes shall have been constructed or laid in any such district, or any portion thereof, in accordance with plans adopted for such district, the city council of such city shall have no power or authority to change the boundary lines of such district, nor to increase or diminish the extent of territory made tributary to the ejector or pumping station therein; provided, that whenever it shall be found advisable after any such district has been established to make a portion of such district tributary to the pumping station of an adjoining district, for the purpose of obtaining a better and more efficient drainage for such portion, then and in such event, the said council may, by an affirmative vote of two-thirds (2-3) of all its members, cause such change to be made, after the city engineer of such city shall have filed his opinion in writing, deeming such change proper and advisable.

Whenever any such sewerage system, other than a natural gravitation system, shall be adopted and established in any such city, the cost and expense of all machinery, ejectors, pumps, air compressors, compressed air storage tanks, and all compressed air pipes and connections, and of erecting and installing all such machinery and appliances and the cost of constructing and laying the final discharge and outlet pipes from the ejector or pumping chamber, in such district to its terminus, shall be paid by the city at large out of the general fund of such city; and no greater amount than the cost of material and labor for and of constructing and laying all sewers and sewer pipes, and the cost and expense of material and labor for, and of constructing and equipping all flush tanks, the ejector or pumping chamber or chambers and attendant manholes and all other manholes in each such district, shall be chargeable to and assessed upon the lots and parcels of land found benefited in any such district.

Whenever only a portion of a sewerage district, established as in this section provided, shall be constructed and only a part of the territory in such district shall be provided with sewers, then and in such event there shall be assessed upon the property benefited thereby, such portion only of the cost of the ejector or pumping chamber and adjoining manhole, if constructed for the ultimate use of the entire district, as said council may deem equitable and just, and the balance of such cost, not so assessed, shall in the first instance be paid out of the general fund of such city, and upon each and every subsequent extension of sewers in such district, such portion of the cost of such ejector or pumping chamber and adjoining manhole, as may be deemed just and equitable by said city council, shall be included in the assessment for the cost of such extension, until such district has been fully completed, and each assessment for such portion of such chamber and manhole shall be returned into said general fund as the same shall be collected from time to time. ('01, c. 379, §5.)

1713-¼ d. Contract for entire improvement or for work alone; contract for machinery.—Any contract for the making of any improvement designated in this act may be for the entire improvement complete and include all labor, material, machinery and whatever may be necessary for the full completion thereof, or may be for the doing of the work alone, such city furnishing the necessary material therefor, as the city council of such city may deem to be the best interest of such city; and such council may also, at its discretion, cause the making of any such improvement by separate contracts for different portions thereof or by separate contracts for the labor, material and machinery required for the making of such improvement; in each such instance the notice, prescribed by section 4 of this act, shall contain a distinct statement of the nature and extent of such separate contracts, and shall definitely describe such separate portions of such improvement.

Whenever any machinery or mechanical appliances shall form a part of any improvement authorized by this act, the city council of such city may award a contract for the same after taking into consideration the efficiency, duty, cost of operation and maintenance and the construction, workmanship and operation generally of the several machines or appliances designated in the several bids, without regard to the amount of such bids. ('01, c. 379, §6.)

1713-¼ e. Sprinkling district; publication; contract for sprinkling with water or other substance; contract may include any number of districts.—Before any proceedings are had by any such city council for the sprinkling of any of the streets, lanes, alleys or public grounds in any such city, such council shall each year, by resolution in writing, determine what territory in such city shall be sprinkled during such year, and may divide such territory into two or more sprinkling districts, describing the boundary lines of each such district; each district so determined shall be designated by number, and thereafter all reference to such district by number in any notice required by this act, or in any other proceeding having reference thereto, shall be deemed a sufficient designation; said resolutions shall designate what officer or officers of said city shall supervise and inspect said work in accordance with the plans and specifications therefor; such resolution shall be published once in the official paper of such city.

The contract price to be paid by said city for the doing of such work, when such sprinkling is done with water, shall be upon the basis of sprinkling one hundred (100) square feet per week, during the life of such contract; if in the opinion of said council it is deemed impracticable, at the time of letting any such contract, to designate the exact length of time during which sprinkling is necessary in any or all of the districts designated during any particular season, said council may let such contract without so designating

the beginning and the end of such sprinkling season; and upon the city so letting such contract, the city council of such city shall have power to order the beginning of said work upon three (3) days' notice to the contractors hereof, and shall likewise have power to order said work to cease for the season in any or all districts or in any portion of any one district, if in their opinion no necessity therefor exists, and such order and direction shall be final, conclusive and binding upon all parties concerned. When, for the prevention of dust, oil or any substance other than water is employed in such work, the specifications therefor shall designate the number of sprinklings, or applications of the substance, to be applied during the entire season to the surface of the streets in the district specified, and the contract price to be paid by said city shall be upon the basis of one lump sum for each separate sprinkling or application in the entire district; such sum to include both labor and material or to be for labor alone as the specifications therefor may prescribe.

Any number of districts may be included in one contract and any or all action by the city council with reference to sprinkling may be with reference to the entire territory to be sprinkled. ('01, c. 379, §7; '13, c. 7, §2.)

**1713-¼ f. Council to give interested parties hearing as to proposed work; lowest responsible bid; work under direction of city engineer; mayor to approve or veto resolution; passage over veto.**—At the time and place designated in the notice prescribed by section four (4) of this act, an opportunity shall be given by the city council of such city to any and all interested parties to be heard for or against the proposed work designated in such notice, and the clerk or recorder of such city shall, in the presence of the said council, open and read all sealed proposals which may have been received for the doing of such work or the furnishing of material, if any, therefor, or both, as the case may be, and the city council of such city may then, by an affirmative vote of majority of all its members, by resolution in writing, accept the most favorable proposal (such proposal to be that of the lowest responsible bidder) and by such resolution authorized the doing of the proposed work or any part thereof, by the person or persons whose proposal shall have been accepted, and direct that written contract be made with him or them therefor; or may reject any or all proposals offered and refuse to authorize to do such work or of any particular part thereof; or if it is deemed by said council to be to the best interest of the city, and the estimate of the city's engineer is less than the lowest bid for said work and material, may reject all proposals offered, and authorize the doing of such work under the direction of the city engineer without contract, or may in its discretion, from lack of quorum or any other reasons, postpone the consideration and decision of the whole matter, or any branch thereof to a future definite time, of which postponement all parties interested shall be required and deemed to take notice.

Such resolutions, after the same has been duly adopted by the said council, shall be signed by the president of such council and attested by the said recorder or clerk, and on the next day after the adoption thereof the same shall be transmitted by such clerk or recorder to the mayor of such city for his approval. If the mayor approves the same he shall append his signature, with the date of his approval thereto, and return the same to the clerk or recorder within five (5) days, Sunday excepted, from the date of its transmission to him; and if he declines to approve the same he shall, within said period of five (5) days (Sundays excepted), return the same to the clerk or recorder with a statement of his objections thereto, to be presented to the said council at its next meeting thereafter.

Upon the return of said resolution to the city council, without the mayor's approval, the question shall again be put upon the passage of the same, notwithstanding the objections of the mayor, and if upon such vote, which shall be taken by a call of the ayes and noes, two-thirds (213) of all the members of the said council shall vote in favor of the adoption of such resolution, the same shall be declared adopted and shall have the same force and effect as if approved by the mayor.

If such resolution, transmitted to the mayor, shall not be returned by him to the said recorder or clerk within said five days (Sundays excepted), after presentation thereof to him, the same shall be deemed to be approved by him, and he shall deliver the same to the clerk or recorder on demand. ('01, c. 379, §8.)

**1713-¼ g. Contracts; how executed.**—All contracts authorized by this act for any of the improvements therein designated, shall be executed on behalf of such city by the mayor and attested by the clerk or recorder thereof. ('01, c. 379, §9.)

**1713-¼ h. Contract for paving may include sewer, etc.; assessments.**—That each such city is hereby authorized, whenever a contract is let for the paving or macadamizing of any of its streets, to include in such contract, when deemed expedient or necessary, the construction and laying, as far as the property lines, of all lateral sewers and drain connections that may be deemed expedient or necessary, and that the cost of such work shall be assessed by said council upon the real estate benefited thereby, and enforced and collected in the manner and under the regulations provided by this act for other local improvements in such city. ('01, c. 379, §10.)

**1713-¼ i. Patented appliance and material.**—In making any improvements herein authorized, the said council may select patented appliances and material to enter into such construction, if the cost, maintenance and duty thereof is deemed relatively the lowest or most satisfactory, all things considered, and the decision of said council therein shall be final. ('01, c. 379, §11.)

**1713-¼ j. Municipal quarries and works; street commissioner to certify cost.**—Each such city is hereby authorized to provide, establish, equip and maintain and cause to be operated under the supervision of the street commissioner of such city, municipal quarries for the purpose of providing stone, rock and macadam for municipal improvements and uses; and suitable works, apparatus and other facilities for the manufacture, construction and laying of macadam, asphalt, or other kinds of street pavements and sidewalks, as the city council of such city may determine.

Whenever any material is furnished by or obtained from any such municipal quarries, works, apparatus or other facilities, and employed in the construction of making any public improvements provided for in this act, the cost of which is to be assessed upon property benefited thereby, the street commissioner of such city shall immediately upon the completion of said improvement certify the cost of such material so furnished and employed in the making of said improvement, and all work in connection therewith to the city council of such city, and such certificate shall be placed on the file with the city recorder for the inspection of all parties interested; the amount so certified shall be deemed a part of the cost of the improvement so to be assessed, and an assessment shall be made therefor, levied and collected in the same manner as though said work had been performed and said material delivered by contract, as hereinbefore provided. ('01, c. 379, §12.)

**1713-¼ k. Board of health to report nuisance; report plan for abatement.**—Whenever the board of health shall report to the city council of any such city that stagnant or impure water stands upon any lot, lots or parcels of land within such city, thereby creating a

nuisance injurious to public health, said council shall immediately proceed to investigate the same, and if they shall determine that a nuisance does exist by reason of any stagnant or impure water standing upon any lot, lots or parcel of land, and the same is injurious to public health, they shall instruct the city engineer to prepare and recommend a plan and specifications for the abatement of said nuisance, together with an estimate of the expense, which shall be submitted to said council and filed with the recorder, the same as for other public improvements designated in this act, and if said council deems that sufficient real estate can be found benefited to the extent of the damages, costs and expenses necessary to be incurred thereby, such council shall order the doing of said work in the manner hereinbefore provided, and the same proceedings shall be had in relation thereto by said council and other city officers as in case of other local improvements provided for in this act, and the cost thereof shall be assessed upon the property benefited as hereinafter provided. ('01, c. 379, §13.)

**1713-¼l. Unforeseen obstacles; Contract rescinded; Mayor's consent not required.**—If the city council of any such city, in carrying out any of the provisions of this act, should find unforeseen obstacles in grading, excavating, filling, paving or abating nuisances, or in constructing sewers or drains, not provided for, such city council may by resolution order such change or modification in such improvement to meet such unforeseen obstacles, as the said council may deem equitable and just, upon the recommendation of the city's engineer in charge of such work, at any time before or after the letting or making of any contract to do the same, or at any time while the work is in progress, by an affirmative vote of two-thirds (2-3) of all the members of such council; and any additional expense occasioned by such change, addition or modification of the improvement may be included in the assessment therefor upon property benefited by such improvement, but no additional expense shall be incurred other than may be necessary to overcome such unforeseen obstacles; provided, that if the expense required to overcome such unforeseen obstacle will materially increase the cost which would be incurred in the work, if such unforeseen obstacle had not occurred, then the city council of such city shall have the power, by resolution in writing, adopted by an affirmative vote of two-thirds (2-3) of all the members of such council to rescind the contract therefor so far as the uncompleted part of the work is concerned, and may, in their discretion, after such rescission, order the work to be relet as other work is let under this act, and the original contractor in such case shall be entitled to be paid for the portion of the work done by him, ratably, according to contract price, as nearly as the same can be ascertained, and no more. No resolution adopted by virtue of the provisions contained in this section shall require the consent or action of the mayor of such city, but shall be in full force and effect when adopted by the city council, as herein designated. ('01, c. 379, §14.)

**1713-¼m. City engineer may complete work, when.**—If, in the opinion of the city council and its engineer in charge, any work under any contract in such city, authorized by this act, does not proceed each month so as to insure its completion within the time named in the contract, the city's engineer in charge of such work shall have power, when authorized by resolution of such city council, to furnish and use men and materials to complete the work, and charge the expense thereof to the contractor, and the same shall be deducted from any moneys due him or to become due such contractor, or may be collected from him in a suit by said city. ('01, c. 379, §15.)

**1713-¼n. Violating contract; damages and increased cost.**—In all cases where the work for any improvement contemplated by the provisions of this act, shall be suspended before final completion, or the contractor shall abandon his work under his said con-

tract or shall fail to perform the same for any cause, or if at any time the work or any part thereof is unnecessarily delayed, or the contractor is violating any of the conditions of his contract or executing any of the same in bad faith, then at the option of such city, and by an affirmative vote of a majority of all the members of such council, the contractor may be excluded from further control and superintendence of the work required by his said contract, and such city may then assume such control and superintendence and proceed to complete the work or improvement, either by authorizing the city engineer in charge to procure and furnish all necessary labor and material and complete the same by day work, or, as the city council may determine, relet the unfinished portion of such work or improvement in the same manner, as nearly as may be, as provided in this act for the letting of contracts in the first instant for such improvements, and in every case of such new contract the work shall be carried to completion and shall be paid for in the same manner as contracts for other like improvements, and any and all damages and increased costs of the work to the city, including both labor and material, will be a charge against the original contractor and shall be deducted from any moneys remaining unpaid him or to become due such contractor, and the balance, if any, may be collected by said city from him and his sureties as provided by law. ('01, c. 379, §16.)

**1713-¼o. Contractor personally responsible.**—Any contractor or person who accepts a contract authorized by this act, under any such city, shall take the same with the condition that he shall be personally and directly responsible for any and all loss, damage or injury which may arise or in any way, directly or indirectly, be suffered by said city by reason of any occurrence while the work is going on, and before acceptance thereof by such city, caused by any negligence or misconduct on his part or on the part of his servants or employes in doing the same, and every such contractor shall guard all such work by suitable guards by day and with lights at night, so as to prevent any loss, damage or accident. ('01, c. 379, §17.)

**1713-¼p. Contractor to execute bond.**—Before any contract whatever for the doing of any work or furnishing any skill or material, contemplated in this act, to any such city for the making of any improvement herein authorized shall be valid for any purpose, the contractor therefor shall execute a bond to such city, with two or more sufficient sureties to be approved by the mayor of such city, in such amount as the council of such city may direct, not less than the contract price agreed to be paid for the performance of such contract, and in no event less than one thousand (\$1,000) dollars, conditioned as provided by the General Laws of this state requiring the giving of bonds by contractors for public works and improvements, and conditioned further, that such contractor will indemnify and hold harmless such city against any damage, loss or injury which may arise in any way, directly or indirectly, be suffered by said city by reason of any occurrence while the work is going on and before acceptance thereof by such city, caused by any negligence or misconduct on the part of such contractor, his servants or employes in doing the same.

Such bond shall in all respects be executed as required by such General Laws, and all provisions in such laws contained, shall be applicable, as near as may be, to contracts herein authorized.

Every such bond shall be filed with the contract in the office of the clerk or recorder of such city, the custodian thereof. ('01, c. 379, §18.)

**1713-¼q. Bids accompanied by bond, or certified check.**—The council of every such city shall have power to require all bids for the doing of all work or the furnishing of all skill or material, authorized by this act to be accompanied by a bond, on the part

of the bidder in such sum and with such sureties as said council may prescribe, or in lieu of such bond a certified check payable to such city upon a bank located in such city, or cash of the same amount, conditioned that he will enter into a contract with such city for the doing of the work or the furnishing of the skill or material for the price mentioned in his bid, and according to the plans and specifications therefor in case the contract shall be awarded to him; and in case of default on his part to sign and enter into such contract or fail to furnish the required bond therefor, within the time prescribed by such council in and by the specifications therefor, the same shall be deemed forfeited, and if a check or cash be so deposited the same shall be the property of the city absolutely, and in case of a bond the same may be sued and judgment recovered thereon by such city, for the full amount in any court having jurisdiction of the amount. ('01, c. 379, §19.)

**1713-¼ r. Assessments to be made.**—It is hereby made the duty of the city council of such city to make without unnecessary delay, at the proper time or times, all assessments for local improvements authorized by this act. ('01, c. 379, §20.)

**1713-¼ s. Same; objections; assessment statement.**—Upon the completion of any improvement authorized under the provisions of this act, the city council of such city shall proceed without delay to apportion and assess the cost of such improvement, when not herein otherwise provided, upon the real estate by them deemed benefited, to the extent of benefits received, and in proportion, as near as may be, to the benefits resulting thereto from the improvement; and it shall constitute no objection to such assessment that the amount thereof either exceeds or falls short of the original estimate of the cost of the improvement submitted to the city council, or that the said city has not fully adjusted all matters with the contractors for said work, or approved his final estimate therefor, or that the said council has refused at that time to relieve the said contractor from further duties in connection therewith.

In all proceedings and advertisements for the making and collection of any assessment under this act, letters, figures and the usual and customary abbreviations may be used to denote lots, parts of lots, lands and blocks, sections, townships, ranges and parts thereof, the year and the amounts; such assessment shall be in writing, in which shall be given a description of each lot or parcel so assessed, the name of the owner thereof, if known, and the exact amount assessed thereto. ('01, c. 379, §21.)

**1713-¼ t. Publication of notice of meeting; objections in writing.**—Upon the completion of any assessment authorized by this act, the said council shall direct that the same be placed on file with the clerk or recorder, and shall appoint a time, not less than ten (10) days distant, and a place when and where it will meet to consider and act upon such assessment, and the clerk or recorder shall thereupon cause notice of such meeting, and the time, place and purpose thereof, to be given by one publication of such notice in the official newspaper of such city, at least five (5) days prior to the time so appointed for said meeting; in such notice shall be given a brief description of the improvement for which the assessment has been made, and the territory embraced in such assessment, and shall be to the effect that such assessment is on file with the city recorder or clerk and open to the inspection of all interested parties, and that all objections to the same must be filed in writing with the clerk or recorder of such city at least one (1) day (Sunday and legal holidays excepted), prior to said meeting, and that unless sufficient cause is shown to the contrary the same will be confirmed; provided, that if such assessment be for sprinkling, such notice need not contain a description of the territory embraced in such assessment and a reference

therein to the number of the district, for the sprinkling of which the assessment is made, shall be deemed sufficiently definite. ('01, c. 379, §22.)

**1713-¼ tt. Construction placed upon word "sprinkling."**—That the word "sprinkling" wherever used in this act shall be deemed to include sprinkling, saturating or treating the surface of a highway, street, public way or public ground with water, oil, mineral or any other substance, for the purpose of preventing dust in the atmosphere or on the surface of such public way or ground. ('01, c. 379, §22a, added '13, c. 7, §3.)

**1713-¼ u. Council to hear objections; filing; corrected assessment confirmed.**—At the time and place so appointed, as provided in the last preceding section [§1713-¼ t], the said council shall proceed to consider said assessment and hear all objections which parties interested may desire to make thereto, and may adjourn as often as deemed expedient to a future definite time and place, and if none of the members are present the recorder may adjourn to some other convenient time and place, of which postponement all parties interested shall be required and deemed to take notice. All objections to said assessment shall be in writing and filed with said recorder at least one (1) day (Sunday and legal holidays excepted), prior to the said meeting of said council; provided, however, that said council may, in its discretion, allow any party interested, who has accidentally or inadvertently omitted to file his objection aforesaid, to do so at the time of meeting of said council. Said council may give a new notice of such hearing if the previous notice shall be found imperfect or for any other reason.

Said council shall, after due consideration, make such correction or changes in said assessment, and may revise the same as they may deem necessary to perfect and equalize the same on the basis prescribed in this act, and shall confirm and establish the assessment when so corrected and equalized. Said assessment, when so confirmed and established, shall be final, conclusive and binding upon all parties interested therein, and the several amounts charged in such assessment, as so confirmed and established against the several lots and parcels of land therein mentioned, shall be enforced and collected as hereinafter provided. If any assessment be annulled or set aside, the said city council shall proceed de novo to make another new assessment in like manner, and like notice shall be given as herein required in relation to the first, and all parties interested shall have the like rights. ('01, c. 379, §23.)

**1713-¼ v. Portion of cost chargeable to railway company; distress.**—When in any case, any portion of the cost and expense of making any improvement mentioned in this act in any such city shall by virtue of any valid law or ordinance, or by virtue of any contract be chargeable upon any railway company in any such city, the amount or amounts so chargeable may be assessed upon such railway company, and the balance only upon the real estate benefited thereby, and such city may collect the amount so assessed upon said railway company, by distress and sale of personal property in the manner provided for in the General Laws of this state in the case of taxes levied upon personal property, or by suit brought for that purpose; provided, however, that any real estate belonging to such railway company subject to assessment under the General Laws of this state or any valid ordinance or contract, and deemed benefited by said improvement, shall be assessed as in other cases. ('01, c. 379, §24.)

**1713-¼ w. Assessment a lien.**—All assessments levied under the provisions of this act shall be a paramount lien on the real estate upon which the same may be imposed, from the date of the confirmation of such assessment. ('01, c. 379, §25.)

**1713-¼x. Record of assessment.**—The clerk or recorder of each such city shall keep in his office, in books to be provided for that purpose, a correct record of all assessment confirmed by the city council and authorized by this act; the said books to be properly ruled and headed so as to show at all times a substantial description and history of each assessment on each lot and parcel of ground, whether payable in installments as hereinafter provided, and whether paid to the city or county treasurer or whether remaining unpaid. ('01, c. 379, §26.)

**1713-¼y. Warrant for collection.**—When any special assessment, authorized by this act shall be confirmed and established by the city council of any such city, as herein provided for, it shall be the duty of the clerk or recorder of such city to issue a warrant for the collection thereof, which shall be under the seal of said city and signed by the mayor and clerk or recorder thereof, and shall contain a printed or written copy of the assessment roll as confirmed as aforesaid, or so much thereof as describe the real estate and the amount of the assessment in each case. ('01, c. 379, §27.)

**1713-¼z. Same; to whom delivered.**—All warrants issued for the collection of any special assessment in any such city, and herein authorized, shall be delivered by the clerk or recorder to the city treasurer of such city as soon as practicable after the said assessment has been confirmed and established, excepting for assessment for the cost of repairing sidewalk, which shall be delivered to the county auditor of such county as hereinafter designated; the recorder shall in each instance take a receipt for such warrants and place the same on file. ('01, c. 379, §28.)

**1713-½. Same; notice by publication.**—Upon the receipt of any warrant for the collection of any special assessment authorized by this act, the city treasurer of such city shall forthwith give notice by one publication in the official newspaper of such city, that such warrant is in his hands for collection, briefly describing its nature and the improvements for which such assessment has been made, and the territory embraced in such assessments; provided, when such assessment is for sprinkling, a reference in such notice to the number of the sprinkling district for the sprinkling of which such assessment has been made, shall be deemed a sufficient reference to the territory embraced in such assessment. Such notice shall require all persons interested to make payments within thirty (30) days from the date of such notice, at his office, or at the option of said treasurer, at some bank in said city acting for such treasurer. ('01, c. 379, §29.)

**1713-½a. Assessments not paid, certified lists returned to clerk; penalty; transmitted to county auditor; collected as other taxes.**—If the assessments charged in any special assessment warrant, made for any improvement whatsoever under the provisions of this act, shall not be paid within thirty (30) days after the publication of the notice by the said city treasurer that he has received such warrant for collection, said treasurer shall return to the recorder or clerk of such city a list, duly certified by him, said treasurer, of the assessments so made which still remains unpaid, giving in such lists the description of the several lots and parcels on which the assessments have not been paid, with the names of the respective owners thereof, if known, and the several amounts assessed thereto.

Such city recorder or clerk shall thereupon add to each delinquent and unpaid assessment a penalty of ten (10) per cent, and before the first day of November following, transmit a duly certified list of such unpaid assessments, with a description of the several lots and parcels of land on which the same are made, and the names of the respective owners thereof, if known, to the auditor of the county in which such city is located, who shall enter the several amounts of said unpaid assessments on the tax list for such

city for the next ensuing year, and levy the same upon the several lots and parcels of land to which the same are respectively chargeable, and the same shall thereupon be enforced and collected as other taxes on real estate are enforced and collected under the general laws of this state. ('01, c. 379, §30.)

**1713-½b. Assessment not set aside or held invalid.**—No assessment in this act provided for shall be set aside or held invalid by reason of any informality in the proceedings prior to the entry thereof on the tax list by the auditor of said county, as hereinafter required, unless it shall appear that by reason of such informality or irregularity substantial injury has been done to the party or parties claiming to be aggrieved. ('01, c. 379, §31.)

**1713-½c. New assessment.**—If for any cause the proceedings of the city council of any such city, or any of its officers, may be found irregular or defective, whether jurisdictional or otherwise, the said council may make a new assessment from time to time, and as often as needs be, upon all real estate benefited and on which no payment has been made for said improvements, until the full amount of all benefits assessed have been realized from the real estate benefited by such improvement. ('01, c. 379, §32.)

**1713-½d. Extension of payment on assessment; annual installments.**—The city council of any city shall have power and authority and may by resolution in writing, adopted by an affirmative vote of a majority of all its members, extend the time for the payment of any assessment made and confirmed by it for the purposes and as in this act designated, against any lot or parcel of land, and may provide that such assessment may be paid in annual installments of any number, not exceeding ten. When such assessment is fully completed and has been confirmed and established, the said city council shall, by resolution, determine the number of annual installments, if any, in which such assessment may be paid, which resolution shall be attached to and form a part of such assessment roll. ('01, c. 379, §33.)

**1713-½e. City treasurer to give notice.**—If such council shall adopt the resolution, specified in the foregoing section, the city treasurer shall in his notice that the warrants are in his hands for collection, required by section 29 of this act, include a notice that the owner, or any person interested in any lot, or parcel so assessed and described in such assessment, may at his election and written request pay the sum assessed in installments, as designated in said resolution. ('01, c. 379, §34.)

**1713-½f. Notice of election to pay in installments; dividing assessments.**—Any person desiring to so pay such assessment in installments, as a condition precedent to the exercising of such right, shall file, in duplicate, a written notice of such his election and request for permission to so pay in annual installments, within thirty (30) days after such publication, and before such assessment becomes delinquent, with the city treasurer of such city, and at the same time pay the first installment then due and payable. Upon failure to so file such notice and request and pay said first installment, the whole amount of such assessment shall be due and payable the same as though no extension of time for payment had been provided for.

Upon the filing of such notice and request by any person interested, the said treasurer shall divide the said assessment into the proper installments, and make proper record of the same, and transmit one of such duplicate notices to the city recorder, who shall note such fact in his record book of assessments. ('01, c. 379, §35.)

**1713-½g. Council may waive neglect to elect.**—The city council of such city may at any time after an assessment becomes delinquent, upon a written



application to it waive the neglect to so elect within the proper time, and permit any assessment which has become delinquent to be paid in installments as herein provided. ('01, c. 379, §36.)

**1713-½ h. Installments to bear interest.**—Each of said installments so extended shall bear interest, payable annually at a rate to be determined in and by such resolution, not exceeding five (5) per cent per annum from the expiration of such thirty (30) days after the publication of the notice provided in section 29 of this act. ('01, c. 379, §37.)

**1713-½ i. Installments may be of different amounts; when due.**—No assessment of less than ten (10) dollars against any one lot or parcel of land shall be divided into installments, and no assessment shall be divided so that the amount of any of the installments into which it is divided shall be less than five (5) dollars, and the several installments may be of different amounts as the said council may determine.

The time for the payment of the installments, and for the enforcement of the same against the property affected by the assessment, shall be extended so that the several amounts shall become due and payable as follows: The first installment at the time the assessment would have been payable if the time of payment had not been extended, as provided in section 29 of this act; the second installment on October 1st of the succeeding year, the third installment on October 1st of the second succeeding year, and so on; each installment, excepting the first shall be made due and payable on the first day of October in the year when payable. ('01, c. 379, §38.)

**1713-½ j. Extended installments not paid; certified as special tax to county auditor; collected as other taxes.**—After the time of payment of any assessment has been so extended and divided into installments as aforesaid, if any installment so extended shall not be paid when it becomes due and payable, together with the interest to that time on all future installments, the city treasurer of such city shall on the fifth day of October, in each year, certify to the city recorder or clerk of such city, such extended installment which has become due and payable on the first day of October in that year, and which has not been paid, together with all interest then due and unpaid on the whole assessment, as a special tax on said property, in the same manner as other delinquent assessments in his hands for collection; and said city recorder shall thereupon certify the same to the county auditor in the same manner, at the same time and with the same penalty added thereto as in cases of other delinquent assessments, and in all respects as provided in and by section 30 of this act; the said county auditor, on receipt thereof, shall enter and carry out the same upon the proper tax list for that year, in the same manner as in other cases of unpaid assessments certified to him under the provisions of this act, and the same shall thereupon be collected and payment thereof enforced the same as other taxes on real estate are collected and enforced, and when collected paid over to the treasurer of said city. ('01, c. 379, §39.)

**1713-½ k. Council may extend time for payment; collection.**—Upon application in writing of any owner or party interested in any lot or parcel of land against which any assessment has been heretofore made, and has heretofore been confirmed by the city council of such city, such council shall have power and authority and may by resolution in writing, adopted by an affirmative vote of a majority of all its members, extend the time for the payment of such assessment as to said lot or parcel, and may provide that such assessment may be paid thereafter in annual installments of any number not exceeding ten (10), providing such assessment, so made prior to the date hereof, exceeds the sum of twenty (20) dollars, against such lot or parcel of land.

Whenever any assessment, heretofore made, be so divided into installments, and the time of payment thereof extended, all provisions of this act applicable to extending the time of payment of assessments, shall apply thereto, and control in the collection and enforcement of the same. ('01, c. 379, §40.)

**1713-½ l. Party interested may pay all installments before maturity.**—Any owner or party interested in any piece or parcel of land against which an assessment is levied, may, after such assessment has been divided into installments, pay all of the installments at any time before maturity, but in such event shall pay interest thereon to the first day of October immediately following such payment. ('01, c. 379, §41.)

**1713-½ m. A paramount lien.**—Every installment, the time of payment of which has been extended under this act, shall continue to be and shall be and constitute a paramount lien in favor of such city and against each of the lots or parcels of land as to which said extension is granted, for the amount so extended for each lot or parcel, and until the same is fully paid. ('01, c. 379, §42.)

**1713-½ n. Application for extension-recognition of validity.**—When such application, election or request for an extension of the time of payment in installments if an assessment shall have been made and filed as herein provided, the owner or person interested and so filing the same, and his or their heirs, personal representatives or assigns, or any lot or parcel of land as to which an extension has been granted, shall be held to have recognized and assented to the validity and regularity of said assessment and of all proceedings had thereon prior to the granting of said application, and shall be thereby forever estopped from denying the validity of said assessment or the amount thereof. ('01, c. 379, §43.)

**1713-½ o. Council may issue certificates of indebtedness; amount.**—Whenever the time of payment of an assessment is extended, and such assessment is divided into annual installments, in any such city as herein provided the city council of such city shall have power and is hereby authorized, in anticipation of the collection and payment of such assessment, and the several installments provided for, to issue and sell from time to time the certificates of indebtedness of such city, in accordance with the provisions of an act of the Legislature of the State of Minnesota entitled "An act to create in cities in the State of Minnesota, having no more than fifty thousand, and not less than fifteen thousand inhabitants, a local improvement fund, and to empower such cities to issue their bonds and certificates of indebtedness for certain purposes therein mentioned," approved March 8, 1897.

Such certificates shall be issued from time to time in such amounts as the city council of such city may determine as necessary for that purpose, not exceeding in the aggregate at any time the aggregate amount of unpaid installments and shall be issued for such length of time as the said council may determine and as the extended time of times for paying such installments may require. ('01, c. 379, §44.)

**1713-½ p. Proposals for sidewalks to be published; plans and specifications.**—The city council of each such city shall annually cause proposals to be published, in the same manner and for the same length of time as in the case of other public improvements provided for in this act for the construction and laying of such sidewalks as may be ordered built and laid by said city council prior to the first day of November in each year. General plans and specifications applicable to all sidewalks that may be ordered built and laid during such year by said council shall be made, approved and filed before such publication of proposals, as in the case of other public improvements; such plans and specifications shall classify the different kinds of walks required by the conditions existing in the different portions of such city, ac-

curately specifying the material, dimensions and method of construction for each such class, and require separate proposals for each such class, the proposals shall be received and the work shall be let and placed under contract in the same manner and under the same regulations as in the case of other improvements provided for in this act, so far as the provisions referring thereto may be made applicable hereto. ('01, c. 379, §45.)

**1713-½q. Order to build sidewalks by resolution; copy to contractor; construction other than by contract.**—Whenever the city council shall order the construction and laying of any sidewalk or sidewalks such order shall be by resolution in writing, accurately describing the location of each such walk included in such order, and such resolution shall require the same formality, vote and approval for its adoption as resolutions of like nature designated in section 8 of this act; any number of walks, in different portions of the city, and belonging to different classes under the general specifications therefor, may be included in one order.

After the publication of such resolution the city recorder or clerk shall without delay transmit a copy of such order to the person or persons having the contract for the construction and laying for the time being, who shall within the time designated in the specifications therefor, if no time be designated in such order, cause the sidewalk or sidewalks so ordered constructed and laid by the said council, to be constructed and laid.

When for any reason no contract is awarded by the city council for the construction of sidewalks, as authorized by section forty-five (45) of this act, then such council may from time to time authorize the construction of sidewalks in such city in the same manner as the making of other improvements are authorized by such council under the provisions of this act, and any number of walks on one or more streets may be included in one contract. ('01, c. 379, §46.)

**1713-½r. City engineer to issue permit to owner; bond; ordinance to regulate; supervision of city engineer; when owners may not construct.**—Any person desiring to construct, lay or relay his or her own sidewalk shall first obtain a permit therefor from the city engineer of such city, such permit shall state the location of such walk, the material out of which the same is to be constructed, laid or relaid, and the time when the same shall be completed, and there shall also be attached to such permit a general plan and specification for the doing of the work.

No work shall be begun thereon until the contractor therefor, or the owner thereof, if he shall do the work himself, shall first execute a bond to such city, with two or more sufficient sureties, to be approved by the mayor in the penal sum of not less than one thousand (1,000) dollars, conditioned that he will do said work, subject to the supervision and approval of the city engineer of said city, and as required by the ordinances of such city, and will indemnify and hold harmless said city against any damage or loss which may arise, or in any way, directly or indirectly, be suffered by said city by reason of any occurrence while the work is going on and before acceptance thereof by the city engineer, caused by any negligence or misconduct on the part of such contractor or owner, as the case may be, his or their servants or employes, in doing the same; such bond shall be filed with the city recorder or clerk, and may be enforced by said city the same as other bonds of a like nature, as required by law.

The city council of each such city may by ordinance regulate the manner of constructing, laying, relaying and repairing sidewalks by the owners of property in such city, not inconsistent with the provisions of this act, and may authorize the filing of a like bond as hereinbefore in this section provided, in such penal sum as the council may direct, by persons engaged

in and carrying on the business of constructing or relaying sidewalks, to include and cover the construction and laying of all walks for property owners in such city, for a period of one year, and such bond shall have the same force and effect as though given for each walk separately, as above provided.

When an owner constructs, lays or relays his or her own walk, the same shall be constructed, laid or relaid under the supervision and direction of the city engineer, and such engineer shall upon the full and satisfactory completion of such walk, deliver to the contractor certificate of his acceptance, if demanded.

No property owner shall have any authority whatsoever to construct or lay his or her own walk after the city council shall have ordered its construction by resolution, as hereinbefore provided, and the said city council shall not so order the building of any walk after a permit has been issued therefor by the city engineer, and before the expiration of the time designated therein within which the same is to be built. ('01, c. 379, §47.)

**1713-½s. Cost of sidewalks assessed upon real estate benefited.**—The city council of such city shall, as soon as practicable after the construction, laying or relaying of any sidewalk, assess the cost of such improvement or improvements upon the real estate benefited thereby, in the same manner and under the same regulations hereinbefore provided for the making of other assessments and the same shall be collected and enforced and all steps taken in connection therewith as otherwise provided in this act for collecting and enforcing other assessments authorized by this act; the assessments for the cost of any number of walks adjacent to any number of lots or parcels of land may be combined in one assessment roll. ('01, c. 379, §48.)

**1713-½t. Failure to build sidewalks.**—Whenever the said contractor shall fail to build or relay any sidewalk, as provided in his contract the same shall be built or relaid as provided in sections 15 and 16 of this act. ('01, c. 379, §49.)

**1713-½u. Same; street commissioner to build; repair; record; assessment.**—Whenever the street commissioners of any such city shall report to the city council the necessity of repairing certain walks in such city, not deemed dangerous to pedestrians by him, and shall estimate the cost of such repairs to be less than ten (10) dollars adjacent to any one lot or parcel of land, the said council may authorize such street commissioner to make such repairs, if the owner or agent thereof fails to make such repairs within forty-eight (48) hours after notice to that effect from said street commissioner, if such owner or agent be known and can be found in such city by him.

In case any sidewalk shall become so out of repair or broken as to become dangerous, it shall be the duty of the street commissioner to immediately repair the same in a good and substantial manner.

The said street commissioner shall keep a written record of all such repairs, and shall at least once in each month report and certify to the city council the cost in each case of all repairs made to sidewalks in such city, as specified in this section, with a description of each lot or parcel of land abutting each case of repairs.

Each such report shall be filed and preserved by the city recorder for the inspection of all parties interested; the city council shall once in each year, as near as conveniently may be to the time of the annual tax levy for said city, assess and levy the cost of making such repairs upon the lots or parcels of land found benefited by such repairs in the same manner provided for in this act for assessing the cost of other improvements herein designated. In each case such assessment, for all such repairs within the year, and since the making of the last assessment for

such repairs, may be combined in one assessment roll; such assessment shall be collected and enforced in the same manner as other assessments provided for in this act, except that the same shall not first be transmitted to the city treasurer for collection, but shall be directly certified to the county auditor of such county by said recorder to be placed upon the tax list for that year by said auditor. ('01, c. 379, §50.)

**1713-½v. Owner or interested party may pay assessment; city treasurer to certify to city recorder.**—Any owner of, or party interested in, any piece or parcel of land against which an assessment is levied, as herein provided, may pay such assessment to the treasurer of such city at any time before the first Monday in January following the date on which the same has been certified to the city recorder or county auditor, as hereinbefore provided, and said treasurer shall thereupon give his receipt in duplicate for the same, which shall be sufficient authority for the cancellation of such assessment by the county auditor or county treasurer on his books, or by the city recorder, as the case may be. After the first Monday in January following the date on which any delinquent assessment shall have been certified to the county auditor, the same must be paid to the county treasurer the same as other state or county taxes.

Upon the presentation of one of said duplicate receipts by such owner or person interested, to the county auditor or county treasurer of such county, as the case may be, he shall cancel such assessment on his books, or if the same has not yet been transmitted to the county auditor by the city recorder of such city, said recorder shall thereupon cancel such assessment on the delinquent list containing the same, and after that time the lien on such land shall cease to the amount of such payment, and the said county auditor, if such receipt be filed with him, shall report the same in the next settlement thereafter with the said city treasurer, for taxes collected and payable to such city treasurer.

On the first Monday of each year the city treasurer shall certify to the city recorder of such city all payments made to him, such treasurer, of assessments certified to the county auditor for collection, and such recorder shall enter all such payments in the proper records therefor. ('01, c. 379, §51.)

**1713-½w. Affidavit proof of publication evidence.**—When any notice is required to be published in any newspaper, under the provisions contained in this act, an affidavit of the publisher or printer of such newspaper, or of the foreman or clerk of such publisher or printer, annexed to a printed copy of such notice taken from the paper in which it was published and specifying the time when, and the paper in which such notice was published, shall be evidence in all cases and in every court of judicial proceeding of the facts contained in such affidavit. ('01, c. 379, §52.)

**1713-½x. Auditor not to certify if delinquent.**—The county auditor shall not issue his certificate that taxes are paid on any piece or parcel of land upon which any delinquent assessment authorized by this act, or any portion thereof, has been certified to him until such assessment, or portion, or extended installment thereof, with penalties and interest thereon, has been paid and cancelled, as provided in this act, and the general laws of the state governing the collection of taxes. ('01, c. 379, §53.)

**1713-½y. Applicable prior to passage and approval.**—Every such city may assess in accordance with the provisions of this act, the cost of any improvement either fully or partially completed at the date hereof, and before such city was brought within the operation of this act, and for which no assessment has been made at such time.

This act shall not be deemed to repeal any provision of any special charter in force at the date thereof. ('01, c. 379, §54.)

**1713-½z. Effective date.**—This act shall take effect and be in force from and after its passage. ('01, c. 379, §55.)

**1713-¾. Cities of third class may improve roads.**—Any city of the third class of the State of Minnesota is hereby authorized to widen, maintain and repair any road, street, avenue, boulevard, parkway or other public highway, which lies within the corporate limits of any such city and adjacent to a corporate boundary line of such city which may be authorized by ordinance of any such city passed by a majority vote of all members of the city council, or other governing body of said city, even though such road, street, avenue, boulevard, parkway or other public highway, so widened, be partly within and partly without and beyond the corporate limits of said city. (Act Mar. 24, 1939, c. 75, §1.)

**1713-¾a. May acquire property.**—Any city mentioned in Section 1 may acquire by gift, devise, purchase, condemnation or other means any property necessary or convenient or desirable for the purpose of widening, building, maintaining and repairing any road, street, avenue, boulevard, parkway or other public highway authorized to be widened in Section 1. (Act Mar. 24, 1939, c. 75, §2.)

**1713-¾b. May condemn property.**—Whenever the common council or other governing body of any such city shall by ordinance as aforesaid, declare that it is necessary or convenient or desirable to acquire any real property for any such public use, it shall describe such property as nearly as may be convenient in such ordinance, and state the use to which it is proposed to devote such property, and direct the city attorney to take the appropriate proceedings in the proper course for the condemnation of the same, and direct the city engineer to make and present to the common council, or other governing body, such plat and survey of said real estate as will show the property to be taken, and the owner of each parcel thereof according to the records in the office of the register of deeds of such county, and to accompany such plat and survey with such report as will fully explain the situation of such property, and such report may contain any other pertinent statement which the engineer deems best.

The common council, or other governing body of such city may cause such plat and survey to be modified or amended as it may deem proper, and when satisfied with said plat and survey may adopt the same and direct a copy of such plat and such ordinance to be filed in the office of the register of deeds of the county in which such land is situate.

Such copy of the plat and ordinance when so filed shall operate as notice of the pendency of an action by said city against each piece or parcel of land therein described for the condemnation thereof.

The city attorney shall thereupon apply to the district court in and for such county for the appointment of three commissioners to appraise the property so to be taken and the damage for such taking.

He shall give a notice of such application in which shall specify the time and place of application, and in a general way describe the property proposed to be taken, and shall name the owners of such property so far as known to him, but failure to name all or any of the owners correctly shall in no wise affect the proceedings.

Such notice shall be served by one publication of the same in the official paper of the city at least 20 days before the date fixed for such application, and a copy of such notice shall be served upon any person or corporation in possession of any parcel therein described, and upon each person or corporation who appears by the records in the office of the register of deeds of the county in which such city is situated, to be interested in any of said parcels, and who can be found in such county, in the same manner as a summons is served in a civil action. (Act Mar. 24, 1939, c. 75, §3.)

**1713-¾ c. Court to appoint commissioners.**—At the time and place named in said notice, or at a duly adjourned time and place, upon proof of the publication of said notice as aforesaid, the court shall appoint three commissioners, all of whom shall be freeholders and electors of the county in which said city is situated, who shall have cognizance of all cases named in such application, and shall have power to appraise the value of all property therein described, and the damages for the taking of the same.

The city attorney shall forthwith by written notice, notify said commissioners personally of their appointment, and request them to attend at his office on or before a day fixed by him not less than two days after the service of such notice, to qualify and enter upon their duties, and if any commissioner shall refuse or neglect to attend as aforesaid, the mayor of the city shall in writing appoint one or more commissioners in the stead of the said absentees, and shall file such appointment with the clerk of the court which appointed such original commissioners.

Said commissioners shall thereupon, and before entering upon the duties of their office, severally take and subscribe an oath to the effect that they are freeholders and electors of the county in question and in no wise interested in any property to be affected by said proceedings, and that they will faithfully perform their duty as such commissioners without partiality and to the best of their knowledge and ability, which oath shall be filed in the office of the clerk of said court.

The commissioners shall thereupon give at least 20 days' notice, by one publication in the official paper of the city, of the time and place where they will attend to make an assessment of damages in said proceedings.

Such meeting may be adjourned from time to time without further publication of notice.

It shall be the duty of the city attorney to serve a copy of such notice at least four days before the date named in such notice upon all persons or corporation over whom the court shall acquire jurisdiction, and who shall serve notice upon the city attorney of their appearance in such proceedings.

Such notice shall be served in the manner provided by statute for the service of notices and other papers in civil actions, and may be made upon the party or his attorney.

At the time and place named in said notice, or at an adjourned time and place, the said commissioners, or a majority of them, after viewing the property involved and hearing the evidence offered, shall make through an impartial appraisal and award of compensation and damage to be paid for each tract or parcel of land to be taken or damaged, but if the remainder of any parcel or piece of property of which a part only is to be taken or damaged shall be benefited by such proposed improvement, then the commissioner in considering and awarding such compensation and damages, shall consider, determine and offset the proportionate benefits which will accrue to the remainder of such parcel not so taken and belonging to the same owner as does the part taken, and shall award only the excess, if any, of the compensation or damages over or above the benefits.

Such report shall be in writing, signed by the commissioners, or a majority of them, and filed with the clerk of the court as soon as completed.

Upon the filing of such report, the commissioners shall give notice thereof by one publication in the official paper of the city.

Such published report shall contain a description of the several parcels of land taken or damaged for such public use and the respective awards therefor. (Act Mar. 24, 1939, c. 75, §4.)

**1713-¾ d. Service of notices.**—A copy of such notice shall within ten days thereafter be served upon the city attorney and upon all parties who have appeared in said proceedings, and such notice shall be

served in the manner provided by statute for the service of notices and other papers in civil actions, and may be made upon the party or his attorney.

Any person or corporation interested in any property described in said report or the city in question may appeal from any award therein at any time within 30 days after the publication of said notice by filing with the clerk of the district court, which appointed said commissioners, notice of appeal signed by the party or his attorney taking the same, and describing the party, the property in which he is interested, and the award to which he objects.

An appeal made from any award shall in no wise effect an award not appealed from.

The clerk shall enter the appeal as an action in said court; there shall be no pleadings therein and such appeal shall be tried as other causes originally commenced in said court are tried and judgment rendered therein.

From such determination an appeal may be taken to the supreme court of the state. (Act Mar. 24, 1939, c. 75, §5.)

**1713-¾ e. Compensation for commissioners.**—After said commissioners shall file said report and publish said notice thereof as aforesaid the court shall allow the commissioners such reasonable compensation for their services as it shall deem best, which shall be paid by the city seeking to condemn said property as aforesaid. (Act Mar. 24, 1939, c. 75, §6.)

**1713-¾ f. Award to be final.—When.**—Whenever an award of damages shall be made and filed as aforesaid, and not appealed from, in any proceedings for the taking of property, under this act, or whenever the court shall render final judgment in any appeal from any such award, the rights of all parties shall be finally fixed and determined thereby and the same shall constitute a lawful and sufficient condemnation and appropriation to the public use of the land for which damages are so awarded and every right, title and interest therein and thereto, and every other lien thereon shall be thereby directed and such city shall become vested with the title to, and become the owner of, the property taken or condemned absolutely for all the purposes for which said city may ever use the same; and such city shall be bound to, and shall within one year of the time of such final determination pay the amount of such award with interest thereon at the rate of five per cent per annum from the date of the final award or judgment of the court, as the case may be, and if not so paid judgment therefor may be had against the city.

In case there shall be any doubt as to who is entitled to such compensation or damages, or any part thereof as may be awarded, the amount so awarded, and in doubt or dispute shall be by the common council or other governing body of such city appropriated and set apart in the city treasury for whoever shall establish his right thereto by some judicial proceedings.

Before payment of any such award the owner of such property, or the claimant of the award, shall furnish satisfactory evidence of his right of such award. (Act Mar. 24, 1939, c. 75, §7.)

**1713-¾ g. City may abandon proceedings.**—Any such city may by ordinance passed by a three-fourths vote of all the members of its common council or other governing body, at any time within 20 days after any commissioners appointed by the court hereunder shall file their report with the clerk of said court, or in case of an appeal within 20 days after final determination thereof, abandon such proceedings and shall thereupon pay the costs thereof. (Act Mar. 24, 1939, c. 75, §8.)

**1713-¾ h. To prepare statement of damages.**—Upon the completion of any proceedings under this act for the acquisition of any property by any such city, the mayor or other executive head of such city shall cause

an accurate description of the property so taken to be prepared, together with a statement of the amount of damages, if any, awarded or paid, or to be paid to each owner thereof and shall sign and acknowledge the same as such mayor or executive head, and cause the same to be recorded in the office of the register of deeds of the county in which such property is situated, and it is hereby made the duty of such register of deeds, upon being paid his statutory fees, to record such statement in some appropriate book in his office.

Such record or duly certified copy thereof shall be prima facie evidence that the city in question is the owner of the property described therein by good and perfect title. (Act Mar. 24, 1939, c. 75, § 9.)

**1713-3*1*. Application of act.**—This act shall be applicable to any city of the third class existing under a charter framed under and pursuant to the Constitution of the state of Minnesota, Article 4, Section 36.

Any city acquiring any property under this act is empowered to afford police protection to any and every such property (Act Mar. 24, 1939, c. 75, § 10.)

**1713-1. Division of assessments.**

This act held complied with as affecting liability of city under warrant issued against special improvement fund. *Judd v. C.*, 193M590, 272NW577. See *Dun. Dig.* 6579a.

**1714. Rates for gas or electric current to be prescribed.**

Home Rule Charter city may compel inspection of records of public utilities for rate making purposes. *Op. Atty. Gen.*, Apr. 21, 1933.

Section is constitutional and city in determining rate is not limited to basing rate only "on the capital investment." *Op. Atty. Gen.*, July 17, 1933.

Sections 1714 to 1716 were not intended to apply where city itself is actual distributor of electric current purchased from a power company at city limits. *Op. Atty. Gen.* (624c-11), Aug. 19, 1935.

Village operating under Laws 1885 is bound by 25 year franchise granted to a power company in 1916, and cannot lower rates by ordinance. *Op. Atty. Gen.* (624c-6), Sept. 16, 1937.

**1716-1. Certain cities may establish information bureau.**—The city council, city commission, or other governing body of any city of the third class having an assessed valuation of not less than \$14,000,000, exclusive of moneys and credits, may establish and maintain a bureau of information and publicity for the purpose of furnishing tourist information and for the purpose of preparing, publishing and circulating information and facts concerning the recreational facilities and business and industrial opportunities of the community. For this purpose it may, within the limits herein prescribed, employ a manager for such bureau and such clerical and stenographic assistance as shall be deemed necessary, and may incur expense for rentals, publication, postage, and other necessary charges incidental to such purpose. (Act. Apr. 22, 1933, c. 423, § 1.)

**1716-2. Tax levy for expenses.**—The city council, city commission, or other governing body of such city may each year at the time tax levies are made for the general revenues of the city, for the purpose of defraying the expense incurred in the establishment and maintenance of such information and publicity bureau, levy within the limits now prescribed by law a tax on all the taxable property of such city, the amount of such tax not to exceed in the aggregate the sum of \$5,000.00 per annum, which levy shall be transmitted to the County Auditor of the County in which the city is situated, at the time the other tax levies are transmitted, and when received the monies derived from such tax shall be credited to a special fund for the purposes of this Act. Such governing body may during the year 1933 appropriate from the general funds of the city not to exceed \$5,000.00 for such purposes. (Act Apr. 22, 1933, c. 423, § 2.)

**1716-3. May designate agency.**—The city council, city commission, or other governing body of such city may designate the chamber of commerce, commercial club, or any other civic body organized within

such city to promote the public welfare, as its agency for the expenditure of such special fund for the purposes herein designated. (Act Apr. 22, 1933, c. 423, § 3.)

**1716-4. Application of act.**—This act shall apply to every city of the third class, whether governed by home rule charter or otherwise, having an assessed valuation of more than \$15,000,000. In the event any city shall at any time come under the terms of this act it shall continue thereunder notwithstanding any subsequent change in classification or valuation. (Act Apr. 1, 1935, c. 92, § 1.)

Policemen in cities of third class covered by this act are exempt from provisions of §254-24. *Op. Atty. Gen.* (331b-1), Apr. 15, 1935.

South St. Paul does not come within cities covered by act. *Op. Atty. Gen.* (785j), Aug. 8, 1936.

**1716-5. Police department may be incorporated.**—The police department in any such city is hereby authorized to become incorporated pursuant to the provisions of any laws of the State of Minnesota and to adopt articles of incorporation and by-laws as a relief association. All members of such department at the time of the taking effect of this act and all persons subsequently becoming members of such department shall be members of such association, except municipal court officers and persons appointed for temporary service or for probationary periods; provided that for purposes of this act no employment after six months shall be considered to be temporary or probationary. All such members of the department shall be assessed for entrance fee and dues of the association as fixed by the by-law, which entrance fee and dues together with the assessment authorized by Section 13 hereof shall, when certified by the secretary of the association to the city clerk, be deducted from the pay of such member and paid into the proper fund of the association. (Act Apr. 1, 1935, c. 92, § 2; Apr. 12, 1937, c. 197, § 1.)

**1716-6. Termination of membership.**—Every person shall cease to be a member of said association upon the termination, from any cause, of his employment in said police department, except as he may be entitled to receive benefits hereunder or under the by-laws of said association subsequent to such termination. (Act Apr. 1, 1935, c. 92, § 3.)

**1716-7. Pensions.**—When any member of said association shall have reached the age of 55 years he may retire and shall thereupon be entitled to a pension as long as he shall live, at the following rates:

(a) \$75.00 per month when such member shall have served as a member of said police department for a period of 20 years or more, excluding temporary employment or probationary periods, as hereinbefore defined.

(b) An additional five dollars per month for each year of service over 20 that said person may have served as a member of such police department after the age of 55 years. The total amount of pension hereunder shall in no event exceed \$100.00 per month.

(c) In the event such members shall retire after reaching the age of 55 or more and after having been a member of said department for at least ten years, but before having served 20 years in said department, the amount of pension which he shall receive shall be that proportion of \$75.00 per month which the years of service in said department prior to retirement bear to 20 years, major fractions of years of service to be treated as one year and minor fractions to be disregarded.

(d) In no event shall temporary employment or employment for probationary period, as hereinbefore defined, be considered in computing pension allowances hereunder.

(e) In the event any member shall be discharged from the service of said police department after having served 20 years or more and before such member has reached the age of 55, he may, upon a vote of a majority of the members of the relief association, be permitted to continue as a member of such associa-

tion, notwithstanding that he is no longer a member of said police department, and upon reaching the age of 55 years, shall be entitled to a pension at the rate of \$75.00 per month; provided that in such event such member shall make application to said association for such privilege within six months from the time he is discharged and shall contribute each month after said discharge, and until reaching the age of 55 years, to the pension fund of said relief association a sum of money equal to 3 1/2 % of the then average monthly pay of members of said department holding the rank held by said member at the time of discharge. In the event such association approves such application, such member shall within 60 days thereafter pay into said association for the pension fund the monthly installments herein provided for the period between his discharge and the time of said first payment. Thereafter, in the event said member shall default in the payment of such monthly assessment and such default shall continue for a period of sixty days, all rights hereunder shall cease. That in the event that any member of said police department and of said relief association, regardless of his age, shall become totally disabled from performing any kind of work, labor or services whatsoever, after he has served as a member of said police department for at least ten years and shall have been discharged or shall have resigned from said police department by reason of said disability, he shall be entitled to and paid a pension from the pension fund of said association, the amount of which pension shall be that proportion of \$100.00 per month, which the years of service in said department prior to retirement bear to 25 years, major fractions of years of service to be treated as one year and minor fractions to be disregarded.

No such pension for disability shall commence until the association shall have been furnished with satisfactory proof as to the applicant's age, his years of service in the department and of his disability and the causes thereof, and to that end the applicant must submit himself to examination by the official physician of the association and to such other doctor or doctors as the association may direct and submit to such examinations as often as requested by the association, the cost of which examinations shall be paid by the association out of the pension fund; provided further that the applicant may submit reports as to his disability from other doctors at his own expense to the association for its consideration but the report of the official physician of the association shall be the basis upon which the association shall decide upon the allowance of said disability pension and compute the amounts due thereunder. No such pension shall be paid to any person who is receiving compensation under the Workmen's Compensation Act for the injury causing such disability. (Act Apr. 1, 1935, c. 92, §4; Apr. 12, 1937, c. 197, §2.)

Sec. 3 of Act Apr. 12, 1937, cited, provides that the Act shall take effect from its passage.

**1716-8. Retirement not to be compulsory.**—Retirement at the age of 55 years shall not be compulsory, but when such members shall have reached the age of 60 years the board or commission charged with the administration of the department of police in said city shall have the right to insist upon the retirement of such member at the age of 60 years, regardless of the provisions of any civil service laws. (Act Apr. 1, 1935, c. 92, §5.)

**1716-9. Tax levy.**—For the support of the fund from which such pensions are paid the city council or other governing body of such city shall each year, at the time the tax levies are made for the general revenues of the city, levy within the limits then permitted by law, a tax on all taxable property of such city in the sum of \$10,000.00 per annum, which levy shall be transmitted to the county auditor of the county in which the city is located at the time the other tax levies are transmitted and shall be collected and the payment enforced in the same manner as other taxes of such city. In addition thereto, each

member of said association shall be required to contribute to such fund each month one per cent of his monthly pay, such sum to be deducted at the time of the payment of his salary or wages by the city and transferred to such fund. In addition thereto, such relief association may transfer to such fund moneys raised from other sources and under the control of such association. (Act Apr. 1, 1935, c. 92, §6.)

**1716-10. Tax levy may be omitted—when.**—If at any time the balance on hand in such fund, together with interest or other earnings accrued therein, exceeds the sum of \$50,000.00 then as often as this shall occur the levy of taxes for said fund shall be omitted for said year, and if at any time the whole amount of \$10,000.00 from taxation is not needed for the maintenance of said fund at \$50,000.00 then the sum to be raised by taxation shall be proportionately reduced to such amount as will be sufficient to keep said fund at \$50,000.00 or more. (Act Apr. 1, 1935, c. 92, §7.)

**1716-11. Articles of incorporation and by-laws.**—The articles of incorporation or by-laws of such relief association shall provide for a board of directors to consist of five members, from whom there shall be elected by the board officers to consist of president, vice-president, secretary and treasurer. The mayor or principal executive officer of said city and the city treasurer shall ex officio be members of the said board, in addition to the five members also provided for. Members of such board and the officers thereof shall hold their terms of office for such times as may be provided in the articles of incorporation or by-laws of such association. (Act Apr. 1, 1935, c. 92, §8.)

**1716-12. Custodian of funds.**—The city treasurer shall be the custodian of all funds of such relief association. All moneys raised by taxation as provided hereunder shall be paid and all other funds of such association shall be paid to the city treasurer and shall be kept by him in a separate fund called "Police Pension Fund"; upon the written direction of the board of directors of said association, the city treasurer shall invest said funds in such interest-bearing securities as are specified from time to time by the board of directors; provided that the same shall be such securities as may be prescribed from time to time by the laws of Minnesota as permissible investments for trust funds of the State of Minnesota by the State Board of Investment, except that in addition thereto such funds may be invested in first mortgages upon improved real estate located in said city. (Act Apr. 1, 1935, c. 92, §9.)

**1716-13. Board to file report.**—The board of directors of said association shall file annually, on or before the first day of September of each year, with the clerk of said city, a detailed report of the amount of money received, expended and remaining on hand to the credit of said fund. The books and records of said board shall be open to inspection and audit by any taxpayer of said city or his duly authorized representative, and shall be audited with other books and records of the city at the time of the making of any general city audit. (Act Apr. 1, 1935, c. 92, §10.)

**1716-14. Expenses may be paid.**—Actual expenses in connection with the making of investments may be paid from said fund upon authorization by the board of directors, but no salaries or fees shall be paid to any officer or agent therefrom. (Act Apr. 1, 1935, c. 92, §11.)

**1716-15. Members may receive amount paid in.**—Whenever a member of said association shall cease to be a member of said department for any reason other than death or retirement he shall be paid, on demand, the full amount of the accumulated deductions from pay standing to his credit. Whenever any member shall die without having received a pension or without having received in pension payments, an amount equal to the total amount of the accumulated deductions from his salary hereinbefore provided for,

the full amount of said accumulated deductions, less such pension payments, if any, as have been paid to said member, shall be paid in one lump sum to the beneficiary or beneficiaries designated by such member or, if none, to the legal representatives of such member; provided, however, if no valid claim is established therefor, such accumulated dividends shall remain with and become the property of said association. No member shall be entitled to interest upon deductions under the provisions of this paragraph. (Act Apr. 1, 1935, c. 92, §12.)

**1716-16. May pay health or accident benefits.**—In addition to the pension fund and pension payments provided hereunder, the said relief association may by proper by-laws provide for the payment of additional health or accident benefits to members of said association and to widows or dependents of deceased members thereof. For the payment of such additional benefits such relief association may assess all members of said police department an additional amount not to exceed 2½% of the monthly pay of such members. The plan and schedule of such benefits and the amount of such additional assessments upon members must be approved by a majority vote of the members of the department and may be changed by a majority vote of said members. Such additional payments shall be made from a fund to be known as the "Police Relief Fund," which shall be kept separate from all other funds of the city and separate from the police pension fund before provided. Such police relief fund shall not be supported by taxation, but shall be supported by the additional assessments herein provided for and in such other ways as the by-laws of such association may from time to time provide. (Act Apr. 1, 1935, c. 92, §13.)

**1716-17. Payment of pensions—limitations.**—No pension payments shall be made hereunder to any person while he is in the employ of such city in any capacity or while he is an employee of the State of Minnesota, or while he is receiving a pension from any public funds; provided that if any such person is in the employ of the city or of the state, or is receiving pension from any public funds, and the amount of his monthly compensation or pension is not equal to the monthly pension to which he is entitled hereunder, the difference shall be paid to him. (Act Apr. 1, 1935, c. 92, §14.)

**1716-18. Police pensions in certain cities.**—Members of such relief association shall not be compelled to become members of the Public Employees Retirement Association established by Laws 1931, Chapter 307, or acts amendatory thereof, and if already members of said association shall, upon the establishment of the relief association hereunder, cease to be members thereof and shall be entitled to receive from such association the amount of accumulated deductions of pay contributed to said association in the same manner, and in the same amount, as they would be entitled to upon ceasing to be employees of said municipality. (Act Apr. 1, 1935, c. 92, §15; Apr. 24, 1935, c. 259.)

Act Apr. 15, 1933, c. 260, provides that cities of the third class may reimburse contractors heretofore submitting bids on public works where the deposit has been forfeited.

Act Apr. 15, 1933, c. 270, provides that cities of the third class in one county contiguous to city of the first class in another county may expend one-eighth of one mill on assessed valuation, exclusive of moneys and credits, for parks, advertising, and sleeping quarters for exhibitors and delegates.

Act Apr. 15, 1933, c. 271, provides that cities of the third class in one county and contiguous to a city of the first class in another county may expend not to exceed three-eighths of one mill of assessed valuation, exclusive of moneys and credits, for emergency poor relief.

Sec. 52 of Mankato City Charter, relating to interest of officers or employees in contracts or business of the city, is self-executing. Op. Atty. Gen., Oct. 5, 1931.

Act Mar. 5, 1935, c. 37, authorizes cities of the third class refund forfeited contractors' deposits within six months from effective date of act. It is omitted as temporary.

#### LAWS AFFECTING CITIES OF THE THIRD CLASS

Third class cities may improve streets, and require property outside limits. Laws 1939, c. 75.

#### PROVISIONS RELATING TO CITIES OF FOURTH CLASS

##### 1720. Detachment of lands—Petition—Notice.

Exclusively agricultural land subdivided into small acreages for rural purposes is "unplatted" land. De Griselles, 185M495, 241NW590. See Dun. Dig. 6521.

##### 1722. Existing indebtedness—[Repealed].

The parenthetical credit at the end of this section as it appears in G. S. 1913 and G. S. 1923, should read "(07, c. 221, §3; amended '11, c. 197, §1)."

##### 1722-1. Exceptions—[Repealed].

Repealed by Laws 1911, c. 173.

##### 1726-1. Detachment of unplatted land from city and special or independent school district in such city.

This act is invalid as special legislation. 179M358, 229 NW346.

##### 1726-6. Detachment of unplatted agricultural lands.

This act is not unconstitutional because it does not require notice to land owners not joining in the petition, or as class or special legislation. Petition Clinton Falls Nursery Co. et al., 183M164, 236NW195. See Dun. Dig. 1641, 1646, 1675, 1691, 6521.

This act is constitutional. Wesely, 188M237, 246NW 905.

**1726-9. Scope of act.**—This act shall only apply to cities the limits of which also constitute a separate school district; and which are located wholly within one county. (As amended Apr. 24, 1931, c. 318, §1.)

##### 1727. Taxes for general purposes.

In addition to levy authorized by section, city of Hastings may make a levy for its valid bonded indebtedness and interest thereon incurred prior to 1929. State v. Brown, 189M257, 248NW822.

Section supersedes provision in home-rule charter of city of Hastings in regard to limitation upon total tax levies, and that city may levy tax up to 25 mills for general city and municipal purposes. State v. Brown. Id.

Moneys and credits should be excluded in calculating the amount of tax which may be levied. Op. Atty. Gen., Feb. 6, 1930, July 3, 1930.

Levy of city of fourth class for bonded indebtedness is not limited by this section. Op. Atty. Gen. (519c), May 11, 1934.

An outline of municipal bond procedure in Minnesota. 20 MinnLawRev 583.

##### 1727-1. Rate of tax levy for certain cities.

The limit of the levy for current purposes in the city of Stillwater is to be based on the assessed valuation of real and personal property omitting the moneys and credits. Op. Atty. Gen., July 3, 1930, Feb. 6, 1930.

The maximum tax levy for municipal purposes of villages organized under Laws 1875, c. 139, is now fifteen mills on the dollar of the assessed valuation of all taxable property therein. Op. Atty. Gen., Feb. 29, 1932.

##### 1728. Salaries of mayor and council—Submission to voters.

Election in city of St. Peter held to increase salaries of aldermen to \$100. Op. Atty. Gen. (359a-21), May 18, 1937.

Cities organized under Laws 1921, c. 462 (§1828-17 et seq.), are governed by this section rather than §1828-53 in the matter of fixing salaries of members of city council and mayor. Op. Atty. Gen. (63a-2), June 8, 1937.

##### 1730. To what cities applicable.

General laws operating in all cities are not limited by a provision in a special charter that the general laws of the state shall not be considered as repealing the provisions of the charter. Op. Atty. Gen., Feb. 25, 1930.

**1731. Parks and golf courses.**—That any city of the fourth class of this state, whether said city is acting under general or special law or home rule charter, is hereby authorized and empowered, in addition to the other powers conferred upon it by law, to acquire by gift, purchase, devise, condemnation or lease, lands within its corporate limits, or lands adjacent to such city, and lying outside of its corporate limits, not exceeding one hundred acres in extent of area, for use by the public for a park or a golf course, and for park purposes, and may provide for the improvement thereof by the planting and preservation of trees and shrubs, by inclosing, ornamenting and protecting the same, and in such other ways as may be necessary to make such lands suitable for the uses of a public

park or golf course. ('05, c. 335, §1; G. S. '13, § 1739; Apr. 24, 1935, c. 293, §1.)

Sec. 2 of Act Apr. 24, 1935, cited repeals inconsistent acts, and §3 provides that the act shall take effect from its passage.

City of Sleepy Eye cannot under its charter expend money for improvements in park outside corporate limits. Op. Atty. Gen., May 5, 1931.

City of fourth class may pay money to a hockey club maintaining skating rink and warming house in consideration of the place being thrown open to the public certain days in the week without charge. Op. Atty. Gen., Nov. 13, 1933.

Whether a reasonable appropriation by city council for purpose of decorating Christmas tree and furnishing an entertainment for children at Christmas time is for a public purpose is a question of fact to be passed upon by local governing body. Id.

City may lease land outside city for transient camp where main reason or object is to have state and government employ transients for construction of dam and bathing beach and improvement of park system. Op. Atty. Gen. (330c-2), Sept. 6, 1934.

City may operate a skating rink and is not liable for injuries received thereon where no charge is made, being a governmental function. Op. Atty. Gen. (844b-1), Feb. 11, 1935.

City may erect a building or arena to be used as indoor skating rink and bathhouse, and issue bonds therefor. Op. Atty. Gen. (59b-11), Nov. 21, 1935.

City of North Mankato had power to establish and maintain a playground and park, and could grant a ball club a concession, in consideration of construction of grandstand, and charge for admission to ball park, general public to have full use of playing field during six days of week and ball club only on Sundays. Op. Atty. Gen. (59b-11), Mar. 18, 1937.

**1732. Park board—Powers and duties.**—That the city council of every such city may by a majority vote create a park board for such city, to be composed of three members, to be chosen by said council for terms of one, two and three years respectively, all of whom shall be free holders and residents of such city, and who shall serve without compensation. Such park board shall be authorized and empowered, for and on behalf of and in the name of such city, to acquire by gift, purchase, devise, condemnation or lease, the land to be held and used for park purposes, or purposes of a golf course, and shall provide for the improvement thereof as specified in section one of this act. Said park board shall have general supervision, management and control of such park or golf course and may appoint a suitable person to care for and take charge of the same, and may prescribe his duties and fix his compensation therefor; provided, however, that in any city of the fourth class having a population according to the 1930 federal census in excess of 5,000 inhabitants, which city is located within a county containing not less than 18,000 and not more than 19,000 inhabitants according to the 1930 federal census, and having an assessed valuation for the year 1935 in excess of \$5,000,000, and less than \$6,000,000, exclusive of moneys and credits, the city council thereof may by a majority vote create a park board for such city, to be composed of five members, to be chosen by said council for terms of one, two, three, four and five years respectively, all of whom shall be freeholders and residents of such city, and who shall serve without compensation, and said board shall have the authority and power hereinbefore specified. ('05, c. 335, §2; G. S. '13, §1740; Apr. 24, 1935, c. 293, §1; Mar. 31, 1939, c. 103.)

See note under §1731.

A city of the fourth class may not abolish a park board created under this section. Op. Atty. Gen., June 20, 1931.

Statute controls over ordinance as to method of appointing members of park board. Op. Atty. Gen. (59a-32), Oct. 9, 1935.

City may pay salary of band director out of entertainment fund, but a city may not transfer money from general fund or any other fund to band fund. Op. Atty. Gen. (59b-3), July 28, 1936.

#### **1736. Appropriation.**

Funds received by a city for the condemnation of park property stand in the place of the property and must be used for park purposes. Op. Atty. Gen., June 20, 1931.

Expenditures for band purposes of fourth class cities in counties having 17,500 to 18,000 population and 450 to 475 square miles and 12 to 14 townships, are legalized. Laws 1939, c. 218.

Fourth class cities in counties having 17,500 to 18,000 population and 450 to 475 square miles and 12 to 14

townships may levy a 2 mill tax for purpose of musical entertainment. Laws 1939, c. 219.

#### **1737. Entertainment tax.**

Act Apr. 13, 1939, c. 218, legalizes expenditures by cities of the fourth class in Le Sueur County for municipal band purposes. Probably unconstitutional as local and special.

Act Apr. 13, 1939, c. 219, authorizes cities of the fourth class and boroughs in Le Sueur County to levy annual tax for free musical entertainment. Probably unconstitutional as local and special.

City of International Falls is authorized by section 1737 to levy a tax for musical entertainment of public in public places or public grounds, but has no power to levy a tax for "band purposes" under Laws 1927, c. 79. State v. Keyes, 188M79, 246NW547. See Dun. Dig. 6688a.

This section is repealed by §§1933-17 to 1933-22, insofar as appropriating money for band purposes is concerned. Op. Atty. Gen., Feb. 15, 1933.

Section was not repealed by Laws 1927, c. 79, Mason's Minn. St. 1927, §§1933-17 to 1933-22. Op. Atty. Gen., Aug. 15, 1933.

City council cannot levy a tax for band purposes without submitting the matter to a vote of the people, nor can it transfer money from the general fund or any other fund to the band fund. Op. Atty. Gen. (59b-3), June 6, 1934.

City may not transfer money from general or current fund to band fund where city charter does not provide therefor. Op. Atty. Gen. (59b-3), Apr. 12, 1935.

City may pay salary of band director out of entertainment fund, but a city may not transfer money from general fund or any other fund to band fund. Op. Atty. Gen. (59b-3), July 28, 1936.

City council of Worthington under its home rule charter may transfer surplus moneys from water and light fund to musical entertainment fund in such amount as in exercise of its official judgment and discretion may be necessary to subservise public purpose. Op. Atty. Gen. (519h), May 18, 1937.

#### **1742. Powers of commission.**

Fourth class cities may appropriate funds for improvement of parks golf courses, etc., not located within corporate limits. Laws 1939, c. 192.

Offices of county attorney and park district attorney are incompatible. Op. Atty. Gen. (358a-1), Feb. 5, 1935.

#### **1746. Parking lake shores—Donations—Contracts for water and ice.**

City may improve shores of lake lying partially or wholly within corporate limits, and may acquire easement outside city to turn waters of irrigation or drainage system into lake, and creation of state park of part of city lying on lake does not change boundary of city so as to prevent improvements. Op. Atty. Gen. (330c-5), Nov. 26, 1934.

#### **1746-1. Title to lands and expenditures validated.**

Wherever any city in this state having a population of not more than 3,000 inhabitants, whether operating under a general or special law or under a home rule charter, shall have heretofore acquired the title to any lands exceeding 50 acres in area and lying outside of the corporate limits of said city, for use by the public for a park or park purposes, the title of the said city to the said lands is hereby cured and validated, whether said lands are contiguous to said city or otherwise, provided however said lands are situated in the same county in which such city is situated, and any expenditure of public funds heretofore made in purchasing or improving same is hereby legalized and validated and such city is hereby authorized to provide for the improvement thereof and to expend public moneys thereon in the same manner as it is now authorized to improve and expend public moneys on other lands belonging to said city which are used for park purposes and which lie within the corporate limits of said city or contiguous thereto. (Act Apr. 10, 1933, c. 205.)

**1746-2. Cities of fourth class may appropriate money for improvement of parks, etc., outside of city limits.**—The city council, park board or any other municipal body of any city of the fourth class shall not appropriate public funds for the improvement of parks, golf courses or recreation centers which are not within the corporate limits or contiguous to such city until the question has been submitted to the voters of the municipality and has been approved by a majority of the voters of such city voting at a general election or a special election called for said purpose. (Act Apr. 10, 1939, c. 192, §1.)



Statute is prospective and does not operate retroactively. Op. Atty. Gen. (59a-3), May 3, 1939.

City council may acquire land outside corporate limits for an airport without submission of question to voters. Op. Atty. Gen. (59a-40), May 20, 1939.

**1740-3. Inconsistent acts repealed.**—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed. (Act Apr. 10, 1939, c. 192, §2.)

**1753-1. Waterworks and light plants.**

The property owner and not the city should defray the expense of removing an obstruction in a service pipe running from water main in street to basement, under Waconia Ordinance 29. Op. Atty. Gen., Oct. 8, 1931.

An outline of municipal bond procedure in Minnesota. 20 MinnLawRev 583.

**1754. Waterworks and light plants.**

On expiration of franchise of power company, voters may vote upon alternative proposition; granting of new franchise; acquiring of plants under bond issue. Op. Atty. Gen., Mar. 1, 1933.

Water and light department may purchase equipment and supplies and resell the same to consumers, but it cannot finance cost of installation of equipment by a dealer. Op. Atty. Gen. (624c-5), Aug. 31, 1934.

City may use surplus earnings derived from city owned utilities for general city purposes. Op. Atty. Gen. (624a-6), Oct. 10, 1934.

A municipally owned power plant cannot arbitrarily refuse to furnish power to one desiring to consume it, at least for a purpose which it has recognized as legitimate, and which it has granted to others. Op. Atty. Gen. (624c-14), Oct. 11, 1934.

Sections 1754 to 1759 do not limit or modify powers granted to city of Stillwater in its city charter with reference constructing an electric light or gas plant or with reference to issuing bonds to pay cost of construction in such a plant. Op. Atty. Gen. (624c-8), Feb. 11, 1935.

Irrevocable future pledging of profit of electric power plant may be had for payment of bonds used in purchasing or constructing power plants by city of Eveleth. Op. Atty. Gen. (59a-7), May 31, 1935.

Majority vote of electors is sufficient to authorize issuance of certificates of indebtedness under §1486. Op. Atty. Gen. (59b-7), May 4, 1938.

City may proceed to construct a municipal light plant and issue its bonds therefor either under procedure provided by city charter or under §§1754 to 1760, *id.*

An outline of municipal bond procedure in Minnesota. 20 MinnLawRev 583.

**1755. Powers of council, etc.**

Elections in City of St. James are to be called and held under procedure set out in general statute. Op. Atty. Gen., June 24, 1933.

Amount of bonds which may be issued by city of Madison for making improvements to municipal utility plant is not confined to limitations contained in this section. Op. Atty. Gen. (624d-1), Feb. 17, 1938.

**1762-1. Certain cities may extend, execute or renew mortgages.**—Whenever any city of the fourth class has obtained title to any real estate subject to a mortgage, the common council of that city or a proper agency thereof acting with the consent of the common council of that city may extend or renew such mortgage or may execute a new mortgage of the property. All funds secured by the new or extended mortgage must be used exclusively for the payment of the principal and interest of the original mortgage and for the payment of all prior liens on the property and for no other purpose. (Act Apr. 10, 1939, c. 190, §1.)

**1762-2. Same—Mortgages may be foreclosed.**—In case of default of any mortgage made pursuant to this Act the mortgagee or those claiming under him may foreclose the mortgage as any other mortgage, but in no case may the mortgagee or those claiming under him recover from the city any amount in excess of the amount obtained for the property at the foreclosure sale. (Act Apr. 10, 1939, c. 190, §2.)

**1762-3. Same—To supersede other laws.**—This law shall prevail over any contrary provision contained in a municipal home rule charter. (Act Apr. 10, 1939, c. 190, §3.)

**1762-4. Hospital boards may execute mortgages in certain cases.**—In all cities of the fourth class where hospital boards have been created, either by home rule charter or legislative enactment, and where the city has obtained title to real estate, subject to a mort-

gage, by purchase, gift or decree, such hospital boards are hereby authorized and empowered to enter into an agreement of extension of such mortgage or mortgages or to execute and deliver a new note and mortgage upon such premises for the purpose of refinancing the same, by and with the approval of the city council of any such city, provided, that all funds so secured shall be employed exclusively in the payment of principal and interest on such original mortgage and prior liens if any, upon such real estate, including real estate taxes. (Act Apr. 12, 1939, c. 196, §1.)

**1762-5. Same—Limitation of act.**—The lien of any such mortgage or mortgages so executed by such hospital board shall be limited to the premises there-in described and in case of default the same may be foreclosed as provided by statute in case of other real estate mortgages, but otherwise the same shall not constitute a claim against such city. (Act Apr. 12, 1939, c. 196, §2.)

Sec. 3 of Act Apr. 12, 1939, cited, provides that the act shall take effect from its passage.

**1764. Purchase of electricity.**

Guth et al. v. City of Staples, 183M552, 237NW411; see notes under §200.

Contract to purchase electricity held authorized under this section. Northern States Power Co. v. C., 186M209, 242NW714. See Dun. Dig. 6683.

Providing electricity for its inhabitants is a proprietary function of a municipality, and its contracts relating thereto are governed by same rules of contract law, regarding laches and estoppel, as those of private corporations or individuals. City of Staples v. M., 196M303, 265NW58. See Dun. Dig. 6669b.

Where both parties have fully performed for half 10-year term of a contract of a city providing electricity for its inhabitants and city has permitted other party to put itself to expense in performance, which will result in substantial loss if contract is set aside, city is estopped to question contract. *Id.* See Dun. Dig. 6719.

Contract for furnishing to city electric energy for longer periods than authorized by charter is void. Op. Atty. Gen. (624a-4), Oct. 7, 1935.

**1765. Obligation not indebtedness.**

Contract of city to purchase at wholesale electrical energy over a period of ten years with fixed minimum each year did not create an indebtedness under city charter or any state law fixing limit of indebtedness. McNaught v. C., 198M379, 269NW897. See Dun. Dig. 6683.

**1765-1. Disposition of surplus electricity, etc.**

Op. Atty. Gen. (59a-36), May 11, 1934; note under §1867-1.

Corporation with contract to purchase electric power from a municipal plant for distribution to rural customers of the corporation, was not a "private consumer." Owatonna v. I. (USDC-Minn), 18FSupp6.

A city selling electricity to persons outside its limits under contract may discriminate in favor of residents of the city. Guth et al. v. City of Staples, 183M552, 237NW411.

A city of the fourth class may sell surplus electricity to those outside the city limits regardless of whether the city itself manufactures the current or purchases from another. Guth et al. v. City of Staples, 183M552, 237NW411. See Dun. Dig. 6687, 6689.

City may make conditional sales purchase of electric line outside city limits for purpose of distributing surplus electricity. Op. Atty. Gen. (59a-36), May 11, 1934.

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

City may sell electricity to cooperative corporation at city limits to be distributed by such corporation at such rates as deemed equitable by governing body, though at lower rates than to consumers in municipality. Op. Atty. Gen. (624c-11), Aug. 7, 1936.

City of Waseca, through its water and light board, has authority to enter into contract with an electric construction company to sell electricity, to be delivered at substation in city and used by the purchaser outside limits of city, without a vote of electors, though city purchases its current at wholesale from a public utility. Op. Atty. Gen. (624c-12), June 30, 1937.

**1768. Heating plants.**

Council of city of Blue Earth could not cancel heating bills. Op. Atty. Gen., Mar. 14, 1933.

Police and fire departments civil service commissions cannot act for both policemen and firemen. Op. Atty. Gen., Feb. 2, 1934.

Village may not expend funds for payment of taxes on private property in consideration of person owning such private property furnishing heat for municipal building over a term of years. Op. Atty. Gen. (476b-2), Sept. 27, 1934.

**1774. Expenditure of money for road, bridges and streets in Cities situate in two or more counties.**—In all cities of the fourth class situated in two or more counties, except such cities of the fourth class as are situate in two or more counties, each of which contains no more than 17 full or fractional townships, the common council or other governing body shall have exclusive power to expend all moneys arising from taxation for roads, bridges and streets upon the real and personal property within the corporate limits of such cities, except as herein provided. ('13, c. 183, §1; '25, c. 300, §1; Mar. 9, 1933, c. 69.)

County treasurer is required to pay over to a city of the fourth class situated in two counties all money raised from the real and personal property within the city limits by the county road and bridge tax levy, in addition to the moneys levied by the city. Op. Atty. Gen., May 8, 1931.

Chapter 183, Laws of 1913, as amended by chapter 300, Laws of 1925, now §§1774, 1776, violates the provision of §1, article 9, of constitution, that taxes shall be uniform upon same class of subjects. State v. Scott County, 261 NW863. See Dun. Dig. 9130.

Requirement of territorial uniformity in distribution of proceeds of taxation. 20MinnLawRev234.

**1786. Regulation of public utilities—Definitions.**

City of Duluth may adopt ordinance declaring sewage disposal plants to be a public utility and issue bonds to pay cost of completing same payable out of rentals or charges for use of such plants, without an election and sell them to the state. Op. Atty. Gen. (387b-9), Sept. 23, 1937.

**1793. Police and health departments.**

City of Springfield could pay certain bonds and interest out of its public utility fund. Op. Atty. Gen., Apr. 21, 1931.

**1799-1. Cities and villages may issue bonds for sewage disposal plant.**—The governing body of any village or any city of the fourth class in the State of Minnesota operating under Home Rule Charter pursuant to the provisions of Section 36, Article 4, of the State Constitution is hereby authorized and empowered for the purpose herein designated, to issue the negotiable bonds of such village or city to the amount authorized by such village or city council; said bonds to be made in such denominations and payable at such places and at such times, not exceeding thirty years from the date thereof, as may be deemed best, to mature serially, and to bear interest at the rate not to exceed six per cent per annum, payable semi-annually, with interest coupons attached, payable at such place or places as shall be designated therein.

Provided that no such bonds shall be sold for less amount than the par value thereof and accrued interest thereon.

Provided also that such bonds shall be issued, negotiated and sold in accordance with the particular method prescribed by the laws governing villages or by the charter of the city so issuing such bonds, provided that this act and all proceedings taken hereunder shall be done pursuant to the provisions of Chapter 131, General Laws 1927 [§§1938-3 to 1938-13].

Provided further also, that the bonds authorized by this act or any portion thereof may be issued and sold by any such village or city, notwithstanding any limitations contained in the charter of such city or in any law of the state prescribing or fixing any limit upon the bonded indebtedness of such city or village. ('27, c. 85, §1.; Apr. 18, 1929, c. 244, §1.)

Cities of third or fourth class under home rule charter located in counties having 24 to 25 townships and 34,000 to 35,000 population, who have installed sewage disposal plants, may create a supervision commission. Laws 1939, c. 140.

Villages having populations of over 10,000 may issue bonds to complete sewage disposal plants. Laws 1939, c. 239.

This act does not apply to the city of Cloquet with respect to building a sewage disposal plant, and its powers are given by Laws 1895, c. 8, §135. Op. Atty. Gen. (387b-9), Aug. 7, 1935.

Debt limitations as to issuance of bonds for sewage systems by villages under different circumstances, stated. Op. Atty. Gen. (387g-2), Dec. 30, 1936.

An outline of municipal bond procedure in Minnesota. 20 MinnLawRev 583.

**1799-2. Tax levy.**—The full faith and credit of any such village or city shall at all times be pledged for the payment of any bonds issued under this act and for the payment of the current interest thereon, and said governing body of such village or city shall each year include in the tax levy a sufficient amount for the payment of such interest as it accrues, and for the accumulation of a sinking fund for the redemption of such bonds at their maturity. ('27, c. 85, §2; Apr. 18, 1929, c. 244, §2.)

**1799-3. Execution—Sale.**—All bonds issued under the authority of this act shall be sealed with the seal of the village or the city issuing the same and signed by the president of the village council or mayor and attested by the village or city clerk, except that the signatures to the coupons, attached to such bonds, if any, may be lithographed thereon. The sale of such bonds shall be in such manner and in such proportions of the whole amount authorized by this act and at such times as may be determined by the said governing body of such village or city, and the bonds may be purchased by the state board of investment with the funds of the State of Minnesota. ('27, c. 85, §3; Apr. 18, 1929, c. 244, §3.)

**1799-4. Proceeds not to be used for other purposes.**—The proceeds of any and all bonds issued and sold under authority of this act shall be used only for the purpose of constructing a sewage disposal plant for such village or city. ('27, c. 85, §4; Apr. 18, 1929, c. 244, §4.)

**1799-5. Application.**—Nothing herein contained shall be construed to repeal or modify the provisions of any charter adopted pursuant to Section 36, Article 4, the constitution of this state, requiring the question of the issuance of bonds to be submitted to the vote of electors. ('27, c. 85, §5; Apr. 18, 1929, c. 244, §5.)

**1799-6. Powers additional.**—The powers granted in this act are in addition to all existing powers of such villages or cities. ('27, c. 85, §6; Apr. 18, 1929, c. 244, §6.)

**1799-7. Certain cities may contract for treatment of sewage.**—Any city of the fourth class, having a population of less than 3,000 inhabitants, operating under a home rule charter and maintaining and operating a sewage purification plant and having a state institution, operated under the direction of the state board of control, located partly within and partly without the boundaries of such city, is hereby authorized and empowered to contract with the state of Minnesota for purification treatment of sewage produced at such state institution, upon such terms and for such period of time as the governing body of such city may determine and authorize. (Act Apr. 29, 1935, c. 346.)

Act Apr. 4, 1939, c. 140, authorizes any city of the third or fourth class, organized under a home rule charter or however organized, located in any county having 24 to 25 congressional townships, population of 34,000 to 35,000, which has constructed a sewage disposal plant, to create a board or commission to supervise such plant. It is omitted as local and special.

**1800. Inspection of milk, dairies, etc.**

Ordinances may provide for inspection of both producers and dealers of milk sold within its limits and requires payment of inspection fee. Op. Atty. Gen., Dec. 11, 1929.

Municipalities may impose license on all producers and dealers selling milk within its limits, except as power may be affected by Const., Art. 1, §18. Op. Atty. Gen., Dec. 11, 1929.

**1805 to 1811. [Repealed Apr. 21, 1939, c. 345, Pt. 12, §1, ante §601-12, effective Aug. 1, 1939.]**

**ANNOTATIONS UNDER REPEALED SECTIONS**

**1805. Elections.**

Reenacted as §601-11(4)n.

This act governs elections in city of Montgomery to extent that it is not inconsistent with Laws 1870, c. 31. Op. Atty. Gen., Mar. 14, 1933.

In special municipal elections in city of Ely, procedure specified in §§1828-21, 1828-31, Laws 1933, c. 203, may be followed. Op. Atty. Gen., Oct. 20, 1933.

#### 1806. Candidates.

Reenacted as §601-11(4)o.

Provision requiring candidate to file not less than 15 days preceding election is not applicable to special election in Shakopee to elect alderman to fill vacancy. Op. Atty. Gen., Sept. 7, 1933.

This section applies to elections in city of Marshall organized under General Laws of 1894. Op. Atty. Gen., Mar. 6, 1934.

This section governs filing of candidates for city offices under §1828-19. Op. Atty. Gen. (1831), Sept. 12, 1934.

Village may construct curbing and gutters for trunk highway and pay for the same with certificates of indebtedness, but if it issues bonds there must be vote of electors, and improvement may be paid out of general fund without assessment against abutting owners. Op. Atty. Gen. (476a-4), Aug. 29, 1935.

Cities of the fourth class under home rule charter, silent as to the matter, are governed by §401-1 as to time polls shall remain open, and by §1806 as to time within which affidavits of candidacy must be filed. Op. Atty. Gen. (641), Oct. 8, 1937.

In cities of fourth class, such as Chatfield, where charter or special law under which they are operating does not prescribe method of candidates filing for city office, provisions of this section are controlling. Op. Atty. Gen. (359a-21), Apr. 19, 1938.

#### 1807. Ballots.

Reenacted as §601-11(4)p.

Blank lines should be provided on ballots as provided in §284A. Op. Atty. Gen., Dec. 2, 1930.

City ballot of Stillwater, which holds its election at same time as biennial state election, should be printed on red paper. Op. Atty. Gen., (28b-3), Oct. 10, 1938.

Names on city ballot of Stillwater, which holds its election at same time as biennial state election, should be rotated and not arranged alphabetically. Id.

#### 1808. Polling places.

Reenacted as §601-11(4)q.

This act and section has reference only to the general city election, and has no reference to special elections called to vote on special questions, and Mason's Stat., §§359 and 360 govern the appointment of judges and clerks of election in special elections. Op. Atty. Gen., Oct. 28, 1931.

An outline of municipal bond procedure in Minnesota. 20 MinnLawRev 583.

#### 1809. Australian ballot system to be used.

Reenacted as §601-11(4)r.

This section is not superseded by Laws 1929, c. 198, relating to hours of opening and closing of polls. Op. Atty. Gen., Feb. 19, 1930.

This section does not apply to a city operating under a charter which makes provision for the time of opening and closing the polls. Op. Atty. Gen., Mar. 31, 1930.

Hours during which polls shall be kept open in city of Bemidji, city of fourth class governed by home rule charter which contains no special provision in relation to elections, are governed by §401-1 and not by §1809. Op. Atty. Gen., Jan. 26, 1932.

Hours, during which polling places in city of Owatonna shall be kept open at special election, are covered by Laws 1923, c. 17, but at state general elections, polls should be kept open as provided by Laws 1929, c. 198. Op. Atty. Gen., Apr. 26, 1932.

Special election in city of fourth class would probably be valid if polls did not open at 6:30 A. M. so as to conform with opening on same day of primary. Op. Atty. Gen., May 20, 1932.

1810. Challengers—Not to adjourn until polls are closed.

Reenacted as §601-11(4)s.

1811. General election laws to apply.

Reenacted as §601-11(4)s.

**1815. Street and alley improvements of cities of fourth class or villages—Definitions.**—In any city of the fourth class or village of this state, whether said city or village is acting under general or special law or home rule charter, the council shall have power to improve any street, streets, alley or alleys, or parts thereof, by laying and maintaining pavements, gutters and curbs thereon of any material which it may deem suitable or by grading, graveling or subjecting the same to bituminous or other treatment, when petitioned for by the owners of not less than thirty-five per cent (35%) in frontage of the real property abutting on such street, streets, alley or alleys, or parts thereof, as may be named in the petition as the location for such improvement. By the word "council" as used in this Act is meant the governing body; by the word "mayor," the chief executive officer, and by the word "clerk," the officer who performs the functions thereof, of such municipality, by whatever title they may be respectively denominated. ('19, c. 65,

§1; '21, c. 419, §1; '27, c. 185, §1; Apr. 10, 1933, c. 200.)

Laws 1931, c. 317, legalizes proceedings previously had under this act.

Act Feb. 17, 1939, c. 20, legalizes proceedings had under this section and sections 1816 to 1828, but not to affect pending actions or appeals.

Act Mar. 6, 1939, c. 49, amends Laws 1939, c. 20.

The improvement of an alley cannot be made unless 35 per cent of the abutting owners petition for it, although a number of alleys are joined in one improvement and 35 per cent of all owners petition. 177M28, 224NW254.

The city of New Ulm, under its general powers of control over its streets may reasonably prescribe a 20-foot boulevard in the middle of a residence street 120 feet wide. *Apitz v. C.*, 185M374, 241NW47. See *Dun. Dig.* 6617.

Where bonds were sold pursuant to authority vested by law, and all these bonds have been paid and there is a surplus in the special street improvement fund, such surplus belongs to the people who paid the assessments, and city council has no authority to transfer or loan the surplus to any other city fund. Op. Atty. Gen., July 2, 1931.

Old assessments prior to 1921 were not outlawed because city council passed ordinance in that year purporting to bring city within provisions of this act. Op. Atty. Gen., Mar. 15, 1934.

Village of Blooming Prairie operating under Special Laws 1874, c. 9, may pursuant to its charter improve streets by oiling them without petition of abutting owners. Op. Atty. Gen. (396a-2), Aug. 10, 1934.

As affecting petition for paving street, City of Worthington has the option of proceeding under its home rule charter, Mason's Statutes, §1815, or under §1918-17. Op. Atty. Gen. (396c-10), Apr. 15, 1936.

A city cannot institute paving improvement under this act and then follow procedure under city charter relative to notice, resolution, etc., but city may abandon project and start new one under different statute. Op. Atty. Gen. (125a-18), May 5, 1936.

Several connected streets may constitute one improvement. Id.

Resurfacing streets of city of Montgomery with oil or bituminous material—necessity for petition—assessment against benefited property. Op. Atty. Gen. (396c-2), May 22, 1936.

Property owned by city is not to be included in giving required number of signatures to petition. Op. Atty. Gen. (396c-6), June 30, 1936.

City of Fairmont cannot widen a street entering business section without a petition signed by requisite number of abutting owners. Op. Atty. Gen. (396c-6), Sept. 29, 1936.

A village operating under Laws 1885, c. 145, has option of proceeding under that act or under Laws 1919, c. 65 (§1815 et seq.), or under Laws 1925, c. 382 (§1918-15 et seq.), in making improvements referred to in each of such acts. Op. Atty. Gen. (396g-7), May 21, 1937.

Several streets may be improved upon one petition. Op. Atty. Gen., (396c-6), Nov. 14, 1938.

#### 1816. Same—Assessment of abutting property.

Railroad right of way is subject to assessments for pavement on street abutting railroad. Op. Atty. Gen. (396g-12), May 11, 1936.

A number of streets all connecting with same main street, may be included in one project. Op. Atty. Gen., (396c-6), Sept. 26, 1938.

#### 1819. Plans, specifications and advertisements.

A village may have street work done by day labor and buy materials itself, though cost is in excess of \$500. Op. Atty. Gen. (396c-7), May 31, 1934.

City of New Ulm need not advertise for bids in connection with laying of mains and improving light, water, power and heating plant. Op. Atty. Gen. (707a-1), Oct. 19, 1934.

City may improve street by WPA laborers by the day without advertising for bids. Op. Atty. Gen. (396b-7), Sept. 15, 1936.

Village may not separate one improvement into several projects in order to avoid advertising for bids. Op. Atty. Gen., (396g-7), Oct. 6, 1938.

Village may improve streets by day labor even though cost exceeds \$500. Id.

#### 1820. Payments.

Act July 16, 1937, Sp. Ses., c. 75, legalizes street improvement proceedings in fourth class cities and authorizes completion of improvement under this act.

**1821. Assessment.**—After a contract is let, or after the work is ordered done by day labor as hereinbefore provided, the clerk with the assistance of the engineer or other person selected by the council to perform the duties of engineer, shall forthwith calculate the proper amount to be specially assessed for such improvement against every assessable lot, piece or parcel of land within the district affected, without regard to cash valuation, in accordance with the provisions of Section 2 of this act, and the proposed as-

assessment so made up shall be filed with the clerk and be open to public inspection. The clerk shall thereupon under the council's direction cause notice of the time and place when and where the council will meet to pass upon such proposed assessment, to be published in the official paper at least one week prior to such meeting of the council.

At such meeting the council shall hear and pass upon all objections thereto, if any, and may, if it deems it just, amend such proposed assessment as to any lot or lots, and upon the adoption by resolution of such assessment, the same shall constitute the special assessments against the lands named therein. Such assessment, with the accruing interest thereon, shall be a lien upon the property included therein, concurrent with general taxes, and shall be payable in equal annual installments extending over such period not exceeding 20 years as the council may by resolution determine, the first of said installments to be payable on or before the first day of June following the adoption of the assessment, and any deferred payments to bear interest from the first day of June following the adoption of the assessment at such rate of interest per annum, not exceeding six per cent, as the council may by resolution determine.

It shall then be the duty of the clerk immediately thereafter to transmit a certified duplicate of such assessment to the county auditor of the county, to be extended on the proper tax lists of the county, and such assessments shall be collected and paid over in the same manner as other municipal taxes; provided, that the owner of any property, so assessed, may, at any time, pay the whole of such assessment, or any annual installment thereof with interest, as to any lot, piece or parcel of land affected thereby. (As amended Apr. 1, 1939, c. 135, §1.)

#### 1822. County boards and school districts to pay assessments.

Liability of county for sidewalk and curb work done on property owned by county in connection with village WPA project. Op. Atty. Gen. (480a), March 31, 1939.

Act is applicable to cities of the fourth class under home rule charter, such as Owatonna. Op. Atty. Gen. (396e), April 28, 1939.

#### 1824. Certificates of indebtedness authorized.

Act Feb. 27, 1929, c. 43, validates certificates of indebtedness issued by boroughs under this act.

Form of "certificates of indebtedness" prescribed. Op. Atty. Gen. (476c-4), May 20, 1937.

When work is done under contract section forbids issuance of certificates prior to time contract is made, but where day labor is employed on an improvement, village may issue its certificates for work done daily or in any other manner properly determined by village. Op. Atty. Gen. (59a-51), March 14, 1939.

#### 1825. Reassessment.

Presumption of validity of assessment of the cost of a public improvement is rebuttable. 176M240, 223NW 135.

#### 1827. Appeal to district court.

176M240, 223NW135; note under §1825.

#### 1828. Application.

City of Pipestone has authority to regulate "transient merchants" but not "transient dealers." Op. Atty. Gen., Oct. 9, 1933.

#### 1828-1a. Street sprinkling in fourth class cities—

**Payment for**—In all cities of the fourth class the city council may in its discretion pay one-half of the cost of sprinkling the streets with water; out of the general revenue fund of the city, and may assess one-half of the cost to the property abutting the streets sprinkled. In case any county has property abutting the street so sprinkled the county shall pay the cost of sprinkling the same on presentation to the county board thereof of a bill therefor properly verified. ('19, c. 187, §1.)

#### 1828-1b. Improvement of streets with federal aid—validation—special assessments.—

In all cases where a city of the fourth class having a home rule charter under the Constitution of the State of Minnesota, Article IV, Section 36, has heretofore acting through its city council determined to improve any

street within said city by a resolution adopted by a majority vote of the council after a meeting at which all persons interested had been notified to be present by a notice of such meeting published in the official newspaper and has caused plans and specifications for such improvement to be made and has advertised for bids for such improvement and has entered into contracts for the construction thereof subject to the approval of the federal emergency administration of public works, the United States of America having previously offered a grant to aid in financing such improvement which said offer has been duly accepted by the city council, such proceedings are hereby legalized and declared to be valid and of full force and effect and the city council of such city is hereby authorized to proceed with the making of said improvement, with the levy and collection of assessments and the issuance of certificates of indebtedness therefor all as provided by Mason's Minnesota Statutes of 1927, Sections 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827 and 1828. (Jan. 13, 1936, Ex. Ses., c. 9, §1.)

**1828-1c. Same—pending actions not affected.**—This act shall not apply to or affect any action or appeals now pending in which the validity of any such proceedings is called in question. (Jan. 13, 1936, Ex. Ses., c. 9, §2.)

#### 1828-2. Extension or repair of pumping plants, reservoir systems or water main systems.

This act is applicable to cities of fourth class under home rule charter. Op. Atty. Gen. (59a-7), Aug. 2, 1935.

#### 1828-9½. City Council may vacate streets.—

That in any city of the fourth class organized under a home rule charter, the council thereof shall have power, by a majority vote of the council to vacate any street or highway or any part of any street or highway therein, upon the petition of all the owners of lands abutting both sides of any such street or highway or part thereof proposed to be vacated wherein one end of any such street or highway or part thereof, proposed to be vacated, does not connect with any other street or highway. Except as herein provided all other provisions of such home rule charter shall apply to and govern any such vacation proceeding. (Act Mar. 20, 1933, c. 95, §1.)

**1828-9½a. Application.**—This act shall apply to any proceeding now pending before the city council of any such city wherein the conditions set forth in Section 1 of this act exist. (Act Mar. 20, 1933, c. 95, §2.)

**1828-9½b. Not to affect pending actions.**—The provisions of this act shall not affect any action or proceeding now pending in any of the Courts of this State in which the validity of any street vacation by the council of any such city is involved or is in question. (Act. Mar. 20, 1933, c. 95, §3.)

#### 1828-16½. Certain cities may establish police retirement fund—Tax levy.—

That any city of the fourth class now or hereafter having property, exclusive of moneys and credits of an assessed valuation of more than \$4,000,000.00, may, at the discretion of the city council or other governing body, establish and provide by ordinance for the accumulation, administration and distribution of a police pension fund, or for the payment direct from current funds of pensions, for the benefit of all police officers retired or honorably discharged at or after reaching the age of 65 years, the last preceding 25 years of which time has been or shall have been spent as a police officer in the service of such municipality. Provided, however, that no such pension shall in any case exceed 40 per centum of the salary of such officer at the time of retirement, nor in any case exceed \$600.00 per year, nor in any case be paid after the death of such officer to any dependent or other person whomsoever, nor be subject to garnishment, attachment or other legal process.

To provide funds for the payment of such pensions the city council or other proper authority may levy a tax of not more than one-fifth of one mill on all the

taxable property of such municipality, and may provide for the use for said purposes of some portion of the fines and penalties collected by said municipality from time to time. (Act Apr. 20, 1929, c. 278.)

**1828-16¾.** Application of act.—This act shall apply to every city of the fourth class, whether governed by home rule charter or otherwise, having an assessed valuation of more than \$8,000,000, in which the city council shall have or hereafter may have adopted, by majority vote, a resolution electing to come under the provisions hereof. In the event any city shall at any time come under the terms of this act it shall continue thereunder notwithstanding any subsequent change in classification or valuation. (Act Apr. 13, 1935, c. 170, §1.)

Act is constitutional. Nichols v. C., 204M352, 283NW 539.

Resolution of city council adopted October 22, 1935, to take effect as of July 1, 1936, became operative at once upon adoption, and it is doubtful whether council may suspend or rescind the resolution by July 1, 1936. Op. Atty. Gen. (336), June 25, 1936.

Act is constitutional. Op. Atty. Gen. (785e-3), Apr. 19, 1938.

**1828-16¾a.** Police department may incorporate.—The police department in any such city is hereby authorized to become incorporated pursuant to the provisions of any laws of the State of Minnesota and to adopt articles of incorporation and by-laws as a relief association. All members of such department at the time of the taking effect of this act and all persons subsequently becoming members of such department shall be members of such association, except municipal court officers and persons appointed for temporary service or for probationary periods; provided that for purposes of this act no employment after six months shall be considered to be temporary or probationary. (Act Apr. 13, 1935, c. 170, §2.)

**1828-16¾b.** Termination of membership.—Every person shall cease to be a member of said association upon the termination, from any cause, of his employment in said police department, except as he may be entitled to receive benefits hereunder or under the by-laws of said association subsequent to such termination. (Act Apr. 13, 1935, c. 170, §3.)

**1828-16¾c.** Retirement—Pension.—When any member of said association shall have reached the age of 55 years he may retire and shall thereupon be entitled to a pension as long as he shall live, at the following rates:

(a) \$75.00 per month when such member shall have served as a member of the said police department for a period of 20 years or more, excluding temporary employment or probationary periods, as hereinbefore defined.

(b) An additional five dollars per month for each year of service over 20 that said person may have served as a member of such police department after the age of 55 years. The total amount of pension hereunder shall in no event exceed \$100 per month.

(c) In the event such member shall retire after reaching the age of 55 or more and after having been a member of said department for at least ten years, but before having served 20 years in said department, the amount of pension which he shall receive shall be that proportion of \$75.00 per month which the years of service in said department prior to retirement bear to 20 years, major fractions of years of service to be treated as one year and minor fractions to be disregarded.

(d) In no event shall temporary employment or employment for probationary period, as hereinbefore defined, be considered in computing pension allowances hereunder.

(e) In the event any member shall be discharged from the service of said police department after having served 20 years or more and before such member has reached the age of 55, he may, upon a vote of a majority of the members of the relief association, be permitted to continue as a member of such association, notwithstanding that he is no longer a member of said police department, and upon reaching the age

of 55 years, shall be entitled to a pension at the rate of \$75.00 per month; provided that in such event such member shall make application to said association for such privilege within six months from the time he is discharged and shall contribute each month after said discharge, and until reaching the age of 55 years, to the pension fund of said relief association a sum of money equal to 3½% of the then average monthly pay of members of said department holding the rank held by said member at the time of discharge. In the event such association approves such application, such member shall within 60 days thereafter pay into said association for the pension fund the monthly installments herein provided for the period between his discharge and the time of said first payment. Thereafter, in the event said member shall default in the payment of such monthly assessments and such default shall continue for a period of sixty days, all rights hereunder shall cease. (Act Apr. 13, 1935, c. 170, §4.)

**1828-16¾d.** Retirement not compulsory.—Retirement at the age of 55 years shall not be compulsory, but when such members shall have reached the age of 60 years the police civil service commission, if one exists in such city, or if not the board of commission charged with the administration of the department of police in said city shall have the right to insist upon the retirement of such member at the age of 60 years, regardless of the provisions of any civil service laws. (Act Apr. 13, 1935, c. 170, §5.)

Civil service commission of city of Eveleth has right to insist upon retirement of members of police department, who are over sixty years of age, even over objection of city council. Op. Atty. Gen. (785e-3), Apr. 19, 1938.

**1828-16¾e.** Tax levy for fund.—For the support of the fund from which such pensions are paid the city council or other governing body of such city shall each year, at the time the tax levies are made for the general revenues of the city, levy within the limits then permitted by law, a tax on all taxable property of such city in the sum of \$10,000.00 per annum, which levy shall be transmitted to the county auditor of the county in which the city is located at the time the other tax levies are transmitted and shall be collected and the payment enforced in the same manner as other taxes of such city. In addition thereto, each member of said association shall be required to contribute to such fund each month one per cent of his monthly pay, such sum to be deducted at the time of the payment of his salary or wages by the city and transferred to such fund. In addition thereto, such relief association may transfer to such fund moneys raised from other sources and under the control of such association. (Act Apr. 13, 1935, c. 170, §6.)

Section applies to men employed prior to passage of law. Op. Atty. Gen. (785e-3), Apr. 19, 1938.

City council has no jurisdiction in matter of determining whether a pension should be paid to any member of amount thereof. Id.

Action of city council in adopting provisions of act should be construed as a ratification of tax levies previously made. Id.

**1828-16¾f.** Tax levies to be omitted when.—If at any time the balance on hand in such fund, together with interest or other earnings accrued therein, exceeds the sum of \$50,000.00 then as often as this shall occur the levy of taxes for said fund shall be omitted for said year, and if at any time the whole amount of \$10,000.00 from taxation is not needed for the maintenance of said fund at \$50,000.00 then the sum to be raised by taxation shall be proportionately reduced to such amount as will be sufficient to keep said fund at \$50,000.00 or more. (Act Apr. 13, 1935, c. 170, §7.)

**1828-16¾g.** Officers.—The articles of incorporation or by-laws of such relief association shall provide for a board of directors to consist of five members, from whom there shall be elected by the board officers to consist of president, vice-president, secretary and treasurer. The mayor or principal executive officer of said city and the city treasurer shall ex officio be members of the said board, in addition to the five

members also provided for. Members of such board and the officers thereof shall hold their terms of office for such times as may be provided in the articles of incorporation or by-laws of such association. (Act Apr. 13, 1935, c. 170, §8.)

**1828-16 1/4 h. Police pension fund.**—The city treasurer shall be the custodian of all funds of such relief association. All moneys raised by taxation as provided hereunder shall be paid and all other funds of such association shall be paid to the city treasurer and shall be kept by him in a separate fund called "Police Pension Fund;" upon the written direction of the board of directors of said association, the city treasurer shall invest said funds in such interest-bearing securities as are specified from time to time by the board of directors; provided that the same shall be such securities as may be prescribed from time to time by the laws of Minnesota as permissible investments for trust funds of the State of Minnesota by the State Board of Investment, except that in addition thereto such funds may be invested in first mortgages upon improved real estate located in said city. (Act Apr. 13, 1935, c. 170, §9.)

**1828-16 1/4 i. Report—Filing.**—The board of directors of said association shall file annually, on or before the first day of September of each year, with the clerk of said city, a detailed report of the amount of money received, expended and remaining on hand to the credit of said fund. The books and records of said board shall be open to inspection and audit by any taxpayer of said city or his duly authorized representative, and shall be audited with other books and records of the city at the time of the making of any general city audit. (Act Apr. 13, 1935, c. 170, §10.)

**1828-16 1/4 j. Expenses.**—Actual expenses in connection with the making of investments may be paid from said fund upon authorization by the board of directors, but no salaries or fees shall be paid to any officer or agent therefrom. (Act Apr. 13, 1935, c. 170, §11.)

**1828-16 1/4 k. Deductions from pay to be repaid in certain cases.**—Whenever a member of said association shall cease to be a member of said department for any reason other than death or retirement, he shall be paid, on demand, the full amount of accumulated deductions from pay standing to his credit. Whenever any member shall die without having received a pension or without having received in pension payments, an amount equal to the total amount of the accumulated deductions from his salary hereinbefore provided for, the full amount of said accumulated deductions, less such pension payments, if any, as have been paid to said member, shall be paid in one lump sum to the beneficiary or beneficiaries designated by such member or, if none, to the legal representatives of such member; provided, however, if no valid claim is established therefor, such accumulated dividends shall remain with and become the property of said association. No member shall be entitled to interest upon deductions under the provisions of this paragraph. (Act Apr. 13, 1935, c. 170, §12.)

**1828-16 1/4 l. Health and accident benefits.**—In addition to the pension fund and pension payments provided hereunder, the said relief association may by proper by-laws provide for the payment of additional health or accident benefits to members of said association and to widows or dependents of deceased members thereof. For the payment of such additional benefits such relief association may assess all members of said police department an additional amount not to exceed 2 1/2 % of the monthly pay of such members. The plan and schedule of such benefits and the amount of such additional assessments upon members must be approved by a majority vote of the members of the department and may be changed by a majority vote of said members. Such additional payments shall be made from a fund to be known as the "Police Relief Fund," which shall be kept separate from all

other funds of the city and separate from the police pension fund before provided. Such police relief fund shall not be supported by taxation, but shall be supported by the additional assessments herein provided for and in such other ways as the by-laws of such association may from time to time provide. (Act Apr. 13, 1935, c. 170, §13.)

**1828-16 1/4 m. Limitations.**—No pension payments shall be made hereunder to any person while he is in the employ of such city in any capacity or while he is an employee of the State of Minnesota, or while he is receiving a pension from any public funds; provided that if any such person is in the employ of the city or of the state, or is receiving pension from any public funds, and the amount of his monthly compensation or pension is not equal to the monthly pension to which he is entitled hereunder, the difference shall be paid to him. (Act Apr. 13, 1935, c. 170, §14.)

**1828-16 1/4 n. Membership.**—Members of such relief association shall not be compelled to become members of the Municipal Employees Retirement Association established by Laws 1933, Chapter 307, or acts amendatory thereof, and if already members of said association shall, upon the establishment of the relief association hereunder, cease to be members thereof and shall be entitled to receive from such association the amount of accumulated deductions of pay contributed to said association in the same manner as they would be entitled thereto upon ceasing to be employees of said municipality. (Act Apr. 13, 1935, c. 170, §15.)

**1828-16 1/2. Retirement pensions for firemen in certain cities.**—In any city of the fourth class having a population in excess of 6,000 and not more than 10,000 and a valuation in excess of \$9,000,000.00, exclusive of money and credits, and an area of more than four square miles, and having a Fire Department Relief Association organized under the laws of this State and authorized to pay pensions under Mason's Minnesota Statutes of 1927, Sections 1919 and 1920 and Sections 3723 to 3728, inclusive, or any amendments thereof, such Fire Department Relief Association may pay retirement pensions in excess of the amounts authorized by said statutes, but not in excess of the following total amounts:

Seventy-five dollars per month to each member of the Association who shall have reached the age of 55 years and shall have served 20 years or more as a member of the paid municipal fire department in such city. The monthly payments of \$75.00 may be increased by adding thereto an amount not exceeding three dollars per month for each year of active duty over 20 years of service before retiring; provided, that no such pension or payment hereunder shall exceed the sum of \$96.00 per month. No such pension shall be paid to any person while he remains a member of the Fire Department. (As amended Apr. 2, 1937, c. 132; Apr. 17, 1937, c. 253, §1.)

**1828-16 1/2 a. Who may receive pension.**—No pension authorized by this act shall be paid to any person while receiving a pension in any form, or sick benefits, from any state, county, city, village, township or other political subdivision of the State, or to any person after he removes his residence from the United States, or to any person who shall have been convicted of a felony for which he shall have been adjudged to be imprisoned, or who is a habitual drunkard, or to any person receiving a pension or sick relief from any other public relief association, and no person receiving such pension shall be entitled to any other relief from the association. (Act Apr. 17, 1935, c. 208, §2.)

**1828-16 1/2 b. May pay benefits.**—Nothing herein shall be construed as preventing any such association from paying any benefits other than service pensions which they may be authorized to pay to members of the association under the General Laws of this State or of the Statutes hereinbefore referred to, except that such benefits shall not be paid to any member

while he is receiving a pension hereunder. (Act Apr. 17, 1935, c. 208, §3.)

**1828-16 7/8 c.** Not to be subject to process.—No pension allowed or to be allowed by any Firemen's Relief Association under this act, and no accumulated contributions of members to the fund hereinafter referred to, shall be subject to judgment, garnishments, or executions or other legal process, and no person entitled thereto shall have any right to assign the same, nor shall the association have the power to recognize any attempted assignment or pay over any sum whatever which has been assigned or attempted to be assigned. (Act Apr. 17, 1935, c. 208, §4.)

**1828-16 7/8 d.** Deductions from pay—Tax levies.—In addition to the moneys in the special fund of said association or provided to be raised therefor under existing laws for the payment of pensions and other benefits, revenues from the following sources shall be paid to said special fund, to-wit: It shall be the duty of the city clerk, treasurer or other disbursing officer of such city to deduct each month from the monthly pay of each member of the fire department, who is a member of the association, a sum equal to three and one-half per cent of such monthly pay, and to place the same to the credit of said special fund. The city council or other governing body of such city shall each year, at the time the tax levies are made for the general revenues of the city, levy within the per capita or mill limitations now permitted by law, a tax of \$5,000.00 on all of the taxable property of such city, which levy shall be transmitted to the county auditor of the county in which the city is situated at the time the other levies are transmitted and shall be collected, and the penalties therefore shall be enforced, in the same manner as the other taxes of such city. The city treasurer, when the moneys derived from such tax are received by him, shall pay the same to the treasurer of the fire department's relief association, together with all penalties and interest collected thereon, in the following manner: Of the first levy made after the passage of this act and its adoption by said city, an amount not to exceed one-half of such levy may, at the discretion of the board of trustees of said relief association, be placed to the credit of the general fund of said association. The balance of said levy, as well as all subsequent levies, shall be credited to the special fund of said association, and shall not be withdrawn from said fund or transferred to any other fund except for the purposes of this act; provided however, that said board of trustees may, in its discretion, pay premiums upon the bond of the treasurer and secretary from said special fund. (Act Apr. 17, 1935, c. 208, §5; Mar. 31, 1939, c. 124.)

**1828-16 7/8 e.** Tax levies to be omitted in certain cases.—If at any time the balance on hand of the fund so raised by taxation as in this section provided, together with other resources in said special fund, shall exceed the sum of \$50,000.00 or more, then as often as this shall occur, the levy of said sum shall be omitted for any year in which said condition shall exist; if at any time the whole amount of the sums that may be raised by taxation in any year is not needed for the purposes of this act and the maintenance of said fund at the amount prescribed herein, then such sum so to be raised by taxation in any such year shall be proportionately reduced to such amount as will be sufficient to carry out the provisions hereof. (Act Apr. 17, 1935, c. 208, §6.)

**1828-16 7/8 f.** Treasurer to invest funds.—The treasurer of said association shall, upon written direction of the governing body or board of directors thereof, invest said funds in such interest-bearing securities as are specified, from time to time, by said board of directors; provided same shall be such securities as are prescribed by laws of Minnesota, from time to time, as securities for investments, of the State Board of Investment. (Act Apr. 17, 1935, c. 208, §7.)

**1828-16 7/8 g.** Officers and directors.—The governing board or board of directors of said association whether heretofore or hereafter incorporated shall consist of five members, to be elected annually, who shall first hold their offices for one, two, three, four and five years, respectively, and thereafter each for a five-year term, or until the successor of each is duly elected and qualified, who shall serve without compensation and shall be active members of said paid fire department, and the Mayor and Chief of said Department shall be ex-officio members of said board. The treasurer of said association shall give bond to the Board of Trustees in an amount not less than the total balance of funds owned and belonging to such Relief Association as shown by its last annual statement, conditioned for the faithful discharge of his duties during his continuance in office and for the payment without delay to the officer or persons entitled by law thereto, of all monies belonging to said Relief Association which shall come into his hands by virtue thereof. All vacancies occurring in the elective membership of said board shall be filled by a special election called for that purpose. None of said members shall be eligible to vote upon any question relating to his benefits hereunder. (Act Apr. 17, 1935, c. 208, §8.)

**1828-16 7/8 h.** Must file report.—The said governing board of said association shall file annually on or before the first day of September of each year with the City Clerk of said City a detailed report of the amount of money or property so received, expended, and still remaining on hand to the credit of said fund. The books and records of said board shall be open to inspection and audit by any taxpayer of said City or his duly authorized representative. (Act Apr. 17, 1935, c. 208, §9.)

**1828-16 7/8 i.** Deductions refunded in certain cases.—Whenever a member of said association shall cease to be a member of said department, for any reason other than death or retirement, he shall be paid, on demand, the full amount of the accumulated deductions from pay standing to his credit. Whenever any member shall die without having received a pension, or without having received in pension payments an amount equal to the total amount of the accumulated deductions from his salary heretofore provided for, the full amount of such accumulated deductions, less such pension payments, if any, as have been made to said member shall be paid in one lump sum to the beneficiary or beneficiaries designated by such member, or if none, to the legal representatives of such member; provided, however, if no valid claim is established therefor, such accumulated deductions shall remain with and become the property of said association. Provided however that if any member shall pay any regular (or monthly) payment for sick relief or hospitalization while a member of any department, under any plan approved by the association, such amount may be deducted from the 3 1/2 per cent of the member's salary hereinbefore mentioned. No member shall be entitled to interest upon deductions under the provisions of this paragraph. (Act Apr. 17, 1935, c. 208, §10.)

**1828-16 7/8 j.** Same—Change in value, area or population not to affect pensions.—Whenever any city shall come under the provisions of this act it shall continue subject to the provisions of this act notwithstanding any subsequent change in valuation, area or population. (Act Apr. 2, 1937, c. 132, §2; Apr. 17, 1937, c. 253, §2.)

Sec. 3 of Act Apr. 2, 1937, cited, provides that the Act shall take effect from its passage.

Sec. 3 of Act Apr. 17, 1937, cited, provides that the Act shall take effect from its passage.

#### GENERAL INCORPORATION ACT FOR CITIES OF FOURTH CLASS

**1828-17.** Incorporation—petition—first election.—That inhabitants of contiguous territory not organized as a city and having not less than one thousand

(1000) inhabitants nor more than ten thousand (10,000) inhabitants, may become incorporated as a city of the Fourth Class as hereinafter provided:

(a) A petition addressed to the County Board of the County in which the whole or the larger part of said territory is situated, whether all or part of such territory had been theretofore organized into one or more adjoining boroughs or villages, or not, which is signed by one-fourth of the number of legally qualified voters residing in the territory proposed to be incorporated as a city that voted in said territory at the last preceding general election for state officers, may be filed with the County Auditor of said County praying that a city of the Fourth Class be established in said territory, and that an election be called to determine whether or not such city shall be incorporated. Such petition shall set forth the metes and bounds of the proposed city and of the several wards thereof, and the population thereof, and the number of voters voting in said territory at the last general election for state officers. The residence of each signer shall be stated opposite the signature, but the signatures to the petition need not be appended to one paper. The petition shall be verified by the oaths of at least three of the petitioners, declaring the statements made in the petition to be true. In addition thereto the petitioner procuring the signatures to each paper and petition shall make an oath before a person competent to administer oaths, that each signature is the genuine signature of the elector whose name purports to be thereto subscribed, and that each signer is an elector duly qualified to vote within the territory designated in the petition as the territory proposed to be incorporated as a city of the Fourth Class.

(b) If it shall appear that such petition is in due form, complies with the provisions hereof, and is signed by the proper number of electors residing in the territory sought to be incorporated in the proposed city, of which latter fact the affidavit of the petitioners procuring signatures on such paper and petition shall be prima facie evidence, the County Board shall adopt a resolution approving said petition and in said resolution shall designate the time and place of holding a special election upon said proposition, which election shall take place not less than 30 days nor more than 40 days from the time of presenting and filing said petition with the County Auditor; and the County Board in said resolution shall specify the location of the polling place in each ward, and that the polls will be open from 8 A. M. to 8 P. M., and shall prescribe a form of notice of such special election, a copy of which shall be attached to the resolution, in which notice shall be stated the time of such special election, the location of the polling place in each ward, the hours during which the polls shall be open, together with a statement of the question to be voted upon. Thereupon the County Auditor shall cause a copy of said petition, resolution and notice to be posted in at least five conspicuous places in said proposed city, at least 20 days prior to the date of such election, and shall cause said notice to be published in some legal newspaper published in the proposed city at least once each week for two consecutive weeks prior thereto, and if there be no newspaper published therein, then in a newspaper published in the same county.

(c) The County Board in its resolution shall also name three legally qualified voters residing in said proposed city, but not more than one from a single ward if there be three or more wards, who shall act as Inspectors of Election, who shall supervise the holding of said election and conduct the same in accordance with the laws applicable to the election of village officers in such territory. The County Board in its resolution shall also name and appoint three judges and two clerks of election for each ward who shall be legally qualified voters residing within the proposed city. They shall perform the duties of judges and clerks of election prescribed by the general elec-

tion laws. When the polls have been closed they shall correctly count and record the results of the election, tabulating the same and delivering said results and tabulations to the Inspectors of Election. Thereupon the Inspectors of Election shall canvass the results of election and forthwith make and file with the County Auditor a certificate declaring the time and place of holding of the election, that they have canvassed the ballots cast thereat, and the number cast, both for and against said proposition, and the final results thereof. The certificate shall be signed and verified by at least two of said inspectors to the effect that statements thereof are true. The inspectors shall preserve all ballots, tally sheets, and tabulations pertaining to said election, and forward the same in sealed containers to the County Auditor as soon after said election as conveniently may be to be by him kept according to law.

(d) At such special election only the proposition of incorporation of the proposed city shall be submitted to the voters for acceptance or rejection. The ballots shall bear the words "For Incorporation of the City of . . . . ., Yes—No," with a square after each of the last two words, in one of which the voter may make a cross to express his choice. In the blank space shall be printed the name of the proposed city. Only voters having complied with the laws applicable to voting in the territory where they reside shall have the right to vote.

(e) The County Auditor shall attach said certificate of Inspectors of Election to the original petition, with a copy of the resolution of the County Board, and notice calling the election and naming the officers of election, and the original proofs of posting and publishing of the election notice, and file the whole as one document in his office. If the certificate shall show that three-fifths of the votes cast on the proposition were in the affirmative, he shall forthwith make and transmit to the Secretary of State a certified copy of said document to be filed there as a public document. ('21, c. 462, §1; Apr. 21, 1931, c. 289, §1.)

Where for many years an incorporated village has existed and is included in a city incorporated as a city of fourth class, no part of territory within village limits may, by information in quo warranto against city, be questioned as being not suitable for municipal government. *State v. City of Chisholm*, 199M403, 273NW235. See *Dun. Dig.* 6521.

Chapter 462, Laws 1921, as amended by Chapter 289, Laws 1931 (§1828-17 et seq.), construed to limit rights of voters to include in a city only territory of urban and suburban character and properly conditioned for municipal government. *Id.*

While lands of the Mesaba Range underlain with iron ore are not in the same class as agricultural lands when considered as suitable to become a part of the territory of a municipality, it must be recognized that for industrial purposes they must be distinguished from factories and sites for permanent industrial structures. *Id.*

In determining whether territory beyond mined areas is fit for municipal government, motive in reaching out for it so as to derive revenue therefrom is proper to consider. *Id.*

An admission of a town in its pleading does not preclude interveners from that town to prove that facts are to contrary in proceeding involving validity of organization and boundaries of a city. *Id.*

In proceeding involving validity of organization and boundaries of a city, defense of laches, waiver, and estoppel is not made out from loans obtained from state board of investment, nor from fact of judgments being obtained against city, nor from fact that it vacated a road within its territory or has functioned as a city in other respects. *Id.*

Adoption of a home-rule charter does not preclude court from determining whether territory included in city is lawfully included. *Id.* See *Dun. Dig.* 6545.

A water, light, power and building commission can only be abolished in the manner provided by §1860-1/2, et seq., and it is immaterial that village adopting such a commission has become incorporated as a city of the fourth class. *Op. Atty. Gen.* (624e-11), Oct. 4, 1934.

Where village was established as city of fourth class by election held on Sept. 1, 1934, and Oct. 8, city officials were elected and at the same election the home rule charter was adopted, which was to take effect 30 days after date of election, taxes should be levied in 1934 pursuant to new home rule charter, though such levy must take place after Oct. 10. *Op. Atty. Gen.* (484a-2), Nov. 7, 1934.



**1828-18. Corporate powers in general.**—Upon filing of the petition aforesaid, with the Secretary of State as aforesaid, the inhabitants within the metes and bounds therein described shall thenceforth be a body politic and corporate subject to and with the power to act under the authority of all the provisions of this act. They shall have power to sue and be sued, complain and defend in any court, make and use a common seal and alter it at pleasure; and take hold and purchase, lease and convey such real and personal or mixed estate as the purpose of the corporation may require, within or without the limits aforesaid; shall be capable of contracting and being contracted with; and shall have the general powers possessed by municipal corporations at common law, and in addition thereto shall possess the powers hereinafter specifically granted and shall have and possess all the powers granted and applicable to cities of the Fourth Class not existing or operating under a Charter adopted in pursuance of Section 36, Article 4, of the Constitution of the State of Minnesota, or a special Charter, and the authorities thereof shall have perpetual succession. ('21, c. 462, §2; Apr. 21, 1931, c. 289, §2.)

City of New Ulm, regardless of charter provisions, has the power to open and deepen the channel of the river below the city to facilitate the flow of the sewerage downstream and prevent the contamination of city water. Op. Atty. Gen., Aug. 11, 1931.

Dry vote in village of North Mankato was without effect upon right of city of North Mankato to issue liquor licenses. Op. Atty. Gen., Mar. 19, 1934.

On incorporation of city of fourth class with home rule charter right of those holding position under soldier's preference law in village to retain their positions depends upon whether departments in which they are employed are continued or discontinued under the new government. Op. Atty. Gen. (484a-2), Nov. 7, 1934.

**1828-19. First election.**—Within 15 days after the completion of the incorporation of such city as aforesaid the County Board shall by resolution designate the time and place of holding the first election of officers therein, which shall be not less than 30 days or more than 40 days after filing of the incorporation papers with the Secretary of State. The County Board shall in the same resolution appoint three judges and two clerks of election for each ward, who shall be legally qualified voters residing in their respective wards, and in addition thereto shall appoint three legally qualified voters in said city, but not more than one from each ward thereof, if there be three or more wards, who shall conduct the said first election of officers in said city and who shall be the inspectors thereof, and shall take the usual oath or affirmation as prescribed in the general laws of the State to be taken by the judges and inspectors of elections, and shall have the power to administer the necessary oaths; and the persons so named as inspectors of the election, shall hold and conduct the same in the manner and under the same penalties as provided by the laws of this state regarding elections and shall have power to fill vacancies in the board of inspectors, and among the judges and clerks of election.

When said city election is closed and the number of votes for each person voted for shall have been counted and ascertained, the judge and clerks of election shall make return thereof stating the number of votes for each person for each and every office and shall deliver or cause to be delivered such returns to one of the said inspectors within two (2) days after such election, and the said inspectors (or majority thereof) shall meet and canvass said returns and declare the result within one (1) day thereafter. The inspectors canvassing said returns and declaring the result shall forthwith notify the officers elected of their election by written notice served upon such officers in person or left at their usual place of abode with some person of suitable age and discretion. ('21, c. 462, §3; Apr. 21, 1931, c. 289, §3.)

Section 1806 governs the filing of candidates for city offices. Op. Atty. Gen. (1831), Sept. 12, 1934.

Registration act would not apply to first election of officers for newly incorporated city where it would result in disfranchisement of some of the residents of the new city. Id.

Newly elected treasurer was entitled to books and records of former village treasurer's office. Op. Atty. Gen. (851), Nov. 15, 1934.

**1828-20. Terms of office of officers.**

Term of village municipal judge may not be changed by electors in incorporating as a city of fourth class. Op. Atty. Gen. (307k), Sept. 13, 1934.

**1828-21. Biennial elections.**

Elections in city of St. James are to be called and held under procedure set out in general statute. Op. Atty. Gen., June 24, 1933.

In special municipal elections in city of Ely, procedure specified in §§1828-21, 1828-31, Laws 1933, c. 203, may be followed. Op. Atty. Gen., Oct. 20, 1933.

**1828-24. Elective officers.**—The elective officers of each city shall be Mayor, Treasurer, Recorder, and one Justice of the Peace, who shall be styled City Justice, all of whom shall be qualified voters of the city and two aldermen in each ward who shall be qualified voters therein. All officers for said city shall be appointed by the Common Council unless otherwise provided and all said officers shall hold their offices for two years and until their successors are elected and qualified. ('21, c. 462, §8; Apr. 10, 1933, c. 203, §1.)

Where at end of two year term mayor reappoints chief of police, and the council refuses to confirm it and refuses to pay such officer, such officer holds over until his successor is elected or appointed and is entitled to compensation therefor. Op. Atty. Gen. (785d), Jan. 31, 1938.

**1828-26. Vacancies.**—Whenever a vacancy shall occur in the office of Alderman by death or removal or resignation or otherwise, the common council shall have power and it shall be their duty to declare the office vacant by resolution entered upon their minutes. Such vacancy shall be filled by a new election, held only in the ward which has been deprived of representation on the council by the creation of such vacancy, which shall be ordered by the common council within 10 days after said vacancy is declared, and held within 20 days after such declaration, and reasonable notice of such election shall be given. Any vacancy occurring in any other office shall be filled by a resolution of the common council adopted by a majority vote of the remaining members of the council within 15 days after such vacancy occurs unless otherwise provided for. A person elected or appointed to fill a vacancy shall hold his office and discharge the duties thereof, for the unexpired term and with the same rights and subject to the same liabilities as the person whose office he may be elected or appointed to fill. ('21, c. 462, §10; Apr. 10, 1933, c. 203, §1.)

**1828-27. Elections—Ballots—Tie votes.**

Special election on bond issue for parks and playgrounds may be held on same day as primary election or general election, but a special ballot box must be provided. Op. Atty. Gen. (64t), Apr. 5, 1938.

**1828-28. Qualifications of electors and candidates for office, etc.**

Provision with reference to qualification of electors is invalid insofar as same conflicts with Const. Art. 7, §1. Op. Atty. Gen., Nov. 7, 1933.

**1828-31. Special election. [Repealed.]**

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

Amended Apr. 10, 1933, c. 203, §1.

Procedure under this subdivision may be followed by city of St. James as regards notice of special elections. Op. Atty. Gen., June 24, 1933.

There is no general statutory provision specifically providing procedure for calling and conducting special election to vote on bond issue or what constitutes due notice to electors. Op. Atty. Gen., Aug. 14, 1933.

#### DUTIES OF OFFICERS

**1828-32. Offices vacated, when.**

An officer appointed to fill a vacancy or one elected to a city office must qualify within ten days after receiving notice. Op. Atty. Gen., Jan. 6, 1932.

**1828-35. Oaths of office—Bonds.**

A city treasurer is guilty of malfeasance by depositing city funds in an undesignated bank of which he is stockholder, director, and assistant cashier, and a surety on his bond is liable for money lost through failure of the

bank, notwithstanding stipulation in bond relieving surety from liability for loss caused by failure of any bank or other depository, and there is liability under a bond for funds wrongfully deposited during its term, though bank does not fail until afterwards. *City of Marshall v. G.*, 193M188, 259NW377. See *Dun. Dig.* 6712.

**1828-36. Duties of Mayor.**—The mayor shall preside at all council meetings at which he is present and shall have an equal vote with other members of the council on any matter coming before that body. He shall have no veto power.

He shall take care that the laws of the state and the ordinances of the city are duly observed and enforced, and that all other executive officers of the city discharge their respective duties. He shall from time to time give the common council such information and recommend such measures as he may deem advantageous to the city. The mayor shall be the chief executive officer and head of the police of the city, and shall appoint such police officers and watchmen, except when otherwise provided for.

And in case of a riot or other disturbances, he may appoint as many special or temporary constables as he may deem necessary; and any police officer or watchman, appointed by the mayor as aforesaid, may be discharged from office by him whenever in his opinion the welfare of the city may demand it, or a reduction of their number renders it necessary. ('21, c. 462, §20; Apr. 10, 1933, c. 203, §1.)

**1828-37. Same—Ordinances.**—All ordinances and resolutions shall, before they take effect, and after receiving a required majority vote in the council, be presented to the mayor, and he shall sign the same. Unless a special meeting is called to reconsider any such ordinance or resolution as provided in this chapter, it shall be the duty of the mayor to return the said ordinance or resolution to the city recorder with his signature within ten days after the meeting at which the same was adopted by the council. The city recorder shall sign, attest and duly file and preserve ordinances or resolutions when the same are returned to him. ('21, c. 462, §21; Apr. 10, 1933, c. 203, §1.)

**1828-38. Meetings of council—organization.**—The common council shall biennially on the first Tuesday after the first Monday in January next succeeding the city election, organize and at the time of its organization, proceed to elect from their number a Vice-president for the ensuing two years and such other officers as may be necessary for the transaction of their business, except assessor, who shall be elected annually in the month of March. Such elections shall be by ballot and the affirmative vote of the majority of all the members elected shall be necessary to elect. The mayor shall preside over the meetings of the common council and during his absence from the city or his inability from any cause to discharge the duties of his office, the said vice-president shall exercise all the powers and discharge all the duties of the mayor. The acts of the vice-president of the common council, while performing the duties of mayor as aforesaid, shall have the same force and validity as if performed by the mayor. The mayor and vice-president of the common council shall have the right to administer oaths and affirmations. ('21, c. 462, §22; Apr. 10, 1933, c. 203, §1.)

In all fourth-class cities not operating under charter pursuant to Art. 4, §36, of the constitution, and in which the mayor is the presiding officer of council, but has no vote, the mayor may now vote in case of a tie. *Laws* 1933, c. 192.

**1828-41. City attorney—Election—Duties.**

In case of failure to appoint a city attorney, common council of the city of Shakopee could employ an attorney for the special purpose of giving legal advice or services and prosecuting any particular persons violating city ordinances. *Op. Atty. Gen.*, May 26, 1931.

**1828-42. Treasurer—Duties.**

A city treasurer is guilty of malfeasance by depositing city funds in an undesignated bank of which he is stockholder, director, and assistant cashier, and a surety on his bond is liable for money lost through failure of the bank, notwithstanding stipulation in bond relieving

surety from liability for loss caused by failure of any bank or other depository, and there is liability under a bond for funds wrongfully deposited during its term, though bank does not fail until afterwards. *City of Marshall v. G.*, 193M188, 259NW377. See *Dun. Dig.* 8000, 8004, 8022.

**City of fourth class operating under general statutes must publish financial statement.** *Op. Atty. Gen.*, Sept. 30, 1931.

This section has no application to cities of fourth class operating under a home rule charter. *Op. Atty. Gen.* (277b-2), Jan. 6, 1937.

This section has no application to cities of fourth class operating under a special law or under a home rule charter. *Op. Atty. Gen.* (359a-21), Apr. 19, 1938.

Cities of the fourth class operating under special laws or home rule charters need not publish financial statements. *Op. Atty. Gen.* (277B-2), May 15, 1939.

**1828-43. Chief of police—etc.**

International Falls' home rule charter, c. 8, §1, permits the city council to either reduce or increase the number of officers under the chief of police. *Op. Atty. Gen.*, Apr. 27, 1931.

Where council refuses to confirm appointment and mayor refuses to appoint any officer, council may bring mandamus proceedings to compel mayor to submit name of some other person. *Op. Atty. Gen.* (785d), Jan. 31, 1938.

**1828-46. City assessor—Election—Duties—Term of office.**

*Laws* 1870, c. 31, and General Statutes 1894, §§1045 to 1195, under which city of Marshall was established were not repealed by the revision of 1905 and are still applicable to cities incorporated thereunder, except as modified by later enactment, and a city assessor may be appointed only for a term of one year. *Op. Atty. Gen.* (12a-3), Apr. 23, 1935.

**1828-53. Officers—Other duties—Compensation.**

Mayor may not be interested as an officer and director in a municipal depository, but a director of a regularly designated depository of city funds may be appointed as city attorney, the matter of what should be done by the appointee to place himself outside of pale of statutory provisions not being considered. *Op. Atty. Gen.* (90e-20), Apr. 14, 1936.

Council cannot increase salary of chief of police or superintendent of sewer and water system during term of appointment, or even during time he is holding over without reappointment. *Op. Atty. Gen.* (59a-41), Apr. 13, 1937.

Salaries of members of city council should be fixed as provided in §1728 rather than this section. *Op. Atty. Gen.* (63a-2), June 8, 1937.

**COMMON COUNCIL—GENERAL POWERS AND DUTIES**

**1828-55. Common council.**—The mayor and aldermen shall constitute the common council, and the style of all ordinances, shall be, "The common council of the city of . . . do ordain" &c. The common council shall meet at such time and place as they by resolution may direct. A majority of the council shall constitute a quorum. ('21, c. 462, §36; Apr. 10, 1933, c. 203, §1.)

**1828-57. Powers and duties of council enumerated.**

Regulation of running at large of dogs. *Laws* 1939, c. 410.

Cities of fourth class who hold mortgaged real estate, may renew or refund such mortgage. *Laws* 1939, c. 190.

City council of a city of the fourth class could vacate parts of two streets and a railroad crossing where it was necessary for the reception of materials for use in the paving of a nearby trunk highway. *Op. Atty. Gen.*, July 14, 1931.

City council of Eveleth has no authority to authorize an allowance to members of the council or the mayor for taxi hire or gasoline and oil used in their own automobiles. *Op. Atty. Gen.*, Mar. 22, 1932.

City may use surplus proceeds derived from water, light and heating utilities for general municipal purposes. *Op. Atty. Gen.*, Feb. 5, 1934.

City may pay salary of band director out of entertainment fund, but a city may not transfer money from general fund or any other fund to band fund. *Op. Atty. Gen.* (59b-3), July 28, 1936.

City of North Mankato had power to establish and maintain a playground and park, and could grant a ball club a concession, in consideration of construction of grand stand, and charge for admission to ball park, general public to have full use of playing field during six days of week and ball club only on Sundays. *Op. Atty. Gen.* (59b-11), Mar. 18, 1937.

Whether gasoline curb pump constitutes an unlawful obstruction or nuisance is a matter for governing body of municipality to determine. *Op. Atty. Gen.* (396a-1), Mar. 4, 1938.

(3).

City cannot enter into joint contract with private creamery corporation in connection with construction of sewage disposal plants. *Op. Atty. Gen.*, Sept. 18, 1933.

(36). License ordinance for dogs is not invalid because they are also assessed as personal property. Op. Atty. Gen. (146d-4), July 19, 1933.

(65). City of fourth class may pay money to a hockey club maintaining skating rink and warming house in consideration of the place being thrown open to the public certain days in the week without charge. Op. Atty. Gen., Nov. 13, 1933.

Whether a reasonable appropriation by city council for purpose of decorating Christmas tree and furnishing an entertainment for children at Christmas time is for a public purpose is a question of fact to be passed upon by local governing body. Id.

City may operate a skating rink and is not liable for injuries received thereon where no charge is made, being a governmental function. Op. Atty. Gen. (844b-1), Feb. 11, 1935.

City may accept a deed from abutting property owners on a narrow avenue conditioned that no assessments be levied against grantor's property by reasoning of widening and grading of the avenue and that city carry cost of sewer and water improvements, but city may not waive its right to compel abutting property owners to connect with sewer and water main. Op. Atty. Gen. (396c-6), June 12, 1935.

(71). License fee of \$100 for three years for commercial photography is unreasonable. Op. Atty. Gen., July 27, 1932.

(73). This paragraph controls §1828-61, the words "appropriating money" having reference to original incurring of obligation, while §1828-61 is to be limited to authorization of the expenditure of the appropriation thus made. Op. Atty. Gen., Apr. 4, 1930.

#### 1828-61. Ordinances, regulations, etc.

Act Jan. 18, 1936, Sp. Ses., 1935-36, c. 45, validates ordinances theretofore passed without calling for ayes and nays.

This section is controlled by §1828-57, par. 73, and the provision as to majority vote has reference to the expenditure of an appropriation made by a three-fourths vote under such paragraph 73. Op. Atty. Gen., Apr. 4, 1930.

A resolution abandoning and closing hospital in city of Hastings, and referring to admission of patients and termination of employment of various employees, contained only one subject within the meaning of Hastings' charter, c. 4, §5, which subject was included in a title simply stating that it was a resolution to abandon and cease to operate the hospital. Op. Atty. Gen., Apr. 20, 1931.

An affirmative vote of a majority of members of the city council of Hastings was sufficient for the closing of a hospital, and a two-thirds vote was unnecessary. Op. Atty. Gen., Apr. 20, 1931.

Where charter of city of Columbia Heights provided procedure to be followed in case of recall, it was not within the power of the city council in an ordinance to attach burdensome conditions to the filing of a recall petition. Op. Atty. Gen., Aug. 20, 1931.

Under Jackson City Charter, §66, an ordinance cannot be regularly adopted unless it has been read at three successive regular meetings of the council occurring at least one week apart, and it may not be read at a regular meeting and two adjournments of that meeting. Op. Atty. Gen., Oct. 12, 1931.

#### 1828-63. Audit of accounts by council.

Council may employ certified accountants to audit city affairs. Op. Atty. Gen., Mar. 24, 1933.

#### 1828-64. Borrowing money and issuing bonds—Tax levies—Passage of ordinances, etc.

Method of determining whether or not warrants may be issued for a special purpose for which money may be borrowed is that money on hand and taxes due and likely to be paid should be added together and from this amount deduct amount it will take to pay up outstanding indebtedness and amount which it will take before any new money is to be received from amounts levied this year, and if there is a balance, it may be used to draw new warrants, but city council has no authority to place a due date on such warrants. Op. Atty. Gen., Jan. 19, 1934.

City of North Mankato may not issue warrants or certificates in excess of limitation for white way system payable out of general funds without vote of electors. Op. Atty. Gen. (59a-49), Nov. 7, 1936.

City charter may provide for payment of hospital bonds in hospital services rather than in money. Op. Atty. Gen. (59b-5), Apr. 21, 1938.

Issuance of refunding bonds by city of North Mankato involving more than \$15,000 must be authorized by two-thirds vote of electors, §§1941 and 1942 not applying to cities of the fourth class. Op. Atty. Gen. (36i), July 22, 1939.

#### TAXES

##### 1828-66. Special taxes.

City may accept a deed from abutting property owners on a narrow avenue conditioned that no assessments be

levied against grantor's property by reasoning of widening and grading of the avenue and that city carry cost of sewer and water improvements, but city may not waive its right to compel abutting property owners to connect with sewer and water main. Op. Atty. Gen. (396c-6), June 12, 1935.

#### 1828-68. Tax levies—How made—etc.

City has no power to pay expenses of delegates from fire department to state firemen's association convention. Op. Atty. Gen., June 2, 1930.

#### 1828-70. Disbursements to be authorized by council—Orders for.

Aldermen of city of Marshall are not entitled to extra compensation for tour of inspection to other localities to determine proper kind of engine to purchase for municipal plant, and are not entitled to reimbursement for expenses, in absence of previous authorization by council. Op. Atty. Gen., May 16, 1932.

#### 1828-74. Laying out, opening, altering and vacating streets, etc.—Procedure.

Cities operating under this act may acquire land for street purposes. Op. Atty. Gen. (817p), Oct. 24, 1935.

#### OPENING AND VACATING STREETS, ALLEYS, ETC.

##### 1828-76. Vacation of streets, etc.—Procedure.

Charter provisions prevail under this section with reference to vacating streets. Op. Atty. Gen. (396c-18), June 2, 1934.

#### FIRE DEPARTMENT

##### 1828-82. Chief engineer, assistant engineers, etc.

Where mayor of International Falls submits appointment of a person as chief of fire department and council refuses to confirm the appointment, there is no vacancy in the office and the old incumbent continues as such chief unless he has resigned, or a vacancy has otherwise been created. Op. Atty. Gen., May 29, 1931. Op. Atty. Gen., Feb. 5, 1934; note under §1828-57.

#### MISCELLANEOUS PROVISIONS

1828-100. Mayor of certain cities may vote in case of a tie vote.—In all cities of the fourth class not organized and operating under a charter adopted pursuant to Article 4, Section 36, of the Constitution, in which the Mayor is the presiding officer of the City Council, but has no vote, he shall have the right to vote in case of a tie, but in such case only. (Act Apr. 10, 1933, c. 192.)

1828-101. Inconsistent acts repealed.—All Acts or parts of Acts inconsistent herewith are hereby repealed. (Act Apr. 10, 1933, c. 203, §2.)

1828-102. Present terms of office extended.—This Act shall take effect and be in force from and after its passage, but the present incumbents in all offices shall remain in office and continue to exercise the regular duties of said offices as heretofore provided until the expiration of their present terms of office, and thereafter no successor to the president of the council shall be elected. (Act Apr. 10, 1933, c. 203, §3.)

1828-103. Office of Mayor and Chief of Police combined in certain cities of the fourth class.—In any city of the fourth class, organized under any special or general law and having a population of not less than 500 or more than 1,000, excepting, however, any city operating under a home rule charter, the governing body of such city is hereby authorized by ordinance to combine the office of chief of police with that of the mayor and to provide that the mayor of such city shall also be the chief of police of such city and perform all the duties by law conferred upon the chief of police of such city for the preservation of the public peace. (Mar. 19, 1937, c. 68, §1.)

1828-104. Certain cities may expend money to advertise their industrial, agricultural, or recreational facilities.—That any city of the fourth class now or hereafter having an assessed valuation, exclusive of moneys and credits, of more than \$3,000,000.00 and a population of not less than 6,000 nor more than 9,000 may, by action of its governing body, annually appropriate, levy and expend not to exceed \$2,500.00 for the printing and distribution of pamphlets, newspapers, literature, and other printed matter or for road signs or for community celebrations and con-

ventions which encourages the industrial, agricultural or recreational facilities of said city or the area in which it is located. The governing body may either directly undertake the preparation and distribution of such written or printed matter and the work herein authorized or may authorize any chamber of commerce or other civic agency to carry on the preparation and distribution thereof. All moneys necessary to carry out the enabling provisions of this act may be spent from the general revenue fund of the city and within the limitations of law now existing. (Act July 14, 1937, Sp. Ses., c. 11, §1.)

**1828-105. Same—change in classification of city.**—If any city comes under the provisions of this act and avails itself of the powers and privileges herein contained, it shall thereafter continue within the classifications provided herein notwithstanding any subsequent change in valuation or population. (Act July 14, 1937, Sp. Ses., c. 12, §2.)

The title of Act July 14, 1937, cited, purports to authorize the creation of a "bureau of information and publicity for the purpose of furnishing tourist information, and advertising the recreational, agricultural and industrial opportunities and facilities of the community." The body of the act varies from this declared purpose.

Sec. 3 of Act July 14, 1937, cited, provides that the act shall take effect from its passage.

#### LAWS AFFECTING CITIES OF THE FOURTH CLASS

Laws 1931, c. 184, legalizes obligations incurred or payments made for poor relief by cities of the fourth class, having population of less than 9,000 and assessed valuation in excess of \$14,000,000.

Laws 1931, c. 361, legalizes conveyances by fourth class cities operating under home rule charter of land outside city limits, such conveyances having been made without vote of the electors.

Act Apr. 1, 1935, c. 91, validates proceedings for amendment of home rule charters of fourth class cities.

Act Mar. 24, 1937, c. 99, authorizes fourth class cities governed by home rule charter, and situated in county with 60 to 80 townships, having population of 45,000 to 75,000, and in whose favor judgment has been rendered against individual sureties on depository bond for city funds, to compromise such judgment after favorable vote of electors.

#### PROVISIONS RELATING TO CITIES, VILLAGES, BOROUGHES, TOWNS, AND COUNTIES

##### 1829. Right of eminent domain.

Under §1271, notwithstanding Sp. Laws 1881, c. 410, the city of White Bear, under its home rule charter, could condemn Goose Lake, outside its corporate limits as a sewage disposal plant. 172M255, 214NW930.

A city has power of eminent domain in requiring necessary rights to empty sewerage into lake outside corporate limits subject to laws respecting nuisances and health regulations. Op. Atty. Gen., June 20, 1933.

##### 1831. Damages—Notice of claim—Limitation.

This section is applicable to injuries to property as well as to injuries to the person. 129M267, 152NW647.

City held not liable for injury to one who negligently broke a fire alarm wire, though at the time of his injury he was repairing the wire with the consent of the chief of the fire department. 171M391, 214NW656.

Liability of city and abutting owner for injuries caused by defects in sidewalks. 172M35, 214NW671.

The notice to the municipality of the injury was sufficiently definite to appraise defendant of the place of the accident. 173M453, 217NW495.

Liability of village for injuries growing out of collision of automobile with marker on unlighted street. 174M450, 219NW774.

A notice stating that accident happened on sidewalk in front of No. 2127 on First avenue, was sufficient although it misstated the distance from a cross street. 175M361, 221NW241.

Whether village was negligent in not removing ice and snow from sidewalk, held for jury. 175M361, 221NW241.

This section does not apply to an action to enjoin, or to recover damages for, an invasion upon private property by casting sewage thereon and creating a nuisance. 177M547, 226NW898.

Depression of cement blocks in sidewalk held such a defect as to warrant finding that city should have anticipated injury to pedestrian and was negligent in failing to repair it. 178M326, 227NW177.

Contributory negligence for jury. 178M326, 227NW177. Evidence held not to warrant finding that defect in walk on bridge was cause of injury to pedestrian struck by automobile. 178M353, 227NW203.

Action for death must be commenced within one year from the occurrence of the loss or injury. 178M489, 227NW653.

City held negligent in permitting dangerous condition from accumulation of snow and ice. 179M553, 230NW89.

Evidence held not to show negligence of village in maintaining sewer or that damage was caused by negligence. Power v. Village of Hibbing, Itasca Bazaar Co. v. Same, 182M66, 233NW597. See Dun. Dig. 6666(95).

Damage from overflow of a sewer, caused by an extraordinary rainfall which could not reasonably have been anticipated or guarded against, where there was no negligence on the part of the village in the construction or maintenance of the sewer, cannot be recovered on the theory of trespass or nuisance. Power v. Village of Hibbing, Itasca Bazaar Co. v. Same, 182M66, 233NW597. See Dun. Dig. 6664(91).

Rule of *res ipsa loquitur* held not to apply against a village in action for damages for overflow of sewer. Power v. Village of Hibbing, Itasca Bazaar Co. v. Same, 182M66, 233NW597. See Dun. Dig. 7044.

In action for injuries received when stepping into open catch basin hole in sidewalk, negligence and contributory negligence held for jury. Reid v. Village of Aitkin, 182M87, 233NW826. See Dun. Dig. 6844(98).

Evidence held to show city was negligent in paving and constructing a street, causing flooding of basement. National Weeklies, Inc. v. J., 183M150, 235NW905. See Dun. Dig. 10172.

Whether paving contractors were negligent in placing and maintaining an iron pipe two inches in diameter along and upon a public sidewalk in front of an entrance to an apartment house was a question of fact for the jury. Dougherty v. G., 184M436, 239NW153. See Dun. Dig. 6845a.

Service upon mayor of city of St. Paul of a claim against that city for damages for injuries sustained because of an alleged defective sidewalk held not legal service. Aronson v. C., 193M34, 257NW662. See Dun. Dig. 6739, 6740.

Villages have no responsibility as to highways after they have been taken over by state highway department and have become part of trunk system, and village is not liable for injuries to travelers resulting from improper maintenance. Lundstrom v. G., 194M624, 261NW465. See Dun. Dig. 6818.

Duty of keeping sidewalk in a reasonably safe condition for travel is placed on city and not upon abutting owners or occupants. Abar v. R., 195M597, 263NW917. See Dun. Dig. 6829, 6845.

In action by pedestrian against city for injury received when cornice overhanging sidewalk fell, court properly withdrew from consideration of jury issue of actual notice of defect in cornice where there was no evidence of any kind indicating that any official of the city ever had actual knowledge of decayed condition of cornice or of faulty construction. Heidemann v. C., 195M611, 264NW212. See Dun. Dig. 6823.

In action against city, whether city was negligent in not barricading or warning driver that bridge had been removed and that fill was being made covering culverts, and whether driver was negligent in not observing that fill was not complete, held for jury. Wilson v. C., 196M532, 265NW438. See Dun. Dig. 6825.

In action brought to recover damages for injuries sustained as a result of a fall on an icy crosswalk, evidence held sufficient to support a finding of negligence on part of city. Callahan v. C., 197M403, 267NW361. See Dun. Dig. 6829.

A city is not liable for injury caused by a defect in a street unless it had actual or constructive notice of defect a sufficient time before accident to render it negligent in failing to guard or remove same. Baker v. C., 198M437, 270NW154. See Dun. Dig. 6823.

City is liable for negligence of its employees while engaged in repair of its streets by operating road grader. McCarthy v. C., 201M276, 276NW1. See Dun. Dig. 6818.

A city is under legal obligation to exercise reasonable care to keep and maintain streets in a safe condition for public use. *Id.*

Whether or not thirteen year old plaintiff was guilty of contributory negligence held for jury. *Id.* See Dun. Dig. 6838.

Record supports a verdict that city employee was negligent in backing a road grader by which minor plaintiff was injured. *Id.* See Dun. Dig. 6844.

Evidence that a dangerous condition on a sidewalk or crosswalk existed from one to two weeks is sufficient to sustain a finding that city had constructive notice of condition. Mathieson v. C., 201M290, 276NW222. See Dun. Dig. 6814.

A municipal corporation is liable for damages resulting from its negligent failure to keep its sidewalks free from ice and snow and reasonably safe for public use. *Id.*

Pedestrian held not contributorily negligent as a matter of law in using crosswalk, even though existence of danger from ice and ruts was known to her; no showing being made that a safer route could have been selected without substantial inconvenience. Champion v. C., 202M136, 277NW422. See Dun. Dig. 6838.

Duty of maintaining streets and sidewalks reasonably safe for travel rests upon municipality, and street railway was not liable for ruts near rails caused by plowing snow and use by automobiles. Phelon v. D., 202M224, 277NW552. See Dun. Dig. 6818.

Evidence that a defect in a sewer pipe caused a hole in street approximately one month before it caused a second hole which was cause of plaintiff's injuries is sufficient to make question for jury whether city had actual or constructive notice of defect. *Baker v. C.*, 202 M491, 279NW211. See Dun. Dig. 6823.

City and not owners or tenants of premises abutting public sidewalk is responsible for latter's safe condition for travel, and it cannot shift its responsibility to shoulders of others by ordinance. *O'Hara v. M.*, 203M541, 282 NW274. See Dun. Dig. 6845.

Where sidewalk was clear of ice and snow in the morning, city was not liable for injury to a pedestrian who slipped on a patch of ice 12 by 8 inches in the afternoon. *Johnson v. C.*, 204M115, 282NW693. See Dun. Dig. 6829.

A metal canopy extending only 10 inches over base line of building and over sidewalk and constructed to protect awning when raised from rain or snow, outer edge for ornament or use having a so-called gutter three-fourths of an inch deep, was neither a nuisance nor obstruction to the free and safe use of the sidewalk, so as to render abutting owner or city liable for very small patch of ice formed on sidewalk. *Id.* See Dun. Dig. 6829.

In action for injuries caused by ice forming on sidewalk from spout on oil station, evidence held to justify finding that defendant oil company was occupying station through its manager, notwithstanding that station had been leased to a third person by the owner thereof. *Noetzelman v. W.*, 204M26, 283NW481. See Dun. Dig. 6829.

City is liable for negligent operation of a snow plow. *Op. Atty. Gen.*, Jan. 24, 1929.

Although not liable for damages done by fire trucks and police cars, a city is liable for damage done through the negligent operation of street flusher. *Op. Atty. Gen.*, Aug. 23, 1930.

Whether village would be liable for injuries to private property by loose stones picked up in street by automobile and thrown on to private property is question of fact. *Op. Atty. Gen.*, Oct. 6, 1933.

Village council has no legal authority or power to grant privilege to individuals of installing gasoline curb pump on state trunk highway, and a village would be liable for any injuries caused by such an obstruction to one who was in exercise of due care. *Op. Atty. Gen.* (396g-9), Jan. 8, 1935.

A village is not liable for any injury resulting from failure to properly maintain trunk highway, at least where village does not affirmatively create a dangerous condition. *Op. Atty. Gen.* (844b-6), Jan. 27, 1936.

Duty and liability of city for accident occurring on state trunk highway by operating snow plow. *Op. Atty. Gen.* (844b-8), Apr. 30, 1936.

Sections 1831, 1832 and 1833 apply to all cities and villages which are duly organized and incorporated. *Op. Atty. Gen.* (476a-5), July 17, 1936.

Municipality is not liable for negligence in operation of fire apparatus in absence of statute. *Op. Atty. Gen.* (688h), Aug. 27, 1936.

This section has no application to a claim by a doctor or nurses for services in caring for a pedestrian struck by an automobile and taken to hospital as an emergency case. *Op. Atty. Gen.* (442a-7), Dec. 22, 1936.

A city or village maintaining a public park is discharging a governmental function and is not responsible for negligence in maintenance of a slide, unless so maintained as to constitute a nuisance. *Op. Atty. Gen.* (844b-1), Aug. 9, 1937.

Board cannot pay expenses of person injured at school play. *Op. Atty. Gen.* (844f-3), Aug. 11, 1937.

Village operating a water plant is acting in a proprietary and not governmental capacity, and is liable for negligence in shutting off water without notifying merchants operating electrical refrigeration machine cooled by water. *Op. Atty. Gen.* (476b-15), Sept. 18, 1937.

A city or village in operating a motor vehicle for purpose of keeping streets and highways in a safe and proper condition for public travel is performing a corporate rather than a governmental function, and is liable for negligent acts of its officers and agents, but a different rule seems to apply where primary purpose is in interest of promotion of public health, such as sprinkling streets to prevent accumulation of dust. *Op. Atty. Gen.* (844b-5), July 5, 1938.

Village is not liable by reason of inadequate water supply for fire department. *Op. Atty. Gen.* (624d-9), July 12, 1938.

Section applies to a claim for damages resulting from shutting off by a municipality of electric current. *Op. Atty. Gen.* (59a-12), Aug. 5, 1938.

City employee under workmen's compensation act need not give notice under this section. *Op. Atty. Gen.*, (523g-18), Aug. 25, 1938.

### 1832. Claims for death—Notice.

Action for death must be commenced within one year from the occurrence of the loss or injury. 178M489, 227 NW653.

### 1834. Judgment against municipality—Payment.

Payments need not be authorized by mayor or council. *Op. Atty. Gen.* (63b-10), Nov. 29, 1935.

Attorney fees, witness fees, and other court expenses incurred may be paid out of "judgment fund" or out of general fund. *Op. Atty. Gen.* (476a-4), Apr. 5, 1938.

### 1836. Tax levy—Execution.

Village may not levy in excess of per capita limitation for purpose of paying outstanding judgments. *Op. Atty. Gen.*, Sept. 13, 1932.

As affecting levy of tax to pay judgment against village, it is immaterial whether judgment is entered after litigation of issues or pursuant to stipulation entered into in good faith. *Op. Atty. Gen.*, Sept. 13, 1932.

It is duty of officers of village to levy a sufficient sum to pay judgment against it but levy therefor must be included in maximum amount which village council may levy under per capita law. *Op. Atty. Gen.*, Sept. 23, 1932.

Municipality may make a levy to pay judgments in addition to maximum amount permitted by statute. *Op. Atty. Gen.* (519i), Oct. 12, 1934.

Money collected from taxes levied to pay certain judgments cannot be used to pay other judgments. *Op. Atty. Gen.* (519q), Oct. 4, 1935.

### 1837. Codification of charter, etc.

A single ordinance may be enacted for purpose of numbering old village ordinances which may be obsolete or superseded by other later ordinances, and it is not necessary to republish old ordinances. *Op. Atty. Gen.*, Mar. 21, 1934.

### 1841. Deposit of public funds.

Where city treasurer has made deposits in excess of collateral securities given by a bank in lieu of a depository bond under §1973-1, city did not have a preferred claim on the theory that the over-deposit was a criminal offense. 172M324, 215NW174.

Where it is contemplated that the deposit shall be a continuing one, no date being fixed for its payment, the sureties are not released by renewals made without their consent. 174M56, 218NW444.

Where a certificate of deposit is taken for village money deposited with the bank, and such certificate is renewed from time to time, the renewal certificates, nothing else appearing, are not payments of the original deposit. 174M56, 218NW444.

Undertaking given instead of a bond will be enforced as a common-law bond. 174M56, 218NW444.

This section must be construed as a part of a depository bond, and liability of sureties is limited to the penalty of the bond, and where the bank closes, the liability of the sureties becomes absolute, and when they pay the loss they are subrogated to the rights of the obligee, and such right of subrogation cannot be questioned by the sureties on the treasurer's bond. 181M271, 232NW320. See Dun. Dig. 2701, 9045.

Village treasurer and surety on official bond were not relieved from liability for money of village deposited in a bank that failed, where there was no compliance with statute. *Village of Hallock v. P.*, 189M469, 250NW4. See Dun. Dig. 8022.

Fergus Falls City Charter, §27, exempting sureties on city treasurer's bond from liability for funds lawfully deposited in duly designated depository, also exempted treasurer. *Benson v. A.*, 199M119, 271NW125. See Dun. Dig. 2700.

In action on a city treasurer's bond, court rightly refused to compute and include interest in finding amount unpaid upon judgment recovered by city upon depository bond of a bank, since interest is not recoverable upon a treasurer's bond until demand of payment. *Id.*

City treasurer of Le Sueur violates its charter where bank of which he is president is designated as depository, though he takes no part in the making of the contract on the side of the city. *Op. Atty. Gen.*, May 14, 1931.

Village cannot deposit its funds in a bank without requiring bond and at same time relieve village officers from liability. *Op. Atty. Gen.*, Feb. 6, 1933.

If no depository of village funds is designated or if depository does not furnish the necessary security the village treasurer is answerable for any loss. *Op. Atty. Gen.*, Apr. 3, 1933.

Village council has right to designate a depository of village funds under charge of village treasurer. *Op. Atty. Gen.*, May 2, 1933.

City treasurer was relieved of liability for loss of funds where he deposits money lawfully in depository designated by city council. *Op. Atty. Gen.*, May 31, 1933.

Section applies to cities having home rule charters. *Id.* Credit union may not be designated as city depository nor may city funds be invested in securities thereof. *Op. Atty. Gen.* (53b), Nov. 21, 1935.

Village treasurer makes deposit in bank other than that designated by village council at his peril. *Op. Atty. Gen.* (140b-6), Aug. 5, 1936.

### 1844. Duty of council—Act supplementary.

Sections 1843 and 1844 prescribe a complete procedure and in proceedings instituted under those sections procedure prescribed by §§1845 to 1849 may be ignored. *Op. Atty. Gen.* (484e-1), Dec. 22, 1938.

### 1845. Annexation of territory to certain cities and villages.

Quo warranto to test validity, see §§132, 156. Granting of leave to a municipal corporation to file an information in nature of quo warranto, notwithstanding refusal of attorney general to apply for writ or to con-

sent to its filing, lies in sound discretion of court, and that discretion should be exercised favorably, and leave granted where one municipal corporation, on grounds prima facie valid, challenges legal effectiveness of proceedings by another to take over and include within its limits territory belonging to former, issue so raised being one of public rather than mere private interest. *State v. City of Chisholm*, 196M285, 264NW793. See *Dun. Dig.* 6521.

In proceeding involving validity of organization and boundaries of a city, defense of laches, waiver, and estoppel is not made out from loans obtained from state board of investment, nor from fact of judgments being obtained against city, nor from fact that it vacated a road within its territory or has functioned as a city in other respects. *State v. City of Chisholm*, 199M403, 273 NW235. See *Dun. Dig.* 6521.

Adoption of a home-rule charter does not preclude court from determining whether territory included in city is lawfully included. *Id.* See *Dun. Dig.* 6539.

A village annexing new territory was not entitled to any tax levied by the township board the preceding year. *Op. Atty. Gen.*, Aug. 14, 1930.

There is no apportionment of indebtedness of township because part of it is annexed by a village. *Op. Atty. Gen.*, Aug. 14, 1930.

Time and manner of contesting annexation of territory. *Op. Atty. Gen.*, Aug. 14, 1930.

**1846. Petition for election.**

Signers of petition for annexation of territory to village cannot withdraw their names after it has been accepted by village council. *Op. Atty. Gen.*, Apr. 23, 1932.

**1847. Duty of governing body.**

Village council, after accepting petition for annexation of territory and setting election date, may not rescind its action accepting and approving petition. *Op. Atty. Gen.*, Apr. 23, 1932.

**1848. Election, how conducted—Ballots.**

Corrupt Practices Act does not apply to election in connection with annexation of territory to village. *Op. Atty. Gen.*, Apr. 23, 1932.

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.

**1849. Duty of city or village clerk, etc.**

Act Apr. 22, 1933, c. 414, limited by its descriptive terms to Hennepin County, provides for transfer of an island located in several villages and towns to town or village having the largest area of such island. It may be unconstitutional as local and special.

**WATER, LIGHT, POWER AND BUILDING COMMISSION**

**1852. Power and light commission created.—**

There may be created in all villages regardless of population and in every city in the State of Minnesota having a population of less than 10,000 inhabitants a water, light, power and building commission with powers and duties as hereinafter provided. ('07, c. 412, §1; G. S. '13, §1807; Apr. 13, 1933, c. 221, §2.)

Act Apr. 13, 1933, c. 221, §1, amends the title of Laws 1907, c. 412, to read as follows: "An Act to authorize the creation of water, light, power and building commissions in all villages regardless of population and in all cities having a population less than 10,000 in the state of Minnesota."

In determining whether secs. 1852-1860 are applicable to a village the present population is immaterial as it is conclusively presumed that the present population is its population in the last state census. *Op. Atty. Gen.*, Feb. 1, 1933.

Laws 1907, c. 412, under which village created a water, light, power and building commission continues applicable after the population of the village according to the last census exceeds 10,000. *Op. Atty. Gen.*, Feb. 14, 1933.

Water and light commission has no power to enter into lease providing for option to buy stokers without advertising for bids. *Op. Atty. Gen.*, Aug. 12, 1933.

Member of village council may enter into contract with water, light, power and building commission, having full charge of construction work. *Op. Atty. Gen.*, Mar. 19, 1934.

A water, light, power and building commission can only be abolished in the manner provided by §1860-1/2, et seq., and it is immaterial that village adopting such a commission has become incorporated as a city of the fourth class. *Op. Atty. Gen.* (624e-11), Oct. 4, 1934.

Board of water commissioners of city of Stillwater is a part of city government and not an independent corporation separate from city itself, and employees of board are "public employees" of city within meaning of public employees retirement association act. *Op. Atty. Gen.* (331b), May 18, 1938.

**1852-1. Power and light commission heretofore created ratified.—**In the event there exists in any

village having a population of more than 10,000 a water, light, power and building commission established under Laws 1907, Chapter 412, and continuing to act thereunder, the existence of such commission is hereby ratified and confirmed and it shall continue to exist and be governed by said law as amended. (Act Apr. 13, 1933, c. 221, §3.)

**1854. Appointment of members of water, light, power and building commissions in cities having less than 10,000 inhabitants.**

It is mandatory for each member to act as president during the last year of his term. *Op. Atty. Gen.*, Mar. 16, 1929.

Village water and light commission may not compensate one of its members unless statute, under which it is operating provides for compensation. *Op. Atty. Gen.*, July 9, 1932.

The word, "appointment," requires naming of person other than person exercising appointing power, and hence a member of village council is ineligible to appointment as member of water and light commission. *Op. Atty. Gen.*, Mar. 30, 1933.

Member of water, light, power and building commission must be an inhabitant and resident of city. *Op. Atty. Gen.*, Feb. 2, 1934.

Member of city council may not be appointed as member of water and light commission during his term as councilman. *Op. Atty. Gen.* (358e-1), Jan. 17, 1935.

Terms of office cannot be lengthened or shortened by a municipal ordinance. *Op. Atty. Gen.* (785e-1), Apr. 25, 1935.

It is ground for removal of member of water, light, power and building commission that he sells supplies to the commission or purchases supplies from other members, but village council has no power to remove the officer, and officer may recover value of supplies to the village. *Op. Atty. Gen.* (707b-6), Feb. 11, 1936.

In view of G. S. 1894, §1081, a bank of which mayor or city of Marshall is a stockholder cannot be appointed depository of city, but it would be immaterial that member of water and light commission or city attorney were stockholders if they took no part in appointment of depository. *Op. Atty. Gen.* (90e-7), May 1, 1936.

Commission may not pay salaries to each of its members, with exception of the secretary. *Op. Atty. Gen.* (469b-6), Mar. 1, 1937.

City council has no authority to move member of water and light commission. *Op. Atty. Gen.* (358e-1), May 15, 1937.

Members of water, light, power and building commission of a village may enter into contract with village to furnish material for construction of a new sewer system if commission has no voice in making of contract. *Op. Atty. Gen.*, (469a-2), Oct. 22, 1938.

Commissioner holds over until his successor is appointed and qualifies. *Op. Atty. Gen.*, (469b-6), Dec. 3, 1938.

**1856. Secretary of water, light and power commissions in certain Municipalities—powers—duties—bond—salary—removal.—**The said water, light, power and building commission shall have the power and authority, and it is hereby given the power and authority to appoint and employ a secretary of said commission, who shall qualify as hereinafter stated, and upon such qualification shall be the secretary of said water, light, power and building commission, provided, that in cities organized under the provision of Chapter 8, General Laws 1895, the city clerk shall be the secretary of said commission; and provided further, that said commission may appoint as such secretary a member of said commission, who shall serve as such secretary only one year in any three years, and such term as secretary shall be during the second year of the term for which he is appointed. Such secretary shall keep an accurate record, in books kept by him for that purpose, of all the proceedings and business transactions of said commission and he is also empowered and it is hereby made his duty to collect water, light and rent charges from patrons for the said city or village as the case may be, and at once pay the same into the treasury of said municipality and he shall make a detailed statement of the same at the regular monthly meeting of said commission, which shall be held on the first Tuesday of each month. He shall be furnished by said municipality with all the necessary books and stationery to properly perform all the duties of his office and he shall be required to furnish a corporate bond running to such municipality, in such amount to be fixed by said commission, that he

will faithfully perform all the duties of his office as is required of him by law and promptly pay over to the treasurer of said city or village, as the case may be, all moneys and deliver up all property to the council of said city or village, belonging to said municipality, that he may have in his possession. Said bond shall be approved by the said commission and filed with the city or village treasurer, as the case may be. The compensation of said secretary for his services shall be fixed by the said commission in a sum not to exceed one hundred twenty-five dollars (\$125) per month, the same to be when so fixed full compensation for services performed as secretary of said commission, which compensation shall be paid out of the treasury of said municipality. Said commission shall be authorized and fully empowered, and it is hereby authorized and fully empowered to revoke its said appointment and discharge its said secretary any time it may see fit and whenever it does so revoke such appointment and discharge its secretary it shall have and is hereby given the power and authority to reappoint and employ such other secretary as it may desire or determine. (Apr. 19, 1937, c. 281, §1.)

Member of commission may not act as secretary. Op. Atty. Gen., Mar. 16, 1929.

Village council and water and light commission are authorized to establish a utility electric fund and withdraw certain moneys in the water and light fund to create such new fund, and both funds continue under the protection of the village treasurer. Op. Atty. Gen., Apr. 8, 1933.

Commission has no legal right to pay premium on bond of secretary. Op. Atty. Gen., May 25, 1933.

Commission has no authority to raise salary of secretary above \$75 per month. Op. Atty. Gen. (624e-11), June 20, 1934.

Secretary should keep books of commission as a part of his duties as secretary, and is not entitled to extra compensation therefor. Op. Atty. Gen. (624a-3), Dec. 1, 1936.

Commission may appoint one of its members as secretary for one year and fix his compensation. Op. Atty. Gen. (624e-7), Dec. 7, 1936.

City council has no authority to limit powers of commission over city hall, public library, or museum building. Op. Atty. Gen. (59b-13), May 19, 1933.

Where village council appoints a new water and light commission, council has no authority to examine and audit books of old commission. Op. Atty. Gen. (469b-6), Dec. 30, 1933.

**1857. Powers of water, light and building commissions in certain cases.**—Said commission shall have full, absolute and exclusive control of and power over the water, light, and power plant or plants, and municipal heating plant or plants, and all parts, attachments and appurtenances hereto, and all apparatus and material of every kind and description used or to be used in operating said plants, or any or either of them in all said municipalities aforesaid, including all other public buildings and halls owned by said municipality. They shall have the power and authority to operate the same and each thereof, and to extend, add to, change or modify the same, and to do any and all things in and about the same which they may deem necessary for a proper economical operation of the same; provided, they shall not have the right to sell, lease, rent or in any way dispose of or incumber or suffer or permit, the said property or any part thereof, to come under the control of any other person or corporation whatever; provided, however, this shall not prevent the said commission from renting or leasing public halls or buildings for public use and entertainments. They shall have authority to buy all material, and employ all help necessary, or they may contract to extend, add to, change or modify said plants, building and halls, or any part thereof; they shall also have authority to buy all fuel and supplies, and employ all help necessary to operate said plant. ('07, c. 412, §6; G. S. '13, §1812; Apr. 15, 1933, c. 278.)

The water, light, power and building commission of Grand Rapids has not power to construct a gas plant and gas mains for the distribution and sale of gas. Op. Atty. Gen., Aug. 14, 1931.

The council of the village of Hawley having a water, light, power and building commission, is the proper agency to contract for the purchase of electrical energy,

and approval of the commission is unnecessary. Op. Atty. Gen., Feb. 3, 1932.

Where village attorney is required to act in an advisory capacity to a village, this makes him attorney for the water, light and power commission, and such commission has no authority to employ other counsel. Op. Atty. Gen., Feb. 3, 1932.

Commission is clothed with all power necessary to operate plant, including purchase of materials and fixing of rates to patrons, and it has power to prescribe rules as to whether or not its list of customers shall be open to general inspection by taxpayers. Op. Atty. Gen., Mar. 13, 1933.

The commission has exclusive power to contract hereunder without signature of mayor or approval of council, and this section prevails over inconsistent provisions of city charter. Op. Atty. Gen., Mar. 24, 1933.

Commission has power to contract for new well and pumping house, but has no authority to issue bonds of village. Op. Atty. Gen., Aug. 30, 1933.

Power commission may purchase equipment on installment plan if cost thereof is to be paid from earnings of water plant. Op. Atty. Gen., Jan. 23, 1934.

Village council cannot adopt ordinance interfering with powers of commission, which has right to determine its own rules and regulations. Op. Atty. Gen., Feb. 5, 1934.

Commission need not advertise for bids before purchasing a second hand machine for \$5000. Op. Atty. Gen., Mar. 1, 1934.

Management and control of a local utility operating under commission are lodged in the commission and not in the village council. Op. Atty. Gen. (469b-6), July 3, 1934.

Where village of North St. Paul desires to enter into contract with Ramsey County for purchase of water temporarily pending the digging of a new well, the contract is to be entered into by the water, light, power, and building commission and not the village council, and such commission may require bids or not as it shall determine. Op. Atty. Gen. (469b-6), Dec. 11, 1934.

Commission may not employ an attorney to advise them at meeting or to collect delinquent water bills, nor can it pay for collection of bills on a percentage basis. Op. Atty. Gen. (624c-11), June 19, 1935.

Act of superintendent of power plant in requiring employee to resign is not binding upon the commission. Op. Atty. Gen. (624c-1), June 21, 1935.

Village council cannot adopt ordinance interfering with powers of commission. Op. Atty. Gen. (469b-6), July 20, 1935.

Water, light, power and building commission of a village may not invest surplus funds in outstanding village warrants. Op. Atty. Gen. (469b-6), Sept. 19, 1935.

Surplus earnings may be used for other municipal purposes. Op. Atty. Gen. (476b-15), Feb. 14, 1936.

A village organized under Laws 1885, Chap. 145, but having a commission under this act, may purchase a secondhand Diesel engine from another village without advertising for bids. Op. Atty. Gen. (624a-3), May 26, 1936.

Power to construct and maintain village sewerage system is vested in council and not in Water, Light, Power and Building Commission. Op. Atty. Gen. (387g-5), July 30, 1936.

Power to manage, operate and extend, add to, modify or change the utilities plant is vested in commission and not city council. Op. Atty. Gen. (624a-), Dec. 1, 1936.

There is no procedure for limiting authority of commission solely to affairs of water department. Op. Atty. Gen. (469b-6), Mar. 1, 1937.

Section does not authorize leasing of part of municipal building for a term of years to a theater company. Op. Atty. Gen. (469a-9), Mar. 31, 1937.

City water, light and power commission had power to terminate unexpired contract of superintendent without approval of city council. Op. Atty. Gen. (358e-1), May 15, 1937.

A city accepting water from well for six years was liable for contract price, though contract was let without a proper call for bids and contained terms not included in call and purported to bind city to abandonment of a certain mine. Chisholm Water Supply Co. v. C., 285NW895. See Dun, Dig. 6707.

Commission may contract for group life insurance on employees. Op. Atty. Gen. (469b-6), Dec. 22, 1937.

It is not necessary to publish proceedings of water, light and power commission of city of Sauk Center, other than periodical reports. Op. Atty. Gen. (59a-37), Dec. 27, 1937.

Provision of city charter requiring water and light commission to shut off water in cases of delinquency in payment applies to a surcharge made by council for use of sewage disposal plant, even as to water users who have no sewer connections. Op. Atty. Gen. (387b-9), Apr. 5, 1938.

While it is possible that the light and water commission may borrow money without consent of village council or without vote of people and issue certificates of indebtedness payable only from future earnings, it should have village council adopt a resolution approving and ratifying law. Op. Atty. Gen., (469b-6), Sept. 27, 1938.

Commission furnishing water, heat and electricity may discontinue service of all for failure to pay one item. Op. Atty. Gen., (624c-4), Nov. 2, 1938.

Water, light, and power commissions in villages operating under Laws 1885, should advertise for bids when

constructing a filtration system at a cost of \$4,000. Op. Atty. Gen. (707a-15), April 24, 1939.

Village or water, light and power commission may install a filtration system for use in connection with water system without a vote of electors where there is sufficient money on hand obtained from operation of municipal liquor store and lighting plant. Id.

Surplus in fund may be transferred to general fund and used for other municipal purposes. Op. Atty. Gen. (624a-6), May 18, 1939.

**1858. Rates, how fixed—Warrants—etc.**

Op. Atty. Gen., Mar. 13, 1933; note under §1857.

Power and building commission may not furnish hydrant rental and light to village free of charge with the purpose of permitting the village to recoup its finances so that it may be able to purchase a fire truck, if the village does not levy a tax of five mills for such purpose. Op. Atty. Gen., Apr. 27, 1931.

The village council may not draw on the water and light fund to pay bills and expense properly chargeable against the general fund and the road and bridge fund. Op. Atty. Gen., Feb. 3, 1932.

Changes in water, light and power rates need not be approved by the village council and need not be submitted to the voters of the village. Op. Atty. Gen., Feb. 8, 1932.

City may enter into agreement with water and light commission fixing rates which city is to pay for water and light, provided such rates do not exceed rates charged to private parties. Op. Atty. Gen., June 13, 1932.

Claims in connection with obligations of village water, light, power and building commission are to be audited and allowed by the commission and must be verified and identified. Op. Atty. Gen., Aug. 12, 1932.

Concurrence of two members of commission in any business transaction constitutes a legal majority. Op. Atty. Gen. (469b-6), Apr. 11, 1934.

Vice-president of commission may not sign warrant or contract on refusal of president to do so, but president may be compelled to sign by mandamus. Id.

Where village prior to organization under this act operated its own public utilities and fixed rate by ordinance, upon creation of commission under this act to operate such public utilities, right to fix and change rate passed to said commission. Op. Atty. Gen. (624E-5), Sept. 29, 1934.

If city charter permits water bills to be assessed against real estate, they become liens thereon of which purchaser of lands must take notice, although not filed with county auditor. Op. Atty. Gen. (624d-5), Nov. 3, 1934.

Commission may compromise settlement by accepting less than amount actually owing by consumers if in judgment of commission it is for best interest of commission and village to accept less. Op. Atty. Gen. (469b-6), Mar. 2, 1935.

Commission may not cancel delinquent accounts, as this would amount to gratuity contrary to public policy. Id.

Where a tax has been levied for water and light purposes pursuant to §1245, commission may fix rates and collect for water furnished to residents of village, and can refuse to furnish water to persons owing delinquent accounts. Id.

Commission may fix water rates different from those set under old ordinance and without interference on part of village council. Op. Atty. Gen. (624c-11), June 19, 1935.

Village may not make water rent a lien against real property of user in absence of statute or charter authorization. Op. Atty. Gen. (477h-36), Aug. 7, 1935.

Water and light commission in exercise of its judgment and discretion, may furnish heat to a particular class of users, such as churches, at less than rates charged to consumers generally so long as it does not act arbitrary or fix rates which are unjust and unreasonable. Op. Atty. Gen. (59b-7), Apr. 1, 1938.

Commission may not furnish water free to a class of inhabitants, even though they are in outlying districts and water is transported to them in village sprinkler. Op. Atty. Gen. (469b-6), Apr. 21, 1938.

City charging rates which were discriminatory between consumers of the same class may make rebate to persons paying charges for services in excess of that charged another under flat rate. Op. Atty. Gen. (624c-11), July 29, 1938.

Proceedings are published after they have been taken, and publication is not prerequisite to effectiveness of any order. Op. Atty. Gen. (624c-4), May 15, 1939.

Resolution fixing water and light rates and providing for discontinuance of service of delinquent customers need not be published in a newspaper before going into effect. Id.

**1859. Act, how availed of.**

Only a majority of aldermen in a city operating under general Laws 1894, §1087, was necessary to enact a resolution, and was not necessary to publish resolution twice in paper. Op. Atty. Gen. (471o), Dec. 3, 1934.

Village council operating under Laws 1885, ch. 145, need not publish resolution establishing commission. Op. Atty. Gen. (469b-6), Mar. 1, 1937.

**1860. Application of act.**—This act shall apply to any city of the 4th class, operating under a Home

Rule Charter, having a population of not less than 1000 nor more than 1500, which is located in any county having a population of not less than 33,000 nor more than 34,000, according to the last Federal Census but, shall not include or apply to any other cities now or hereafter governed under a Charter adopted under and pursuant to Section 36, Article 4, of the constitution of this State, and the several acts of the legislature authorizing cities to adopt their own charter. (As amended Apr. 13, 1939, c. 230.)

**1860-½. Cities or villages may rescind action.**—

Any city or village which has heretofore or may hereafter avail itself of the provisions of Laws 1907, Chapter 412 [§§1852 to 1860], by the adoption of a resolution as therein provided, may rescind such action in the manner hereinafter provided. (Act Apr. 17, 1931, c. 190, §1.)

Council has no power to abolish commission without submitting same to vote of electors. Op. Atty. Gen. (624e-11), June 20, 1934.

Water and light commission adopted under §1852, et seq. can only be abolished as provided in this act, and it is immaterial that village has been incorporated as a city of the fourth class under §1828-17, et seq. Op. Atty. Gen. (624e-11), Oct. 4, 1934.

**1860-½a. Petition—to be voted on.**—Upon the

presentation of a petition in writing, signed by electors thereof equal to 15 per cent of the number who voted at the last preceding general municipal election, and not less than 50 in number, the council shall submit at the next general election occurring within 60 days thereafter, if any, the following question:

“Shall the action of this municipality in availing itself of the provisions of Laws 1907, Chapter 412, be rescinded?

Yes .....  
No .....

If there is no general election to be so held, the council shall call a special election in the manner provided by law to be held not less than 30 days nor more than 45 days thereafter, and shall submit such question at such special election.

Notice shall be given and such election, whether general or special, shall be conducted, ballots counted and canvassed, returns made, and results declared in the same manner as in the case of other propositions submitted to the electors. (Act Apr. 17, 1931, c. 190, §2.)

**1860-½b. Two-thirds vote required to rescind.**—

If two-thirds of the votes cast upon the proposition be in the affirmative, the provisions of said Laws 1907, Chapter 412 [§§1852 to 1860] and of any law amendatory of or supplemental thereto, shall cease to apply to such city or village 30 days after the date of holding such election. (Act Apr. 17, 1931, c. 190, §3.)

**1860-½c. Powers of water, light, power and building commission enlarged in certain cases.**—

In all villages in this State having now, or hereafter having, a population of 10,000 inhabitants and in which there is existing at the present time a water, light, power, and building commission, pursuant to Chapter 412 of the Laws of 1907 [§§1852 to 1860], the said commission, in addition to the general duties and powers as outlined in said Chapter 412, Laws of 1907, as amended, shall have and possess the additional powers and duties set forth in this Act. (Act Mar. 27, 1933, c. 111, §1.)

**1860-½d. Commission to collect funds.**—

It shall be the duty of the said commission, and it is hereby empowered to collect water, light, heat, power, gas, and rent charges from patrons including the Village, and pay the same into a fund to be known and designated as “Water and Light Fund.” The said commission shall have exclusive control of the said fund and of all collections made by the said commission. It shall be the duty of the commission to have full, absolute, and exclusive control of the operation and management of the water, light, power, gas, and heating plants in said Villages and to pay for the opera-



tion thereof out of the said "Water and Light Fund." The said commission shall, out of the said "Water and Light Fund," purchase all necessary material and employ all necessary help in the general management, operation, and conduct of its business, including extensions and additions to systems provided, that this shall not restrict or extend the powers of the village and commission to provide replacements, additions or extensions to these systems from other funds. (Act Mar. 27, 1933, c. 111, §2.)

**1860-½ c.** To create reserve fund.—It shall be the duty of the said commission, on the first day of each month, commencing November 1st, 1933, to set aside into a "Reserve Fund" a sum equal to one-twelfth of not less than two per cent of the replacement value of the fixed assets, which sum shall, in any event, be equal to ten per cent of the gross receipts collected by the said commission during the preceding month. Said "Reserve Fund" shall be used by said commission only for the purpose of replacing existing buildings, plants, systems, and stationary equipment for which the reserve is established. The said commission is hereby prohibited from using any such "Reserve Fund" for any other purpose.

Provided, however, the fixed assets of the commission for the purpose of this section shall not include buildings used by other departments of the village, and no reserve shall be created for the replacement of any such buildings. Only such buildings as are principally used and necessary in the operation or administration of water, light, power, gas, and heating plants may be replaced from said reserve fund, and no revenue received from the operation thereof may be used for the maintenance of any other buildings of the Village.

The commission shall have authority to invest, and it shall invest, the "Reserve Fund" and operating surpluses, in amounts to be determined by the commission, in such securities as permitted, by the State board of investments of the State of Minnesota or in certificates of indebtedness and duly authorized bonds of said village. All income earned by such securities shall belong to and become a part of the "Reserve Fund." When such fund equals a total of seventy-five per cent of the replacement value of the fixed assets of the commission, it will no longer be necessary to add the monthly sum specified above. When such sum falls below the seventy-five per cent of the replacement value of the fixed assets, the commission will thereupon renew the placing into such "Reserve Fund" the monthly payments specified above. The commission shall require any bank in which any of its funds are deposited to give Bond as required of banks acting as depositories of municipal funds. (Act Mar. 27, 1933, c. 111, §3.)

Commission can invest reserve fund in bonds or warrants of village, but should always maintain a sufficient reserve or surplus out of which to take care of any maturity bond issues or interest and to meet ordinary operating expenses of utilities. Op. Atty. Gen. (476b-15), Aug. 26, 1935.

**1860-½ f.** Not to limit or extend powers of taxation.—Nothing in this act shall be construed to limit or extend the powers of the village to levy as provided by Mason's Minnesota Statutes of 1927, Sections 1245 to 1247 inclusive, or to be in lieu of such levies, nor shall be construed to limit or extend the powers or limitations with respect to levies for or expenditures from other funds by the village or commission for the operation of the Water and Light Department, or for replacements, additions or extensions to such system from such funds. Provided, further, that nothing in this act shall be construed to limit the power of the village to make levies in excess of the present per capita limitations for indebtedness existing prior to January 1, 1929, as provided by Chapter 206 and Chapter 208, General Laws of Minnesota for 1929. (Act Mar. 27, 1933, c. 111, §4.)

**1860-½ g.** Effective October 1, 1933.—This Act shall take effect commencing October 1, 1933. (Act Mar. 27, 1933, c. 111, §5.)

**1860-½ h.** Pension fund for superintendent of water works.—In every city of the fourth class in the state of Minnesota, now having or hereafter having a population of not less than 7,500 inhabitants and not more than 11,000 inhabitants, and an assessed valuation, more than 50% of which valuation consists of iron ore, there may be created a superintendent of water works pension fund, which shall be managed, controlled and distributed in accordance with the provision of this act. (July 14, 1937, Sp. Ses., c. 31, §1.)

**1860-½ i.** Same; powers of water and light commission.—The water and light commission of such city may, by a two-thirds vote of its membership, cause to be pensioned the superintendent of such city water works, at a salary not to exceed one-half of his average salary during the 25 or more years in which he served in that capacity for such city or its predecessor a village. (July 14, 1937, Sp. Ses., c. 31, §2.)

**1860-1.** Electric light and power plants in cities of fourth class, etc.

Profits of water and light plant could be used to take up indebtedness originally represented by water and light bonds though such bonds have been refunded and combined with other bonds. Op. Atty. Gen., Feb. 11, 1932.

A village purchasing electricity at wholesale and deriving a profit from resale may devote such profits for general village expenditures in the absence of statutory or charter restriction or lien. Op. Atty. Gen., Feb. 15, 1932.

City of Luverne could enter into contract for purchase of diesel generating unit, to be paid for out of earnings of power plant only, without calling for bids. Op. Atty. Gen. (707a-4), Aug. 12, 1937.

**1864.** Extending water pipes on streets, etc. Op. Atty. Gen. (624d-11), Aug. 2, 1934; note under §1491-2.

A municipality may not exact more from one charged with an assessment for extension of its gas and water mains than is permissible under terms of ordinance under which extension was made, and where excess payments have been exacted, municipality may be held as for money had and received. Sloan v. C., 194M48, 259 NW393. See Dun. Dig. 7461, 9114.

Village may extend its waterworks system to connect with its own cemetery outside limits. Op. Atty. Gen., May 31, 1933.

Stillwater board of water commissioners may contract with persons living outside corporate limits for distribution of water and fix price and rates therefor. Op. Atty. Gen. (59b-13), July 6, 1937.

**1865.** Leasing, selling or abandoning of water works or lighting plants.—Any village or city of the fourth class in this state wherein there is constructed and in operation water works and lighting plant or water works or lighting plant for supplying water and light, or either of them, for public purposes or for the private use of its inhabitants or both, owned by any such city or village, may by resolution or ordinance of its governing body, passed and adopted in the usual manner sell, lease or abandon any such plant or any specific part thereof, or discontinue wholly or in part the operations thereof; if a specific part of such plant is to be sold, leased or abandoned, or the operation thereof discontinued, such resolution shall state the specific part to be so sold, leased or abandoned, or to be discontinued. Before any such resolution or ordinance shall become effective, the same shall be submitted to the legal voters of such village or city at a regular village or city election or special election therein and approved by a two-thirds vote of the electors voting thereon at any such election. The ballots at any such election shall be printed and contain in full the resolution or ordinance to be voted upon and thereon immediately following the resolution or ordinance, there shall be printed in appropriate manner the words "yes" and "no" on separate lines and every voter desiring to vote in favor of such proposition shall thereupon make his cross (X) mark opposite the word "yes" and every voter desir-

ing to vote against such proposition shall make such mark opposite the word "no." In case of villages such election shall be conducted and the votes cast thereat shall be canvassed and the result thereof certified in like manner as in case of an election for village officers, and in case of cities of the fourth class, such election shall be conducted and the votes cast thereat shall be canvassed and the result thereof certified in like manner as in case of an election for city officers in the respective cities of the fourth class according to the law or charter governing such city. ('17, c. 172, §1; Apr. 9, 1931, c. 133.)

172M392, 215NW673.  
Chisholm Water Supply Co. v. C., 285NW895; note under §1857.

Contract for furnishing by power company of electricity at city's power plant held not to contemplate abandoning by city of its own power plant. Northern States Power Co. v. C., 186M209, 242NW714. See Dun. Dig. 2996a.

Where village maintains street lighting equipment connected with a transformer of a power company over poles belonging to the power company and a telephone company, the village cannot abandon its street lighting equipment without a vote of the people. Op. Atty. Gen., Jan. 22, 1930.

Neither Laws 1917, c. 172, nor any other law, permits a city of the third class, such as Austin to sell its water and light plant, and that city cannot sell its plant without amendment of its charter, or specific legislative authority. Op. Atty. Gen., Dec. 1, 1930.

Procedure and forms necessary for sale of water and light plants. Op. Atty. Gen., May 3, 1930.

Operation of village gas plant could not be discontinued without vote of electors, and until such discontinuance village could not enter into a contract for the purchase of natural gas. Op. Atty. Gen., Feb. 17, 1932.

Village has no authority to enter into an agreement for the purchase of natural gas to distribute to the people of the village through village gas mains unless there has been an election favorable to the discontinuance of the operation of the gas plant of the village. Op. Atty. Gen., Mar. 4, 1932.

Joint use contract between city and telephone company, contemplating use by either of poles of the other, with certain specified charges, held to constitute a lease by city of certain specific parts of its municipal lighting plant so as to require authorization of voters. Op. Atty. Gen. (624c-16), Sept. 19, 1935.

**1867-1. Municipalities may extend electric service.**  
—The governing body, or the Commission or Board charged with the operation of the public utilities if one exists therein, of any municipality in the state now or hereafter owning and operating an electric light and power plant for the purpose of the manufacture and sale of electrical power or for the purchase and redistribution of electrical power, shall, upon a two-thirds vote of said Governing Body, or said Commission or Board in addition to all other powers now possessed by such municipality, have power to sell electricity to customers, singly or collectively, outside of such municipality, within the State but not to exceed a distance of thirty miles from the corporate limits of said municipality. Before any municipality shall have the power to extend its lines and sell electricity outside of such municipality as provided by this Act, the governing body shall first submit to the voters of said municipality, at a general or special election, the general principle of going outside said municipality and fixing the maximum amount of contemplated expenditures reasonably expected to be made for any and all extensions then or thereafter contemplated. Three weeks published notice shall be given of such election as required by law, and if a majority of those voting upon the proposition favors the same, except that in the case of villages, a 5% vote shall be required, and then the said municipality shall thereafter be considered as having chosen to enter the general business of extending its electric light and power facilities beyond the corporate limits of said municipality. It shall not be necessary to submit to a vote of the people the question of any specific enlargement, extension or improvement of any such outside lines, provided the voters of the municipality have generally elected to exercise the privileges afforded by this Act, and provided that each and any specific extension, enlargement or improvement project is within the limit of the maximum expenditure

authorized at such election. Provided, however, that in cities now or hereafter operating under a home rule charter, where a vote of the people is not now required in order to extend electric light and power lines, no such election shall be required under the provisions of this or any other Act. At any such election, held to determine the attitude of the voters upon this principle, the question shall be simply stated upon the ballot provided therefor, and shall be substantially in the following form: "Shall the city (village) of ..... undertake the general proposition of extending its electric light and power lines beyond the limits of the municipality, and limit the maximum expenditures for any and all future extensions to the sum of \$.....? For this purpose every municipality is authorized and empowered to extend the lines, wires, and fixtures of its plant to such customers and may issue certificates of indebtedness therefor in an amount not to exceed the actual cost of such extensions and for a term not to exceed the reasonable life of the said extensions. Such certificates of indebtedness shall in no case be made a charge against the municipality, but shall be payable and paid out of current revenues of said plant other than taxes. (Act Apr. 1, 1933, c. 141, §1; Apr. 29, 1935, c. 316, §1.)

Where specifications and contract for power plant called for a plant "in and for the said village" there was nothing to show that village intended to embark on an extra-corporate distribution. *Davies v. V.*, 287NW1. See Dun. Dig. 6683.

City of Willmar may furnish water and light beyond city limits without vote of people. Op. Atty. Gen., July 15, 1933.

City cannot extend power lines beyond limits without vote of people. Op. Atty. Gen., Aug. 3, 1933.

City of Fairmont may purchase electric line outside of city limits for purpose of distributing surplus electricity to nonresident consumers without a vote of the people. Op. Atty. Gen. (59a-36), May 11, 1934.

City of Alexandria having a contract with private corporation furnishing light and power to a village cannot acquire the plant of such private corporation without a vote of the electors, home rule charter of such city being silent as to extension of lines out of city. Op. Atty. Gen. (624c-2), Nov. 21, 1934.

Village operating its only owned 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.

Proposition of extending power lines beyond limits should be submitted to voters by village council and not by village, water, light, power and building commission. Op. Atty. Gen. (469h-6), July 9, 1935.

City may sell electricity to cooperative corporation at city limits to be distributed by such corporation at such rates as deemed equitable by governing body, though at lower rates than to consumers in municipality. Op. Atty. Gen. (624c-11), Aug. 7, 1936.

Where the cost of meters and transformers is to be computed as part of cost of extension within limitation fixed by voters is question of fact for officials. Op. Atty. Gen. (624c-7), Sept. 14, 1936.

City of Waseca, through its water and light board, has authority to enter into contract with an electric construction company to sell electricity, to be delivered at substation in city and used by the purchaser outside limits of city, without a vote of electors, though city purchases its current at wholesale from a public utility. Op. Atty. Gen. (624c-12), June 30, 1937.

There is no tax upon sale of surplus electric energy outside of corporate limits of a city, even though in another county. Op. Atty. Gen. (624c-13), Aug. 12, 1937.

Municipally owned electric light and power plant lines used for purpose of furnishing electricity to persons outside of municipality are exempt from taxation. Op. Atty. Gen. (414a-13), Feb. 2, 1938.

Village council owning its own distributing system but purchasing its energy can own lights outside corporate limits and sell and dispose of electric energy and current to persons residing outside limits, but only upon vote of electors. Op. Atty. Gen. (624d-17), June 14, 1939.

Village may repair utility lines extending outside village without submitting question to voters, line going to a farm which was at one time a part of village. Op. Atty. Gen. (624c), July 24, 1939.

**1867-2. Not to extend into other municipalities.**  
—No lines, wires or fixtures shall be extended by any municipality into the territorial limits of any other city or village without the consent of the council or other governing body of such city or village. (Act Apr. 1, 1933, c. 141, §2; Apr. 29, 1935, c. 316, §2.)

**1867-3. Provisions separable.**—The various provisions of this Act, and the clauses, phrases and sentences thereof, shall be severable, and if any part or provision thereof shall be held to be invalid, it shall not be construed as invalidating any other portion thereof. (Act Apr. 1, 1933, c. 141, §3; Apr. 29, 1935, c. 316, §3.)

**1867-4. Proceedings and contracts legalized.**—In all cases where the council or other governing body of any village or borough, however organized, has prior to January 1, 1932, erected poles, wires and cables without the corporate limits of such village or borough for the purpose of procuring electrical current and power from a plant situated without the corporate limits, or has prior to January 1, 1932, entered into contracts of purchase and sale of electric transmission lines already built or incurred indebtedness or obligations by reason thereof, all proceedings taken, contracts made and indebtedness or obligations incurred are hereby legalized and made valid and effectual for all purposes, providing this Act shall not effect any action or proceeding now pending. (Act Apr. 4, 1933, c. 155, §1.)

Sec. 2 of act Apr. 4, 1933, cited, provides that the act shall take effect from its passage.

**1868. Park boards.**

A park board may not be abolished in absence of statute so providing, and abolishment does not result from reincorporation of a village into a city of the fourth class. Op. Atty. Gen. (624e-11), Oct. 4, 1934.

Statute controls over ordinances as to method appointing members of park board. Op. Atty. Gen. (59a-32), Oct. 9, 1935.

**1871. Powers and duties of park board.**—Said park board shall have full, absolute and exclusive control of, and power over, all real estate now or hereafter acquired by said municipality and set apart for park or boulevard purposes therein or in adjoining territory, and all public property used therein or therefor. Said board shall have power and authority to maintain the same, and to beautify and improve any and all such lands and the approaches thereto for the benefits of the general public; to erect and construct therein such roadways and paths, buildings, fountains, toilet rooms, or other improvements necessary to meet the requirements of the visiting public; to buy all necessary material and fuel required to carry out the provisions of this act; to make such reasonable rules and regulations for the government of the same as may be deemed necessary and proper; to employ such help in and about the conduct of such parks and boulevards as may be found necessary; to provide musical and other free entertainment for the general public; to employ a secretary at a salary not exceeding five hundred dollars per annum, whose duty it shall be to keep a full and complete record of all the transactions of said board, attend its meetings, and do and perform such other duties as may from time to time be required of him, by said board; to employ an attorney if found necessary to assist the board at a salary of not exceeding five hundred dollars per annum; to fix the compensation of any and all persons employed by said board; to audit and allow all just claims for labor, services or material furnished by order of said board, and endorse its approval of such claims thereon when allowed, which claims when so audited and allowed and endorsed shall be presented to the council of said municipality for payment and paid by said municipality as other claims are paid; provided, said board shall not have the right to sell, rent, lease or in any other way dispose of or encumber, or suffer, or permit the said property, or any part thereof, to come under the control of any other person or corporation whatever, provided, however, that where such park shall contain a pond or lake or any other body of water which can be used for the purpose of taking therefrom ice, the said park board shall have the power to lease the said pond or lake or any other body of water which the said park may contain for the purpose of taking therefrom ice. Said

board shall also have power and authority to receive on behalf of said municipality any proper donations of statuary, shrubbery, trees, material, or other personal property for use in and about the said parks and boulevards. Said board shall make detailed report of all its doings and proceedings to the council at least once in three months. ('09, c. 441, §4; G. S. '13, §1823; '23, c. 26, §2; Apr. 21, 1931, c. 299.)

Employee of park board was not a police officer within meaning of civil service act, though he had authority to make arrest in park and carried a star. McDougall v. B., 194M550, 261NW180. See Dun. Dig. 5558a.

City may not appropriate from city light fund moneys to be used for improvement of a state park. Op. Atty. Gen., Jan. 15, 1934.

**1880. Cities and villages may construct sewage disposal plants.**—In any city of this state having a population of 10,000 or less, and in all villages and boroughs of this state, whether organized under the General Laws or a special law, and in all such cities organized under home rule charters which do not provide a method of constructing sewers and assessing the cost thereof to benefited property, the city, village or borough council shall have power to maintain and extend any existing sewer system, to relay, alter or extend any existing sewer system and to establish and maintain a general system of sewers, to create sewer districts, and change, diminish or enlarge the boundaries thereof from time to time; to establish and maintain sewage treatment plants when deemed necessary. ('03, c. 312; '07, c. 141; '09, c. 364; '09, c. 385; '13, c. 396; '15, c. 35, §2; '21, c. 295, §1; Mar. 27, 1931, c. 99.)

Proceedings legalized, '37, c. 23.

Where a municipality casts sewage upon private property and creates and maintains a nuisance thereon, the owner or lawful occupant may recover damages. 177M 547, 225NW898.

Sewer warrants issued pursuant to §§1880 to 1893, and acts amendatory thereof, are not a part of outstanding obligations of city within meaning of Laws 1929, c. 351, §1, and Laws 1931, c. 155, §1. Leslie v. C., 186M543, 243 NW786. See Dun. Dig. 6579.

Village may purchase tract to provide an outlet for sewage disposal plant. Op. Atty. Gen., Nov. 28, 1930.

Sewer warrants issued by village are not general obligations thereof and may not be refunded by issuing bonds. Op. Atty. Gen., Sept. 1, 1932.

Where home rule charter provides for method of constructing sewers and assessing cost thereof to benefited property the charter provisions govern in the matter of assessments. Op. Atty. Gen., Mar. 31, 1933.

City of Cloquet which has no charter and was organized under Laws 1895, ch. 8, may establish a sewage disposal plant under this and following sections, but has no authority under §1799-1, et seq. Op. Atty. Gen. (387b-9), Aug. 7, 1935.

Village may construct addition to sewer system and assess cost upon property owners benefited and issue sewer warrants without a vote of electors. Op. Atty. Gen. (387g-3), Apr. 7, 1937.

Members of water, light, power and building commission of a village may enter into contract with village to furnish material for construction of a new sewer system if commission has no voice in making of contract. Op. Atty. Gen., (469a-2), Oct. 22, 1938.

Village building sewer system and disposal plant may finance project by warrants without vote of people, and property owners may be assessed on front footage basis. Op. Atty. Gen. (387g-1), Feb. 24, 1939.

Statute supersedes any provision in Laws 1875, with respect to power of village of Thomson to construct a sewage disposal plant. Op. Atty. Gen. (387G-9), May 9, 1939.

Section is applicable only to sanitary sewers and does not apply to a storm sewer or surface water drain. Op. Atty. Gen. (387B-10), July 27, 1939.

**1883. Ordinance for improvement.**

Where private parties being unable to obtain sufficient signatures to petition constructed extension of sewer at their own expense, and later others desired to use the sewer, village on proper procedure could purchase the sewer system and levy assessments and extend the payment to ten years as in other cases. Op. Atty. Gen. (59b), Feb. 13, 1935.

Power to construct and maintain village sewerage system is vested in council and not in Water, Light, Power and Building Commission. Op. Atty. Gen. (387g-5), July 20, 1936.

Filing of petition is not necessary before village council may construct, maintain or repair sewers. Op. Atty. Gen. (387g-5), July 30, 1936.

Villages may construct village hall and proceed to construct sewerage system and pay costs obtained by levying assessment against property benefited, where funds

are available or taxes have been levied and are in process of collection, without vote of electors. Op. Atty. Gen. (387g-1), Sept. 15, 1936.

**1884. Cost of system.**

Op. Atty. Gen., June 20, 1933; note under §1829. Village has no power to make supplemental assessments against properties benefited by sewer in order to take care of unpaid warrants resulting from failure of some property owners to pay assessments, nor may the deficiency be paid out of the general revenue fund. Op. Atty. Gen., July 14, 1933.

City of New Ulm has authority to construct a sewage disposal plant and issue bonds to pay cost of same. Op. Atty. Gen. (387b-2), July 12, 1934.

Village could issue general obligation bond to cover cost of an interceptor sewer to connect with disposal plant of an adjoining city. Op. Atty. Gen. (476b-14), Apr. 23, 1936.

Debt limitations as to issuance of bonds for sewage systems by villages under different circumstances, stated. Op. Atty. Gen. (387g-2), Dec. 30, 1936.

Village of Edina may pay for cost of general sewage out of general fund, and may enter into contract with City of Minneapolis providing for disposal of sewage of village. Op. Atty. Gen., (387g), Oct. 14, 1938.

**1885. Spreading of assessments.**

District sewers are to be assessed against property benefited and cannot be paid for out of general fund. Op. Atty. Gen. (387g-5), July 30, 1936.

Where sewer in one block has been constructed and paid for by assessments and is operating satisfactorily, no assessment can be made in that block for relaying old sewer in order to get sufficient grade and depth to permit extension into another block, unless the improvement has effect of enhancing value of property. Op. Atty. Gen. (387b), Mar. 24, 1938.

Village of Edina creating a joint sewer district and granted permission by Minneapolis to use latter's system as an outlet could levy an assessment upon all benefited property in view of §1607-23. Op. Atty. Gen. (387g-1), August 21, 1939.

**1887. Cost of lateral sewers.**

Entire cost of lateral sewers must be assessed against abutting properties, even though sewer may also serve as a storm sewer. Op. Atty. Gen. (387b-1), Aug. 27, 1937.

State forfeited lands are not subject to assessment, and assessment will be cancelled upon lot to which state subsequently acquires title. Op. Atty. Gen. (387b-1), Oct. 22, 1937.

Procedure for issuing bonds or warrants for water works and sewer systems payable from earnings or special assessments. Op. Atty. Gen., (476b-15), Sept. 21, 1938.

**1889. Advertisements for bids.**

There is no charter or statutory provision requiring that Lake City advertise for bids before purchasing personal property, such as a truck. Op. Atty. Gen. (59a-38), May 7, 1936.

**1891. Amount of special assessment.**

Op. Atty. Gen., Feb. 13, 1935; note under 1883.

**1892. Supplemental assessment.**

General levy over whole village must be had to pay deficiency for sewer system arising from unforeseen expenses though only part of village benefits from system. Op. Atty. Gen., June 28, 1933.

**1893. Fund for each proposed sewer.**—All moneys collected on any such special assessments shall constitute a fund for the payment of the cost of improvement for the district for which such assessment was made, and the same shall be credited to the proper sewer district fund under the designation: "Fund of Sewer District No. ——" and in anticipation of the collection of such special assessment the city, village or borough may issue warrants on such fund, to be known as "sewer warrants" payable at such times and in such amounts as, in the judgment of the city, village or borough council, the collections of such special assessments will provide for, which warrants shall bear interest at a rate not to exceed five (5) per cent per annum, payable annually, and may have coupons attached representing each year's interest. Each warrant shall upon its face state for what purpose it is issued and specify the particular fund against which it is drawn, and shall be signed by the mayor or executive officer and countersigned by the clerk or recorder of the city, village or borough and be in denominations of not less than fifty dollars nor more than five hundred dollars. The council of any such city, village or borough may by resolution adopted prior to the issuance of such warrants pledge the full

faith and credit of the city, village or borough for the payment of the principal or interest of such warrants when the moneys on hand in the appropriate sewer district fund are insufficient for such purpose and the council shall each year include in the tax levy a sufficient amount to take care of any accumulated or anticipated deficiency in the sewer fund on which warrants are so issued and the council shall pay the principal and interest of any such warrants out of the funds in the treasury when the moneys on hand in the appropriate sewer fund are insufficient to meet the payment of such principal and interest as the same matures. Provided, however, that as to any such warrants for the payment of which the full faith and credit of the city, village or borough is not pledged, such warrants shall be payable solely out of the proper sewer fund and it shall be the duty of any city, village or borough treasurer on presentation to pay such warrants and interest coupons as they mature out of any funds on hand in the proper sewer fund and not otherwise. Such warrants may be used in making payments on contracts for the improvements or may be sold by the city, village or borough for not less than par and the proceeds thereof used in paying for such improvement.

Provided, further, that the council of any city, village or borough which has heretofore issued any such sewer warrants shall have power by unanimous vote of the members of such council to levy a tax not exceeding two mills in any one year for the support of the fund of any sewer district or districts. ('03, c. 312; '07, c. 141; '09, cc. 364, 385; '13, c. 396; '15, c. 35, §15; '21, c. 295, §6; Apr. 1, 1935, c. 98.)

Proceedings legalized. '37, c. 23.

When a municipal corporation by authority of law creates a particular fund with reference to which it contracts, any indebtedness arising on such contract is payable therefrom only. Judd v. C., 198M590, 272NW577. See Dun. Dig. 6580.

A village which issues warrants in anticipation of the collection of sewer assessments, and certificates of indebtedness in anticipation of collection of special assessments for laying water mains, may pay such warrants and certificates out of the general fund as a temporary loan, but must replace the moneys taken with interest. Op. Atty. Gen., June 26, 1931.

Neither county board, Minnesota Tax Commission, nor any other public officer may waive penalty for non-payment of taxes on dates specified. Op. Atty. Gen., May 16, 1932.

Village having two sewer districts could issue assessment warrant to be paid out of funds of particular sewer district. Op. Atty. Gen. (476b-14), Apr. 23, 1936.

**1903. Connections to be made on permission.**

Village is not bound to pay for repairs on private extensions from lateral sewer to lot line of abutting property owners, though repairs are required because of defective workmanship of contractor employed by village. Op. Atty. Gen. (387g-8), Nov. 17, 1934.

Village may deny right of garage owner to connect with sewer if garage oil would impair or destroy effectiveness of disposal. Op. Atty. Gen. (387g-5), Apr. 28, 1936.

**1904. Right of eminent domain.**

Op. Atty. Gen., June 20, 1933; note under §1829.

**1908. Cost assessed against abutting property.**

Village council may not make improvements and then start proceedings to levy special assessment. Op. Atty. Gen. (59a-4), March 14, 1939.

**1918. Same—Certificates of indebtedness.**

Certificates of indebtedness are direct and general obligations of municipality issuing them; and no submission to voters for authority to issue is required. Bergman v. V., 201M28, 275NW297. See Dun. Dig. 6671.

**1918-1. Water mains and appurtenances in cities of fourth class, villages and boroughs—Definitions.**

Where village establishes a limited water system extending its water mains along main street, and permits owners on side streets to install a two-inch private water line connecting with main street, village has no authority to permit another private owner on the same side street to connect with private pipe, in absence of a provision in ordinance granting owners right to construct private main. Op. Atty. Gen. (624d-11), Mar. 30, 1936.

Village operating under Laws 1885 may extend water main pursuant to Laws 1885, Chap. 145, §21(10), or §1918-17, or §1918-1, et seq. Op. Atty. Gen. (624d-11), Aug. 28, 1936.

**1918-2. Same—Assessment of cost of improvements against abutting owners.**

City may accept a deed from abutting property owners on a narrow avenue conditioned that no assessments be levied against grantor's property by reasoning of widening and grading of the avenue and that city carry cost of sewer and water improvements, but city may not waive its right to compel abutting property owners to connect with sewer and water main. Op. Atty. Gen. (396c-6), June 12, 1935.

**1918-7. Same—Assessments against property.—**

After a contract is let or work ordered done by day labor, as herein provided, the clerk, with the assistance of the engineer or superintendent of the work, shall forthwith calculate the amount proper and necessary to be especially assessed for such improvement against every assessable lot, piece or parcel of land within the district affected, without regard to cash valuation, in accordance with the provisions of Mason's Minnesota Statutes of 1927, Section 1918-2. The proposed assessment so made shall be filed with the clerk, for public inspection. Thereupon the clerk, under the direction of the council, shall cause notice of the time and place when and where the council will pass upon such proposed assessment. Such notice shall be published in the official paper at least one week prior to the hearing on such proposed assessment. Such hearing may be had at a regular or special, or adjourned regular or special, meeting of the council. The council shall hear and pass upon all objections, if any, and may amend the proposed assessment as to any lot or lots; and upon the adoption of such assessment by resolution of the council, the same shall become and constitute the special assessments against the lots, pieces and parcels of land therein described. Such assessment, together with the interest accruing on the total amount thereof, from the adoption of the same to the first day of June, following, at such rate of interest per annum, not exceeding six per cent, as the council may by resolution determine, shall be a lien upon the property described therein, and all thereof, which lien shall be concurrent with that of the general taxes assessed against such properties. The amount of such assessment and accrued interest shall be payable in equal annual installments, extending over such period, not exceeding twenty years, as the council may determine by resolution. The first of said installments shall be payable on or before the first day of June following the adoption of the assessment, and all deferred payments shall bear interest from the first day of June, following the adoption of the assessment, at such rate of interest per annum, not exceeding six per cent, as the council may determine by resolution. It shall be the duty of the clerk, immediately after the adoption of such assessment by the council, to transmit a certified duplicate thereof to the county auditor, by whom the same shall be extended on the proper tax lists, and such assessment shall be collected, accounted for, and paid over in the same manner as other municipal taxes, Provided, that the owner of any lot, piece or parcel of land so assessed may, at any time, pay the whole of such assessment, or any installment thereof, with accrued interest. (As amended Apr. 1, 1939, c. 135, §2.)

**1918-10. Same—Certificates of indebtedness.**

Act July 14, 1937, Sp. Sess., c. 20, legalizes proceedings had under this section.

Legalizing laying of water mains in villages and issuance of certificates of indebtedness not exceeding \$15,000. Act July 14, 1937, Sp. Sess., c. 20.

Where village advertises for bids on sale of certificates of indebtedness and no bids are received on day of opening bids, certificates may be sold to a bid later made, and it is not necessary to readvertise. Op. Atty. Gen. (707a-10), Oct. 12, 1934.

**1918-12. Assessments for water mains.—**Whenever any such city, village or borough shall have caused water mains to be laid under a general bond issue and not by special assessment, to equalize the frontage assessments, the council may cause such existing mains, if they are of cast iron, to be examined by

a competent engineer and if same are of suitable size and condition for continued use, such existing mains may be assessed against the property abutting thereon at an average cost of not to exceed eighty per cent of the cost of new mains of similar quality and construction, and this assessment of not exceeding eighty per cent shall be calculated by the engineers or other competent persons, and such assessment shall be prepared and provision made for its collection as in the case of new mains.

A hearing shall be held on old main assessments and may be at the same time as a hearing of the assessment of new mains, if new mains are at that time being laid, and in all respects the action shall be the same as prescribed for new mains. ('21 c. 425, §11½; '23, c. 380, §1; Apr. 25, 1931, c. 345.)

Op. Atty. Gen., Oct. 2, 1930.

Laws 1931, c. 345, amending this section applies only to old existing watermains already laid under a general bond issue and not by such assessments. Op. Atty. Gen. (59a-7), Apr. 25, 1934.

City may not assess abutting land owners where old water mains laid by a private corporation were purchased by city under general bond issue. Op. Atty. Gen. (624d), May 8, 1934.

City council, if operating waterworks system under its charter, has legal right to pay for material to be used in extension of water main, and is not obliged to levy a special tax against property to be benefited. Op. Atty. Gen. (624d-11), Mar. 18, 1936.

**1918-14½. Governing body may construct and reconstruct sewers.—**Whenever the governing body of any village or city of the fourth class, whether operating under home rule charter or not, having power to maintain sewer and water systems within its limits, shall deem it necessary and shall so determine by resolution, it may construct, reconstruct or repair any service connection or connections between its water or sewer mains or pipes, in a street or other public ground, and the abutting property served by its main or mains. (Act Apr. 11, 1929, c. 157, §1.)

**1918-14½a. May assess benefits.—**Within sixty days after such municipality shall have completed such work and improvement, its governing body shall adopt a resolution fixing the time and place for the hearing of all persons interested in such construction or reconstruction or repair and the cost thereof and for ascertaining and determining the amount of benefit to the property for which such connection or connections are constructed, reconstructed or repaired, and such resolution shall be published once in a legal newspaper in said municipality or posted in three of the most public places therein. At the time and place named in said resolution, such governing body shall hear all persons interested in said work and improvement and the cost thereof. Thereupon, by resolution, such governing body shall determine and fix the amount of the benefits caused by said work and improvements to each lot, or parcel of ground for which such connection or connections are constructed, reconstructed or repaired and assess the amount of such costs, including the expense of giving said notice, against the lots or parcel of land so benefited in proportion to the benefit to the abutting property. A complete record thereof shall be kept by the clerk of such municipality in a separate book, which record shall contain a description of the property so benefited and charged with all the costs of such work and improvement, including the cost of giving such notice. (Act Apr. 11, 1929, c. 157, §2.)

**1918-14½b. Assessments may be collected with tax.—**The amount of the benefit to each lot or parcel of ground so determined, shall, together with part of all of the expense of giving such notice as such governing body may determine, be a charge against the same and a lien thereon, and if such charge is not paid within thirty days after such determination, the same shall continue to be a lien on the property so charged and bear interest at the rate of six per cent per annum, which charge shall be certified to the county auditor and extended upon the tax roll and levied

against such property and collected as in case of county and state taxes. (Act Apr. 11, 1929, c. 157, §3.)

**1918-14½c. Public improvements proceedings to be consolidated.**—Whenever two or more petitions for public improvements signed by the percentage of owners of real property abutting on the streets, or alleys, or parts thereof, so to be improved, as now required by Mason's Minnesota Statutes of 1927, Sections 1828, 1918-1 to 1918-11, inclusive, and Sections 1918-13 and 1918-14 and by the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 1815 and 1918-12, or proceedings for any public improvement are instituted under any other law authorizing the same, and all thereof are presented or instituted to the governing body of such municipality at substantially the same dates and said governing body may by resolution determine that such various improvements, although separately petitioned for or instituted, can be more economically completed if consolidated and joined as one project, and said governing body shall have the power by resolution to consolidate said various petitions and proceedings for such separate improvements, and after such consolidation all subsequent proceedings shall be conducted in all respects as if such various separate proceedings had originally been instituted under one petition or as one proceeding. (Act Apr. 8, 1939, c. 156, §1.)

**1918-14½d. Proceedings validated.**—In all instances where such governing body of any municipality has heretofore by resolution determined that separate proceedings pending before such governing body involving the making of improvements under and pursuant to any such law could be more economically conducted and completed by consolidating the same, and pursuant to resolution did so consolidate the same and all subsequent proceedings had accordingly, and as if said various proceedings were one project, such acts, resolutions and proceedings are hereby validated and declared lawful. (Act Apr. 8, 1939, c. 156, §2.)

**1918-15. Public improvements in villages, boroughs, and cities of fourth class.**

Municipalities may consolidate improvement projects petitioned for separately. Laws 1939, c. 156.

City has authority to proceed under this statute though city charter prescribes different method. Op. Atty. Gen., July 15, 1932.

City of Lake City may establish sewage disposal plant either under its home rule charter or under this act. Op. Atty. Gen., Oct. 2, 1933.

City council, if operating waterworks system under its charter, has legal right to pay for material to be used in extension of water main, and is not obliged to levy a special tax against property to be benefited. Op. Atty. Gen. (624d-11), Mar. 18, 1936.

Act does not include ordinary sidewalk construction. Op. Atty. Gen. (396g-7), May 21, 1937.

A village operating under Laws 1885, ch. 145, has option of proceeding under that act or under Laws 1919, ch. 65 (§1815, et seq.) or under Laws 1925, ch. 382 (§1918-15, et seq.), in making improvements referred to in each of such acts. Id.

City of Owatonna may proceed for financing and construction of a sewage disposal plant either under its charter or under this act. Op. Atty. Gen. (387b-9), Aug. 26, 1938.

**1918-16. Same—Making of improvements and assessment of costs.**

Villages having over 700 inhabitants, located in counties having 13,000 to 14,000 population and valuation of \$5,500,000 to \$6,000,000, may make special assessments for improvements. Laws 1939, c. 234.

Special benefits from storm sewers may be assessed against property not abutting on street were laid. Op. Atty. Gen., Aug. 10, 1932.

Assessments may be made under certain circumstances not only against abutting properties but also against other properties benefited by lateral sewer. Op. Atty. Gen. (387b-1), Aug. 27, 1937.

**1918-17. Same—Petition for improvement.**

Petition signed by 51% of abutting owners upon streets where storm sewers are to be laid is sufficient, even though property not abutting is benefited and is to be assessed. Op. Atty. Gen., Aug. 10, 1932.

As affecting petition for paving street, City of Worthington has the option of proceeding under its home rule charter, Mason's Statutes, §1815, or under §1918-17. Op. Atty. Gen. (396c-10), Apr. 15, 1936.

Property owned by city is not to be included in giving required number of signatures to petition. Op. Atty. Gen. (396c-6), June 30, 1936.

Village operating under Laws 1885 may extend water main pursuant to Laws 1885, Chap. 145, §21(10), or §1918-17, or §1918-1, et seq. Op. Atty. Gen. (624d-11), Aug. 28, 1936.

City of Fairmount cannot widen a street entering business section without a petition signed by requisite number of abutting owners. Op. Atty. Gen. (396c-6), Sept. 29, 1936.

The 51% mentioned should include property whether benefited or not, also including agricultural lands in village along which storm sewer would run. Op. Atty. Gen. (387B-10), July 27, 1939.

**1918-19. Same—Hearings by council.**

The village of Harmony organized under the 1885 law and reincorporated under Revised Laws of 1905, may extend water mains without submitting the matter to vote of the people. Op. Atty. Gen., Apr. 4, 1931.

**1918-20. Same—Orders and contracts for improvements.**

In view of §1918-56 village council may under §1918-20 proceed with a street improvement by day labor without advertising for bids. Op. Atty. Gen. (396g-7), May 21, 1937.

**1918-22. Same—Proportionate share of costs, etc.**

Cost of sewers, gutters and paving, but not sidewalks, may be assessed against school property. Op. Atty. Gen., Sept. 10, 1930.

City may be assessed for benefits as to any property owned by it, the same as if owned by individual. Op. Atty. Gen., July 15, 1932.

Assessments may be made under certain circumstances not only against abutting properties but also against other properties benefited by lateral sewer. Op. Atty. Gen. (387b-1), Aug. 27, 1937.

**1918-23. Same—Cost of certain improvements paid by municipalities.**

City council of Sleepy Eye may, on its own initiative, authorize sewer to be extended from park to sewage system and pay for same out of general revenue fund, or assess property benefited. Op. Atty. Gen., June 17, 1932.

City may pay cost of improvement at street intersections and at intersections between streets and alleys. Op. Atty. Gen., July 15, 1932.

Village may construct curbing and gutters for trunk highways and pay for the same with certificates of indebtedness, but if it issues bonds there must be vote of electors, and improvement may be paid out of general fund without assessment against abutting owners. Op. Atty. Gen. (476a-4), Aug. 29, 1935.

**1918-25. Same—Assessments—etc.**

Purchaser at foreclosure sale of part of property subject to special assessment, held entitled to division of assessment. Op. Atty. Gen., Apr. 2, 1930.

**1918-29. Same—Disposition of funds received from assessments—Etc.**

Form of "improvement warrant" prescribed. Op. Atty. Gen. (476c-4), May 20, 1937.

A tax for payment of that which is chargeable to village of Grand Rapids in making street improvement is to be deemed part of general corporation tax, and is subject to statutory limitation of 2% of assessed valuation of taxable property. Op. Atty. Gen. (396g-7), May 21, 1937.

Warrants may be issued without submitting question to electors. Op. Atty. Gen., (59a-49), June 24, 1938.

Making of assessment for proposed improvement is a prerequisite to issuance of improvement warrants. Op. Atty. Gen. (59a-22), Jan. 23, 1939.

Improvement warrants are not and cannot be made a general liability of city. Id.

**1918-35. Sidewalks and sewers in villages and cities, etc.**

Where petition for sidewalk is signed by two owners of three lots and other lots are all owned by life tenant, with remaindermen, petition is signed by majority. Op. Atty. Gen., July 5, 1932.

Conveyance of part of lots, after filing of petition for sidewalks and serving of notice, in no way affected proceedings. Op. Atty. Gen., July 5, 1932.

Property owner on one street cannot compel owners on adjoining street to build sidewalk. Op. Atty. Gen., June 16, 1933.

As to villages organized and operating under Laws 1885, ch. 145, provisions of Laws 1901, ch. 167 (§1918-35, et seq.) and Laws 1903, ch. 382, are still in full force and effect. Op. Atty. Gen. (396g-7), May 21, 1937.

Villages incorporated under Laws 1885, c. 145, may construct sewers under this act. Op. Atty. Gen. (387b-1), Aug. 27, 1937.

Procedure for issuing bonds or warrants for water works and sewer systems payable from earnings or special assessments. Op. Atty. Gen., (476b-15), Sept. 21, 1938.

**1918-37. Same—Work, how done—Assessment of benefits.**

Village may remove such trees as may be necessary to build sidewalk. Op. Atty. Gen., July 5, 1932.

**1918-42. Same—Assessment of benefits on property benefited, etc.**

Cost of sidewalks cannot be assessed against school property. Op. Atty. Gen., Sept. 10, 1930.

**1918-54. Municipalities emergency act of 1935.—**  
This act may be cited as "The Municipalities Emergency Act of 1935." (Act Apr. 5, 1935, c. 125, §1.)

City council in its discretion may expend money in providing garden plots and seeds to WPA workers and persons in need, and may provide musical entertainment and pay salary of instructor in connection with physical education of youth of city. Op. Atty. Gen. (59a-23), May 16, 1936.

A county board has authority to sponsor works on township WPA project, to be paid for by township, but it must have co-operation and express consent of township itself. Op. Atty. Gen. (125a-62), Sept. 28, 1936.

**1918-55. Definitions.—**The following terms wherever used or referred to in this act shall have the following meaning unless a different meaning appears from the context:

(a) The term "municipality" shall mean a county, a city of any class, including a city organized under a charter framed pursuant to Section 36, Article 4 of the Constitution, a town, a village, a borough, or a school, road, sanitary or drainage district, or a county or district agricultural society.

(b) The term "governing body" shall mean the board of supervisors, council, board of trustees, board of commissioners, or other body, board, commission, or other authority charged with governing any municipality.

(c) The term "law" shall mean any act or statute, general, special or local, of this State, including, without being limited to, the charter of any municipality.

(d) The term "bonds" shall mean bonds, interim receipts, certificates, or other obligations of a municipality issued or to be issued by its governing body for the purpose of financing or aiding in the financing of any work, undertaking or project for which a loan or grant, or both, has heretofore been made or may hereafter be made by any Federal Agency.

(e) The term "Recovery Act" shall mean the National Industrial Recovery Act, being the Act of the Congress of the United States of America, approved June sixteenth, nineteen hundred thirty-three, entitled "An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes," and any acts amendatory thereof, and any acts supplemental thereto, and revisions thereof, and any further Acts, or Joint Resolutions of the Congress of the United States of America to reduce and relieve unemployment.

(f) The term "Federal Agency" shall include the United States of America, the President of the United States of America, the Federal Emergency Administrator of Public Works, Reconstruction Finance Corporation, or any agency, instrumentality or corporation of the United States of America, which has heretofore been or hereafter may be designated, created or authorized by or pursuant to any Act or Acts of the Congress of The United States of America, to make loans or grants.

(g) The term "public works project" shall mean any work, project, or undertaking which any municipality, is authorized or required by law to undertake or any lawful purpose for which they are authorized or required by law to make an appropriation.

(h) The term "contract" or "agreement" between a Federal Agency and a municipality shall include contracts and agreements in the customary form and shall also be deemed to include an allotment of funds, resolution, unilateral promise, or other commitment by a Federal Agency by which it shall undertake to make a loan or grant, or both, upon the performance of specified conditions or compliance with rules and regulations theretofore or thereafter promulgated,

prescribed or published by a public agency. In the case of such an allotment of funds, resolution, unilateral promise, or other commitment by a Federal Agency, the terms, conditions and restrictions therein set forth and the rules and regulations theretofore or thereafter promulgated, prescribed or published shall, for the purpose of this act, be deemed to constitute covenants of such a contract that are to be performed by the municipality, if the municipality accepts any money from such Federal Agency. (Act Apr. 5, 1935, c. 125, §2; Jan. 27, 1936, Ex. Ses., c. 114.)

City may sponsor WPA project on fair grounds owned by city and leased to county fair association. Op. Atty. Gen. (772c-5), Apr. 7, 1936.

Any county or district agricultural society formed pursuant to §7835 comes within term "municipality" as defined by §1918-55. Op. Atty. Gen. (772a), June 1, 1936.

County board may employ day labor to remodel court house without advertising for bids pursuant to PWA contract. Op. Atty. Gen. (707a-7), Feb. 8, 1938.

Public, county, or judicial ditch systems fall within definition of "drainage district". Op. Atty. Gen., (148b-5), Oct. 5, 1938.

**1918-56. Powers of municipalities.—**Every municipality shall have power and is hereby authorized:

(a) To accept from any Federal Agency grants for or in aid of the construction of any public works project.

(b) To make contracts and execute instruments containing such terms, provision, and conditions as in the discretion of the governing body of the municipality may be necessary, proper or advisable for the purpose of obtaining grants or loans, or both, from any Federal Agency pursuant to or by virtue of the Recovery Act; to make all other contracts and execute all other instruments necessary, proper or advisable in or for the furtherance of any public works project and to carry out and perform the terms and conditions of all such contracts or instruments.

(c) To subscribe to and comply with the Recovery Act and any rules and regulations made by any Federal Agency with regard to any grants or loans, or both, from any Federal Agency.

(d) To perform any acts authorized under this act through, or by means of its own officers, agents and employees, or by contracts with private corporations, firms or individuals.

(e) To award any contract for the construction of any public works project or part thereof upon any day at least fifteen days after one publication of a notice requesting bids upon such contract in a newspaper of general circulation in the municipality.

(f) To sell bonds at private sale to any Federal Agency without any public advertisement.

(g) To exercise any power conferred by this act for the purpose of obtaining grants or loans or both, from any Federal Agency pursuant to or by virtue of the Recovery Act independently or in conjunction with any other power or powers conferred by this act or heretofore or hereafter conferred by any other law.

(h) To do all acts and things necessary or convenient to carry out the powers expressly given in this Act. (Act Apr. 5, 1935, c. 125, §3.)

Cities operating under home rule charter may issue bonds to pay costs of construction of a hospital. Op. Atty. Gen. (59a-7), May 22, 1935.

Governing body of each municipality has authority to acquire land and easements necessary to execution of work and to take over, maintain and operate completed works. Op. Atty. Gen. (928c-7), Sept. 12, 1935.

County may enter into indemnity contract with federal government in connection with construction of a dam. Op. Atty. Gen. (707b-3), Jan. 6, 1936.

Attorney general will not render opinion relative to powers and duties of the judiciary. Op. Atty. Gen. (307c), Jan. 23, 1936.

There was no necessity for receiving new bids because question of making addition to high school was submitted to voters after bids were received. Op. Atty. Gen. (707a-12), Jan. 28, 1936.

Village may accept deed of fair grounds and buildings from County Fair Association for purpose of carrying on WPA project. Op. Atty. Gen. (469a-6), Apr. 22, 1936.

County board may appropriate money to pay transportation expenses of WPA workers to and from place of employment. Op. Atty. Gen. (107b-1), Aug. 11, 1936.

City may improve streets by WPA laborers by the day without advertising for bids. Op. Atty. Gen. (396b-7), Sept. 15, 1936.

County board in a county operating under town system may incur such incidental expenses of national reemployment offices and WPA offices and reemployment offices as it finds necessary in order to render relief to needy and destitute persons in cooperation with state and federal agencies. Op. Atty. Gen. (1001c), Mar. 9, 1937.

As affecting advertising for bids on PWA project, this section supersedes §991. Op. Atty. Gen. (125a-17), May 7, 1937.

In view of §1918-56 village council may under §1918-20 proceed with a street improvement by day labor without advertising for bids. Op. Atty. Gen. (396g-7), May 21, 1937.

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

Where voters of village approved bonds for construction of building, village council could later accept federal grant without further vote of electors. Op. Atty. Gen. (469c-4), Oct. 5, 1937.

Authority of county to participate in Works Progress Administration project and to purchase materials to restore levels of lake is not limited to \$300. Op. Atty. Gen. (273a-23), Nov. 22, 1937.

City of Luverne may purchase property and construct swimming pool in cooperation with Federal Government under WPA project without vote of electors, so long as issuance of bonds is not required and so long as warrants to be issued will not exceed taxes assessed and in process of collection. Op. Atty. Gen. (59b-11), Jan. 11, 1938.

County board constructing county garage as a WPA project may employ day labor without advertising for bids. Op. Atty. Gen. (707a-17), Aug. 10, 1938.

Regardless of provisions of charter a city could contribute money toward payment of rental of quarters for local WPA unit administrative offices. Op. Atty. Gen. (59a-3), May 16, 1939.

Act gives school board broad powers in making all contracts necessary in furtherance of PWA projects. Op. Atty. Gen. (707a-12), June 23, 1939.

A city may legally contribute a share of expense of maintenance of local unemployment office. Op. Atty. Gen. (59a-22), August 17, 1939.

Any municipality, including a county, may make contributions toward work of State Employment Service, up to December 31, 1939. Op. Atty. Gen. (125B), August 30, 1939.

(e).

Mower County is not required to advertise for bids in purchasing material and employing day labor in connection with repair and construction of bridges. Op. Atty. Gen., (642a-3), Sept. 13, 1938.

**1918-57. Costs of public works determined.**—In determining the cost of any public works project, the following items may be included as part of the cost of such public works project and financed by the issuance of bonds: (a) Engineering, inspection, accounting, fiscal and legal expenses; (b) The cost of issuance of the bonds, including engraving, printing, advertising, accounting and other similar expenses; (c) Any interest costs on money borrowed or estimated to be borrowed during the period of construction of such public works project and for six months thereafter. (Act Apr. 5, 1935, c. 125, §4.)

Attorney's fees incurred in election and in issuance and sale of bonds may be paid out of bond proceeds. Op. Atty. Gen. (59a-7), May 28, 1935.

**1918-58. Acts must be approved.**—The provisions of this Act shall not operate to dispense with the approval of a public works project by a state department, board, officer, commission, or a vote of the electors or freeholders where such approval or vote is necessary or required by law. (Act Apr. 5, 1935, c. 125, §5.)

Act does not authorize issuance of bonds except in conformity with prior laws. Op. Atty. Gen. (44a-4), June 12, 1935.

Where voters of village approved bonds for construction of building, village council could later accept federal grant without further vote of electors. Op. Atty. Gen. (469c-4), Oct. 5, 1937.

**1918-59. Certificates of indebtedness may be issued.**—Pending the preparation or execution of definitive bonds for the purpose of financing the construction of a public works project, interim receipts, certificates of other temporary obligations may be issued by the municipality to the purchaser of such bonds. Such interim receipts, certificates or other temporary obligations shall be in such form and contain such terms, conditions and provisions as the governing body of the municipality issuing the same may determine. (Act Apr. 5, 1935, c. 125, §6.)

**1918-60. Bonds legalized.**—Bonds bearing the signatures of officers in office on the date of signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof any or all the persons whose signatures appearing thereon shall have ceased to be the officers of the municipality issuing the same. (Act Apr. 5, 1935, c. 125, §7.)

**1918-61. Powers supplemental.**—The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of any other law are inconsistent with this act, the provisions of this act shall be controlling. (Act Apr. 5, 1935, c. 125, §8.)

**1918-62. Public relief act.**—This act is intended to aid in relieving the public emergency arising from unemployment by simplifying the procedure for the construction and financing of public works projects. This act is remedial in nature and the powers hereby granted shall be liberally construed. (Act Apr. 5, 1935, c. 125, §9.)

**1918-63. Limitation of act.**—Nothing in this act shall be construed to authorize the issuance of bonds for any purpose by any municipality not authorized to issue bonds for such purpose under any other law heretofore or hereafter enacted; nor to authorize the levy or expenditure of taxes for any purpose, or in any amount, in excess of the limits provided under any existing or hereafter enacted law of this state, nor for any public works project until such project shall be authorized in the manner now or hereafter provided by law. (Act Apr. 5, 1935, c. 125, §10.)

Where voters of village approved bonds for construction of building, village council could later accept federal grant without further vote of electors. Op. Atty. Gen. (469c-4), Oct. 5, 1937.

**1918-64. Provisions severable.**—If any provision of this act, or the application thereof to any person, body, or circumstances, is held invalid, the remainder of the act and the application of such provision to other persons, bodies, or circumstances shall not be affected thereby. (Act Apr. 5, 1935, c. 125, §11.)

**1918-65. Act expires Dec. 31, 1941.**—Except in pursuance of any contract or agreement theretofore entered into by and between any municipality and any Federal agency, no municipality shall exercise any of the powers conferred by this act after December 31, 1941. (Act Apr. 5, 1935, c. 125, §12; Apr. 21, 1937, c. 328, §1; Apr. 22, 1939, c. 424.)

Sec. 13 of Act Apr. 5, 1935, c. 125, cited, provides that the act shall take effect from its passage.

**1918-66. Proceedings legalized and evidences of indebtedness validated.**—In all cases where the governing body or the utility commission or other similar body of any city or village has made a contract, or adopted proceedings for furnishing water, gas, steam heat, electric or telephone service to any such city or village or the inhabitants thereof, or for the furnishing of any such services by a municipally owned utility to areas adjacent thereto, or for the issuance or sale of pledge orders, warrants, bonds or certificates, payable solely from the earnings of a public utility or utilities owned by the city or village issuing the same, such contract or proceedings are hereby legalized, and all such pledge orders, warrants, bonds or certificates issued or to be issued are hereby legalized and declared to be valid and binding obligations of said city or village, payable solely from the revenues of such public utility or utilities, including but not limited to pledge orders, warrants, bonds or certificates issued or to be issued, for the purpose of supplementing grants of the Federal Emergency Administration of Public Works or other Federal Agencies. (Act Apr. 4, 1939, c. 137, §1.)

Act applies only to past transactions, and did not apply to an agreement with a firm dealing in bonds to issue refunding bonds to be paid out of revenues of power plant at a smaller rate of interest, agreement not having been completed by issuance of bonds. Op. Atty. Gen. (44B-12), April 19, 1939.



**1918-67. Pledges validated.**—In all cases where the governing body or utility commission or other similar body of any such village or city has heretofore pledged itself to charge sufficient rates so as to pay interest and principal on such pledge orders, warrants, bonds or certificates, such pledge is hereby legalized and declared to be valid. (Act Apr. 4, 1939, c. 137, §2.)

**1918-68. Act remedial.**—It is hereby expressly found and determined that this act is remedial in nature, being necessary to protect the financial credit of such villages and cities, and this act shall take effect and be in force from and after its passage. (Act Apr. 4, 1939, c. 137, §3.)

**1918-69. Not to apply to pending actions.**—This act shall not apply to any action or proceeding now pending in any courts in the State of Minnesota. (Act Apr. 4, 1939, c. 137, §4.)

**1918-71. Certain cities may install sewage systems and pumping stations.**—Any city, other than cities of the first class, and cities of the second class organized under a home rule charter, however organized, and any village which has installed or may hereafter install, a system of sewers, sewage pumping station, or sewage treatment or disposal plant or plants for public use, in addition to all other powers granted to it shall have authority, by an ordinance duly adopted by the governing body thereof, to charge just and equitable rates, charges or rentals for the use of such facilities and for connection therewith by every person, firm or corporation whose premises are served by such facilities either directly or indirectly. Such charges shall be as nearly as possible equitable and in proportion to the service rendered, and shall take into consideration the quantity of sewage produced and its concentration, strength of river, lake, bay or other body of water pollution qualities in general and the cost of its disposal. The charges shall be fixed on the basis of water consumed, or on any other equitable basis said governing body may deem appropriate, and if the council so directs may be established as a surcharge on the waterbills of all water consumers in the municipality on the grounds that said sewage treatment is for the purpose of preventing pollution of sources of water supply, or on some other basis of measuring the use made of the aforesaid facilities. In case of arrangements with other municipalities, districts or private parties for the supplying of sewers aforesaid, such rates, charges or rentals may also be levied the same as in independent operations. (Act Apr. 20, 1935, c. 221, §1.)

City organized under Laws 1895, c. 8, may issue bonds without vote of electors if the city's indebtedness will not be raised above 5% of taxable property of city. Op. Atty. Gen. (59a-7), Oct. 10, 1935.

If county desires sewage facilities for court house, city may require county to pay charge to defray expenses of operation of sewage disposal plant based on quantity of water consumed. Op. Atty. Gen. (387b-9), Feb. 9, 1938.

Provision of city charter requiring water and light commission to shut off water in cases of delinquency in payment applies to a surcharge made by council for use of sewage disposal plant, even as to water users who have no sewer connections. Op. Atty. Gen. (387b-9), Apr. 5, 1938.

**1918-72. Moneys received shall be placed in special fund.**—The moneys received from the rates, charges or rentals as herein authorized shall be kept separate from the general or other revenues of the political subdivision, and when so collected shall be placed in a separate general sewer fund, or in the water fund of any such city, village or borough. Also, any moneys received from the sale of any by-products arising out of sewage treatment or disposal shall be credited to this fund. The moneys so received shall be recorded, deposited, secured and paid out as other funds of the political subdivision are; provided, that upon establishing and fixing the charges aforesaid the receipts therefrom shall be used first to meet the costs of operating and maintaining the said facilities, and any additional sums collected shall be applied to

capital charges represented by bonds, certificates of indebtedness, or otherwise, and to the reasonable requirements for replacements and obsolescence. In determining the amount of capital costs to be met, the amount charged to special assessments, and also any amount of such cost properly chargeable to other than sanitary sewers, shall be deducted therefrom; and no such rate, charge or rental shall include any amount therefor or be applied thereto upon their collection. (Act Apr. 20, 1935, c. 221, §2.)

**1918-73. Charges to be against the owner, lessee or occupant.**—The rates, charges or rentals for the aforesaid sewer service may be made a charge against the owner, lessee or occupant of the premises, duly charged and billed for the services hereunder, or against any or all of them; and any such claim for unpaid rates, charges or rentals which have been properly billed to the occupant of the premises may be collected in a civil action in any court of competent jurisdiction, or, in the discretion of the governing body of the municipality, may be certified to the county auditor (or auditors of the counties) with the taxes against such property served and shall be collected as other taxes are collected. Payments of delinquent rentals shall be credited to the same fund as current funds for that purpose are, deducting therefrom any cost of collection accruing to the political subdivision. (Act Apr. 20, 1935, c. 221, §3.)

Cost of maintenance of sewage disposal plant may be apportioned against all property owners of city. Op. Atty. Gen. (387b-9), Aug. 24, 1937.

**1918-74. Cities of third class and villages may establish sewers and sewage disposal plants—charges for use of—service to other municipalities.**—Any city of the third class organized under a home rule charter or however organized, and any village, may build and construct when authorized by an ordinance passed by a two-thirds vote of the governing body thereof, a sewage treatment or disposal plant or plants for public use, and any such municipality which has installed or may hereafter install, build or construct, a system of sewers, sewage pumping station, or a sewage treatment or disposal plant or plants for public use, in addition to all other powers granted to it shall have authority, by an ordinance duly adopted by the governing body thereof, to charge just and equitable rates, charges or rentals for the use of such facilities and for connection therewith by every person, firm, or corporation whose premises are served by such facilities either directly or indirectly. Such charges shall be as nearly as possible equitable in proportion to the service rendered, and shall take into consideration the quantity of sewage produced and its concentration, strength or river, lake, bay or other body of water, pollution qualities in general and the cost of its disposal. The charges shall be fixed on the basis of water consumed, or any other equitable basis said governing body may deem appropriate, and if the council so directs, may be established as a surcharge on the water bills of all water consumers in the municipality on the grounds that said sewage treatment is for the purpose of preventing pollution of sources of water supply, or on some other basis of measuring the use made of the aforesaid facilities. In case of arrangements with other municipalities, districts or private parties for the supplying of sewers aforesaid, such rates, charges or rentals may also be levied the same as in independent operations. (Mar. 2, 1937, c. 57, §1.)

Industries may be charged on one basis while private homes are charged on another basis for use of sewage facilities. Op. Atty. Gen., (387b-2), Sept. 6, 1938.

Village may adopt an ordinance providing for an annual charge for connection with sewers in various sewer districts constructed by special assessment. Op. Atty. Gen., (387g), Oct. 14, 1938.

**1918-75. Same—may issue bonds—sinking fund—rates for service—project self-liquidating.**—Any such municipality may issue and sell bonds for the construction of any such system of sewers, sewage pump-

ing stations or sewage treatment or disposal plant or plants for public use when authorized so to do by an ordinance or resolution adopted by a vote of two-thirds of the members of the governing body of said municipality; which bonds shall bear interest at not more than  $\frac{5}{100}$  per annum, payable semi-annually, and shall mature one-twentieth at the end of each year and may be registered with the City Treasurer of said municipality. No bonds shall be sold for less than par, and that each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

At the time of, or before the issuance and sale of any such bonds, the governing body must create a sinking fund for the payment of the bonds and the interest thereon and charges of the fiscal agency for making payment of the bonds and interest thereon.

That at, or before the issuance and sale of such bonds, the governing body shall, by resolution or ordinance, set aside a sinking fund and pledge to the payment of the bonds and the interest thereon the net income and revenues of the system, including all additions thereto and replacements and improvements thereof subsequently constructed or acquired, up to an amount sufficient to provide for the payment of the principal and the interest on the bonds as such principal and interest shall become due and payable, the fiscal agency charges, and a margin of safety, which together with any unused surplus of such margin carried forward from the previous year, shall equal  $\frac{20}{100}$  of all other amounts so required to be paid into the sinking fund.

The said income and revenues above mentioned shall be construed to mean all the gross income from said plant less operating expenses and cost of material and supplies used in operation and less  $\frac{10}{100}$  to be set aside for replacements and depreciation of said plant.

Said payments above mentioned shall constitute a first and prior charge and lien on the entire net income and revenues derived from the operation of said system.

The governing body of such municipality shall have full power and authority, and it is hereby made its duty to fix and establish, on the basis of water consumed or any other equitable basis, by ordinance or resolution, and collect rates and charges for the services and facilities afforded by the system.

The rates and charges established for the services and facilities afforded by this system shall be sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense and operation, repair and maintenance and for the payment of the sums required to be paid into the sinking fund and for the  $\frac{10}{100}$  depreciation charge.

The governing body shall have the right to change and readjust from time to time the rates and charges so fixed and established provided the aggregate of such rates and charges shall always be sufficient to meet the requirements mentioned in preceding paragraph.

After any municipality has issued and sold revenue bonds under this act, it must keep all income and revenues derived from the operation of the system separate and distinct from all other revenues and shall keep books and accounts for such system separate and distinct from all other books and accounts.

That any such bonds and interest thereon shall be a valid claim of the holders thereof only against the sinking fund and the net income and revenues of the system pledged thereto and shall not constitute an indebtedness of the municipality within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

Any municipality issuing bonds under this act shall have the right to covenant with the holders of the

bonds as to (a) the purpose to which the proceeds received from the sale of the bonds shall be applied and the use and disposition thereof; (b) the use and disposition of the income and revenues derived from the operation of the system; (c) the issuance and sale of additional bonds payable from the income and revenues of the system; (d) the operation and maintenance of the system; (e) the insurance to be carried hereon and the disposition of the insurance moneys; (f) its books of account and the inspection and audit thereof and its accounting methods; (g) rates and charges for the services and facilities afforded by the system, and any other matters pertaining to the manner of handling this system and care and manner of paying the revenues on the bonds and interest.

No person, firm or corporation shall be permitted to use said system, except they pay the full and established rate for said service.

Nothing contained in this act shall be construed to permit the municipality to incur, under the provisions thereof, any obligation for the payment of which taxes may be levied.

Any bonds issued under this act may be registered with the City Treasurer or the fiscal agent with whom the sinking fund is deposited.

~~All acts and parts of acts inconsistent herewith are hereby repealed.~~ (Mar. 2, 1937, c. 57, §2.)

Bonds may be issued without vote of electors. Op. Atty. Gen., (387b-2), Sept. 6, 1938.

**1919. Tax for fire department relief fund.**—The village or city council or other governing body of every village and city in this state, other than cities of the first class, and other than any city or village operating under Chapter 153, 192, and 208, Laws of Minnesota for 1935, or acts amendatory thereof, which has a regularly organized fire department, may each year, at the time the tax levies are made for the support of the village or city, and in addition thereto, levy a tax of one-tenth of a mill on all taxable property of such village or city. The tax so levied shall be transmitted to the auditor of the county in which the village or city is situated at the time all other tax levies are transmitted, and shall be collected and payment thereof enforced in like manner as state and county taxes are collected and the payment thereof enforced. The village or city treasurer, when the tax is received by him, shall pay the same over to the treasurer of the duly incorporated firemen's relief association of such village or city, if there is one organized, together with all penalties and interest collected thereon; but if there is no firemen's relief association so organized in any such village or city, or if any such association resign, be dissolved or removed, or any successor of such association resign, be removed or has heretofore resigned or has been removed as trustee of such money, then the treasurer of such municipality shall keep the money in a special fund to be disbursed only for the purposes authorized by this act. Provided, that the village or city council of any village or city in this state which now has or hereafter may have a population of less than 50,000 inhabitants is hereby authorized and empowered, when in its discretion it deems it necessary or desirable so to do, to levy on the taxable property of such village or city an additional amount not to exceed nine-tenths of one mill; such additional tax to be collected and disbursed as herein provided. (As amended Apr. 22, 1937, c. 349, §1.)

Levy of one-tenth of one mill by city of International Falls, for relief fund of its organized volunteer fire department, was properly made. State v. Keyes, 188M123, 246NW547. See Dun. Dig. 6688a.

Association cannot use funds secured under §§1919, 1920, for the purchase of fire apparatus. Op. Atty. Gen., Feb. 28, 1930.

Interest received on moneys in special fund cannot be placed in the general fund of the association. Op. Atty. Gen., Feb. 28, 1930.

Firemen's relief association may expend money from its special fund for the purchase of fire fighting equipment for a village as far as funds received under section 3726 are concerned, but not from funds arising under §1919. Op. Atty. Gen., Apr. 21, 1931.

Firemen's relief association had no authority to pay any moneys levied under this section to an attorney employed by it to enforce the levy. Op. Atty. Gen., July 30, 1931.

City may not limit membership in association to older members of fire department so as to exclude younger members. Op. Atty. Gen. (198a-2), Apr. 3, 1935.

Funds acquired from taxes cannot be used to purchase group insurance, but moneys received from fees, dues, donations, etc., may be used for any purpose. Op. Atty. Gen. (198b-10(d)), Nov. 1, 1935.

Upon incorporation of a firemen's relief association 2% gross premium fund may be turned over to treasurer of such association upon his filing a proper bond. Op. Atty. Gen. (198h-11), Oct. 21, 1936.

"Regularly organized fire department" includes volunteer fire department. Op. Atty. Gen. (688j), Aug. 17, 1937.

Section 1919 is still in force and was not repealed by §3723. Id.

Depositary is not required to furnish bond as security for funds of Firemen's Relief Association. Op. Atty. Gen. (198b-2), Jan. 7, 1938.

Where active member of International Falls fire department became ill and was placed on "disability list", and was dropped as an "active member", and no longer paid any dues, his widow on his death was not entitled to benefits as widow of "active member". Op. Atty. Gen. (198a-1), Apr. 27, 1938.

Under bylaw of relief association limiting benefits to 12 weeks in any 52 weeks, one receiving a single disability incapacitating him for many years is entitled to 12 weeks relief every year during disability. Op. Atty. Gen. (198a-1), April 18, 1939.

**1919-1. Municipalities to fight fires outside of limits.**—The council or any other body of any municipality having control of its fire department may by resolution adopted by a five-sevenths vote authorize its fire department or any portion thereof to attend and serve at fires outside of the limits of the municipality either within or without the state. In case the fire department is controlled by an individual such authorization shall be by written notice posted at the headquarters of the fire department. (Act Apr. 18, 1929, c. 232, §1.)

City furnishing services of fire department outside limits is acting in governmental capacity as affecting liability for injuries. Op. Atty. Gen., (688a), Oct. 4, 1938.

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

A city is not liable for negligent acts of its fire department members, and there is no necessity for a contract of indemnity as between municipalities involved in fire protection agreement. Op. Atty. Gen. (688a), May 4, 1939.

**1919-2. Municipalities to arrange for compensation at outside fires.**—The body or person having control of a municipal fire department shall have authority to contract with other municipalities or private groups for compensation for services rendered in fighting fires as herein provided. The compensation agreed shall be a legal charge and collectible by the municipality rendering such service in any court of competent jurisdiction. (Act Apr. 18, 1929, c. 232, §2.)

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

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

Village furnished with service may contract to reimburse city for loss of or damage to equipment. Op. Atty. Gen., (688a), Oct. 4, 1938.

**1919-3. Firemen serving on outside fires in line of regular duties.**—All municipal firemen attending and serving at fires outside of the limits of the municipality as authorized in this act shall be considered as serving in their regular line of duties as fully as if they were serving within the limits of their own municipality. (Act Apr. 18, 1929, c. 232, §3.)

**1919-4. Cities and villages to pay expenses to conventions in certain cases.**—The governing body of any village or city of this state, however organized, may appropriate such reasonable sums of money as it deems proper to defray the expenses of members of its regularly organized fire department in attending the state convention of the Minnesota State Fire Department Association and/or the Northwest Fire School. (Act Apr. 13, 1931, c. 150.)

**1920. Board of Trustees of firemen's relief associations.**—The board of trustees of every firemen's relief association of this state shall be composed of the following persons, to-wit: six trustees elected annually by such firemen's relief association from its own members and also the following ex officio members taken from the officers of the municipality in which the relief association is located, viz.: The mayor or president, the recorder or clerk, the treasurer and chief of the fire department thereof, and any such board of trustees of a duly incorporated relief association shall have exclusive control and management of all funds received by its treasurer under the provisions of this act, funds derived from the State of Minnesota, and all moneys or property donated, given, granted or devised for the benefit of said funds, and such funds when received shall be kept in a special fund on the books of the secretary and treasurer of said association and shall never be disbursed for any purpose whatever except the following viz.: (1st) For the relief of sick, injured and disabled members of any fire department in such village or city; (2nd) for the payment of pensions to disabled firemen and the widows and orphans of firemen; (3rd) for the payment of pensions to retired firemen pursuant to the laws of the state; (4th) for the payment of the fees, dues and assessments in the Minnesota State Volunteer Firemen's Benefit Association so as to entitle the members of any fire department to membership in and benefits of such state association; (5th) for the equipment and maintenance of such department and for construction, acquisition or repair of buildings, rooms and premises for fire department use or otherwise; for the payment of such death or funeral benefits as may be from time to time stipulated in the by-laws of the respective relief associations; and (6th) for the payment of necessary expenses of administering said fund including secretary's and treasurer's salaries.

The term "widow" shall mean a woman who was the wife of the fireman or pensioner during the time he was an active fireman, provided that she was married to him three or more years prior to the time when such fireman retired as a service pensioner. The term "widow" shall not include the surviving wife who has deserted a fireman or pensioner, or who has not been dependent upon him for support.

Provided, that the funds received by any relief association from dues, fines, initiation fees and entertainments shall be kept in a fund called the general fund, and may be disbursed for any purposes authorized by the articles of incorporation and by-laws of said association. Provided, further, that said relief association is hereby authorized and empowered to invest its funds in such income paying properties and securities as the council of the village or city in which such organization is located shall from time to time authorize. Provided, further, that benefits shall in all cases be within the limits authorized by state law and in accordance with the articles of incorporation and by-laws of the association. (As amended '29, c. 166; '31, c. 71; '35, c. 135; Apr. 22, 1937, c. 349, §2.)

City is without power to pay expenses of delegates from its fire department to state firemen's association convention. Op. Atty. Gen., June 2, 1930.

The funds created by this section and section 3726 should be kept separate so that investment thereof could be approved by the proper authority. Op. Atty. Gen., Mar. 12, 1931.

A village president, recorder and treasurer automatically become members of the Firemen's Relief Association. Op. Atty. Gen., Apr. 2, 1931.

The special tax of one-tenth of a mill levied under this section creates a fund which may be invested only as approved by the village or city council. Op. Atty. Gen., Apr. 2, 1931.

Interest from investments made with moneys received by a firemen's relief association may not be placed in the general fund and expended for purposes for which such fund may be spent. Op. Atty. Gen., July 30, 1931.

A duly incorporated firemen's relief association, at least so far as special fund is concerned, may lawfully sign a waiver agreement. Op. Atty. Gen., Feb. 18, 1933.

By-laws of volunteer fire relief association may provide for benefits to widows and orphans. Op. Atty. Gen., Sept. 25, 1933.

Fireman is entitled to benefit how ever he received his injury. Op. Atty. Gen. (198a-1), Apr. 4, 1935.

Salaries of officers of association may not be paid out of special fund but may be paid out of general fund derived from dues, fines, etc., and one receiving attention may receive a salary as an officer of association. Id.

Lump sum pension may be paid to widows of firemen if such provision is made in certificate or by-laws of association, but should be limited to funds derived from one-tenth of a mill tax levy. Op. Atty. Gen. (198b-6(a)), May 9, 1935.

By-laws may provide for pensions to widows of firemen whose death does not occur in line of service. Op. Atty. Gen. (688m), Jan. 9, 1936.

Funds of relief association which are derived from 2% tax paid by fire insurance companies may be used under §3726 for improvement of firemen's quarters, but tax collected upon properties under §1919 may only be used for the purposes specified in this section. Op. Atty. Gen. (198b-10(a)), Feb. 24, 1936.

Funds may be invested in village warrants, but a village does not have authority to issue postdated warrants for purpose of borrowing money or to represent a running obligation of village. Op. Atty. Gen. (688c-1), Mar. 28, 1936.

Lump sum pension may be paid to widow and orphans of a fireman in event such pension is provided for in articles or by-laws of association and authorized by municipality. Op. Atty. Gen. (198a-1), Sept. 28, 1937.

It is within discretion of governing body of municipality to lend money to fire department to buy uniforms and take a plain unsecured note therefor. Op. Atty. Gen. (198b-5), May 6, 1938.

Statute does not prohibit amendment of articles of incorporation of a relief association so as to authorize payment of benefits to widows of nonactive members who have died prior to amendment. Op. Atty. Gen. (198a-1), July 13, 1938.

**1920-1. Certain towns and school districts may carry insurance.**—That all towns school districts having an assessed valuation of over \$2,000,000.00 and cities, villages and boroughs in this state are hereby authorized to carry insurance against liability of employees of any departments thereof by reason of claims for bodily injuries, death or property damage made upon any such employee by reason of his operation of a motor vehicle while in the performance of his duties, and to defend in the name and on behalf of such employee any suit brought against him to enforce a claim, whether groundless or not, arising out of the operation of a motor vehicle by him while in the performance of his duties. (Mar. 22, 1929, c. 81, §1; Apr. 29, 1935, c. 338, §1.)

Act Apr. 29, 1935, c. 338, §1, amends the title of Laws 1929, c. 81, to read as follows: "An act authorizing towns school districts having assessed valuation of over \$2,000,000.00 and all cities, villages and boroughs to carry insurance against liability of employees of any department thereof arising out of the operation of motor vehicles by them while in the performance of their duties."

It would seem that the legislature intended, but failed, to insert a comma after "towns" in the opening words of this section.

Municipality may pay premium on liability insurance on fire department automobiles. Op. Atty. Gen., Feb. 25, 1933.

Statute does not change rules of law with reference to liability of villages in operating motor vehicles in response to fire calls. Op. Atty. Gen., Mar. 4, 1933.

Members of a purely volunteer fire department whose services are gratuitous are not "employees," but if they receive a stated compensation they are, and the village is authorized to purchase a liability insurance policy for their benefit. Op. Atty. Gen., Apr. 7, 1933.

Members of volunteer fire department who are paid \$1.00 for each fire and 25 cents for each monthly meeting are employees of the village within this chapter. Op. Atty. Gen., Apr. 11, 1933.

Members of volunteer fire department receiving compensation are employees. Op. Atty. Gen., Apr. 11, 1933.

It is not necessary to specifically enumerate individual names of drivers of buses. Op. Atty. Gen. (622d), May 28, 1936.

Towns may carry public liability and property insurance. Op. Atty. Gen. (523e-2), April 10, 1939.

A city is not liable for negligent acts of its fire department members, and there is no necessity for a contract of indemnity as between municipalities involved in fire protection agreement. Op. Atty. Gen. (688a), May 4, 1939.

**1920-2. Governing bodies may pay premium.**—Such governing body may in its discretion pay the premiums on insurance policies insuring individuals or groups of the employees referred to in Section 1 hereof against liability for injury to person or prop-

erty, within the limitations of Section 1 [§1920-1] hereof, and such payment of insurance premiums shall in no way impose upon any municipality any liability whatever. (Act Mar. 22, 1929, c. 81, §2; Apr. 29, 1935, c. 338, §2.)

The enacting part of Act Apr. 29, 1935, c. 338, §3, amending this section purports to amend "section 12" of Laws 1929, c. 81, but the amendment as set out opens with the designation "Sec. 2."

**1929-1. Itinerant carnivals, street shows, street fairs, side shows, circuses, etc., within mile of corporate limits of city of fourth class—Town's licenses or permits for—Consent of city.**—No town board or other public authority shall hereafter issue any license or permit or make any other grant of authority permitting the operation or carrying on of any itinerant carnival, street show, street fair, side show, circus, or any similar enterprise, within one mile of the corporate limits of any city of the fourth class in this state, without having first obtained in writing the consent thereto of the council or other governing body of such city. ('25, c. 366, §1.)

**Explanatory note**—Inserted to correct typographical error in Vol. I, Mason's Minnesota Statutes of 1927.

**1929-4. Same—Definition.**

This act was not intended to amend or modify §5940, and state fire marshal need not consider this act in granting a license for an itinerant motion picture exhibition. Op. Atty. Gen. (197d), June 25, 1934.

**1933. Municipal forests.**

Subsequent curative acts. Act Mar. 9, 1929, c. 53. Municipality should acquire title to land to be used for municipal forests and should not lease it. Op. Atty. Gen., Mar. 8, 1933.

Cities, villages, and towns may not be permitted to take over management and development of tax forfeited lands as community forests. Op. Atty. Gen. (700a-1), May 24, 1938.

**1933-5. Public rest rooms in certain municipalities.**—That all incorporated boroughs, villages, and cities of the fourth class in the state may at the discretion of their respective governing bodies provide and maintain in or near the business center of the village or city a public rest room; such rest room shall be furnished with a suitable number of chairs and a table or tables; shall be heated and lighted between the hours of ten o'clock in the forenoon and six o'clock in the afternoon; the entrance thereto shall be from a public street and there shall be placed on or over the entrance thereto a sign bearing the words "PUBLIC REST ROOM." ('21, c. 294, §1; Apr. 8, 1933, c. 169.)

Expense of establishment of rest room may be paid from general fund, and if building is owned by city the expense of alterations may be paid from permanent improvement fund, under charter of International Falls. Op. Atty. Gen., Feb. 28, 1930.

A village would have power to provide a public rest room in a building to be erected jointly by the American Legion and the band of the village, such rest room to be provided on the first floor and to be kept and maintained by the village at public expense. Op. Atty. Gen., Mar. 25, 1931.

Village rest rooms must be kept open, heated and lighted between ten A. M. and six P. M., but need not be kept open at other hours. Op. Atty. Gen., Feb. 11, 1932.

Village may take over a memorial hall constructed by American Legion Post, and use such building as a combined memorial hall, city hall, council room, and rest room, and may rent the premises for public purposes, for entertainment, public dances or other gatherings, providing such renting does not interfere with public use of property, and does not tie hands of succeeding governing bodies of the village, but cannot assume a mortgage thereon, payment of purchase price in cash or bonds being necessary. Op. Atty. Gen. (476b-8), Mar. 2, 1937.

**1933-9. Tourist camping grounds, in cities, villages, towns and boroughs.**

This section merely places a limitation on expenditure of taxes for tourist camp and does not grant power to levy a special tax. International Harvester Co. v. S., 200M242, 274NW217. See Dun. Dig. 6689.

Village operating under per capita tax law may levy tax for tourist camping grounds, providing entire levy does not exceed the per capita limit. Op. Atty. Gen. (519i), Dec. 15, 1934.

Village has authority to levy taxes for public tourist camping grounds in addition to limitation contained in §1225. Op. Atty. Gen. (519h), Dec. 23, 1935.

**1933-9a. Municipalities may acquire and operate recreational facilities.**—Any city, however organized, or any village, borough, town, county, school district, or any board thereof may operate a program of public recreation and playgrounds; acquire, equip and maintain land, buildings or other recreational facilities; and expend funds for the operation of such program pursuant to the provisions of this act, provided, however, that the provisions of this act shall not apply to any municipality coming within the provisions of chapter 29 extra session laws of 1935. [§§1263-4 to 1263-7]. (Apr. 15, 1937, c. 233, §1.)

School district can hire band instructor and conduct concert. Op. Atty. Gen. (161b-11), May 4, 1937.

City of Litchfield has authority to acquire and maintain a golf course. Op. Atty. Gen. (469a-12), June 4, 1937.

Villages should furnish musical entertainment in form of band concerts pursuant to §1192 and §1933-17 rather than under this act. Op. Atty. Gen. (469c-1), June 5, 1937.

Village of Wadena had no right to purchase 120 acres outside corporate limits at a price of \$7,200 for use as a public bathing beach and for park purposes. Op. Atty. Gen. (476b-10), June 9, 1937.

Act does not include gift to state teachers college at St. Cloud. Op. Atty. Gen. (359a-9), June 11, 1937.

Village council may acquire land outside corporate limits of village for park and recreation purposes and appropriate money from general revenue fund not exceeding \$2,000 without submitting proposition to electors, if village has sufficient money on hand or available out of current tax levy in process of collection. Op. Atty. Gen. (476b-10), Jan. 17, 1938.

Town may operate recreational program without vote of electors of town and where no special levy is provided for expenses may be paid from general fund. Op. Atty. Gen. (519e), Apr. 12, 1938.

City of Le Sueur is authorized to construct a municipal swimming pool and playground, and may issue bonds therefor in an unlimited amount so long as total bonded indebtedness does not exceed 10% of assessed valuation of property. Op. Atty. Gen. (59b-11), Apr. 27, 1938.

School buses may be used to transport musical organizations to other cities and villages in connection with exchange of programs, and contributions for defraying expenses may be accepted. Op. Atty. Gen. (166a-9), June 13, 1938.

City may provide inhabitants with transportation to public park and bathing beach. Op. Atty. Gen. (59b-11), June 24, 1938.

School board may purchase land for recreational purposes without vote of electors, and law applies to all districts however organized. Op. Atty. Gen. (622i-1), July 1, 1938.

It is not necessary for city of St. James to submit question of constructing a swimming pool to electors where expenditure is for work and materials, but question of purchasing site must be submitted to voters. Op. Atty. Gen. (59b-11), Aug. 1, 1938.

A township or village may expend public funds to acquire land for purpose of creating an artificial lake, in connection with a program of public recreation. Op. Atty. Gen. (330-5), Sept. 2, 1938.

School authorities may offer musical instruction, and defray expense thereof out of current expense fund, but they may not purchase uniforms for school bands out of tax money, but such uniforms may be purchased out of recreational fund. Op. Atty. Gen. (159B-11), July 5, 1939.

School board owning part of block in a village may purchase or lease another part of the block for playground purposes. Op. Atty. Gen. (622i-2), August 8, 1939.

**1933-9b. Same—May act independently or cooperatively.**—Any city, however organized, or any village, borough, town, county, school district, or any board thereof may operate such a program independently, or they may cooperate in its conduct and in any manner in which they may mutually agree; or they may delegate the operation of the program to a recreation board created by one or more of them, and appropriate money voted for this purpose to such board. In the case of school districts the right to enter into such agreements with any other public corporation, board or body, or the right to delegate power to a board for operating a program of recreation, shall be authorized only by a majority vote cast at an annual school election, provided that expenditures for this purpose shall not be included under maintenance cost in the computation of supplemental aid to the local school district as provided by Section 3030, Mason's Minnesota Statutes for 1927 as amended. (Apr. 15, 1937, c. 233, §2.)

Unexpended school district funds, not otherwise obligated, can be used for recreational purposes, but school

board cannot operate a recreational program in connection with another political subdivision, or donate money to a recreation board, without vote of people. Op. Atty. Gen. (159b-11), June 1, 1937.

School district may own and operate recreation building jointly with township if voters authorize it. Op. Atty. Gen. (622b), Oct. 8, 1937.

**1933-9c. Same—Location of activities.**—Any corporation, board, or body hereinbefore designated, given charge of the recreation program is authorized to conduct its activities on

(1) property under its custody and management;

(2) other public property under the custody of any other public corporation, body, or board, with the consent of such corporations, bodies, or boards;

(3) private property, with the consent of its owners; and

(4) shall have authority to accept gifts and bequests for the benefit of the recreational service and employ directors and instructors of recreational work. (Apr. 15, 1937, c. 233, §3.)

Village may accept as a gift playground equipment and right to use property not belonging to village. Op. Atty. Gen. (844b-1), June 13, 1938.

**1933-9d. Same—State board of education to establish qualifications.**—In all cases where school funds or property are utilized, the state board of education shall:

(1) Establish minimum qualifications of local recreational directors and instructors;

(2) Prepare or cause to be prepared, published and distributed adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry out the provisions of this act. (Apr. 15, 1937, c. 233, §4.)

State board may prescribe reasonable qualifications for recreation directors and instructors, and may require that they hold a teacher's certificate and such additional qualifications as board may prescribe. Op. Atty. Gen. (172B), June 21, 1939.

**1933-9e. Same—Recreation program to be for education purposes.**—The facilities of any school district, operating a recreation program pursuant to the provisions of this act, shall be used primarily for the purpose of conducting the regular school curriculum and related activities, and the use of school facilities for recreation purposes authorized by this act shall be secondary. (Apr. 15, 1937, c. 233, §5.)

**1933-10. Memorial buildings, etc.**

A village may combine in one building a memorial hall, a fire hall and council room. Op. Atty. Gen., Nov. 27, 1929.

Village council may rebuild soldiers' memorial building destroyed by fire and pay for same out of fire insurance money without submitting matter to vote of people. Op. Atty. Gen. (310f), Apr. 27, 1934.

A village council has power to construct a village hall without vote of electors, unless bond issue is necessary, or to erect a building as a memorial to war veterans with vote of electors, but has no authority direct to erect a community building with or without vote of electors. Op. Atty. Gen. (476b-8), Feb. 11, 1935.

City may erect a building or arena to be used as indoor skating rink and bathhouse, and issue bonds therefor. Op. Atty. Gen. (59b-11), Nov. 21, 1935.

Village may take over a memorial hall constructed by American Legion Post, and use such building as a combined memorial hall, city hall, council room, and rest room, and may rent the premises for public purposes, for entertainment, public dances or other gatherings, providing such renting does not interfere with public use of property, and does not tie hands of succeeding governing bodies of the village, but cannot assume a mortgage thereon, payment of purchase price in cash or bonds being necessary. Op. Atty. Gen. (476b-8), Mar. 2, 1937.

Memorial building may be used as a field house for sports and recreational purposes. Op. Atty. Gen. (59b-9), Mar. 5, 1937.

This act amends and supersedes Laws 1921, c. 257 (§§1710-1 and 1710-2). Id.

Only one site may be designated in resolution in election notice. Op. Atty. Gen. (59b-9), Sept. 25, 1937.

Provisions of this section with respect to election prevail over provisions of home rule charter requiring approval of 60% of electors of purchase of property of value of more than \$3,000. Id.

**1933-14. Same—Construction of law.**

This act amends and supersedes Laws 1921, c. 257 (§§1710-1 and 1710-2). Op. Atty. Gen. (59b-9), Mar. 5, 1937.

**1933-15. Licensing restaurants, etc., in villages and boroughs.**

Village may, within reasonable limitations, regulate closing and opening hours of restaurants, chicken shacks and nite clubs, and provide reasonable limitations upon which vendors may sell non-intoxicating beverages. Op. Atty. Gen., July 28, 1932.

A village may within reasonable limitations regulate the closing and opening hours of restaurants, chicken shacks and night clubs and provide reasonable regulations upon which vendors may sell non-intoxicating malt beverages. Op. Atty. Gen. (477a), Apr. 24, 1934.

Villages can regulate closing hours of restaurants but not drug stores, etc., and may extend closing hours, and hours for sale of malt liquor provided extension is uniform for all businesses regulated. Op. Atty. Gen. (477b-35), June 2, 1936.

Village council may regulate opening and closing hours of restaurant selling non-intoxicating malt liquors, but may not do so where certain beverages are not sold. Op. Atty. Gen. (477b-35), Sept. 23, 1936.

**1933-17. Transfer of funds for maintenance of band.**—Cities of the second, third and fourth class, villages, boroughs or townships, however organized, may when authorized as hereinafter provided, levy each year a tax not to exceed two mills for the purpose of providing a fund for the maintenance or employment of a band for municipal purposes; provided, however, that no such levy by any such municipality shall exceed in any one year the sum of \$10,000.00 nor any such levy by any such township shall exceed the sum of \$1000.00. Any and all sums so levied shall be separately levied, and when collected shall be paid into a separate, special fund and used for the purposes aforesaid; provided, however, that in the event taxes have been levied and collected for the maintenance or employment of a band for municipal purposes and the band shall have been discontinued or the city, village, borough or township "by a vote of the people as now provided by law" shall have decided not to employ a band, said city or village council may transfer the said sum so levied and collected as aforesaid to the general fund of said municipality; no such levy shall be made for any such fund when, at the proper time for the making thereof, according to the municipal records of the receipts thereof and disbursement therefrom, there shall be in such fund an unexpended balance amounting to as much as the maximum levy permitted by law therefor, reckoning in such receipts all uncollected but not delinquent taxes, and reckoning in such disbursements all outstanding obligations against such fund. ('27, c. 79, §1; Apr. 16, 1931, c. 171; Mar. 23, 1937, c. 82, §1.)

Act Apr. 22, 1939, c. 421, applicable by its descriptive terms to villages, boroughs and cities of the fourth class in Scott County alone, authorizes such municipalities to levy a tax for free musical entertainment and a municipal band. A worthy cause, but unconstitutional as local and special.

City of International Falls is authorized by §1737 to levy a tax for musical entertainment of public in public places or public grounds, but has no power to levy a tax for "band purposes" under Laws 1927, c. 79. State v. Keyes, 188M79, 246NW547. See Dun, Dig. 6688a.

Tax may be levied in excess of the 2% limit fixed by Mason's Stat. 1927, §1225. Op. Atty. Gen., July 5, 1929.

Laws 1927, c. 79 [§§1933-17 to 1933-22], repealed G. S. 1923, §§1192, 1367 and 1737, and levy cannot be made without consent of taxpayers. Op. Atty. Gen., Oct. 28, 1929.

Village may contract with existing band association for the giving of public concerts, the form of the contract being in the discretion of the council. Op. Atty. Gen., May 3, 1930.

This act repeals §1737 insofar as appropriating money for band purposes is concerned. Op. Atty. Gen., Feb. 15, 1933.

Taxes illegally collected under §1367 after it was repealed by this act should be transferred to general fund. Op. Atty. Gen., May 26, 1933.

This act did not repeal §1737. Op. Atty. Gen., Aug. 15, 1933.

City council cannot levy a tax for band purposes without submitting the matter to a vote of the people, nor can it transfer money from the general fund or any other fund to the band fund. Op. Atty. Gen. (59b-3), June 6, 1934.

Where village has two bands and council employs one band, the other band has no right to any part of the money raised by the tax. Op. Atty. Gen. (59b-3), July 31, 1934.

Band fund may be used for repair of roof of band stand. Op. Atty. Gen. (469c-1), Mar. 12, 1935.

Time within which levy may be made by village for band or other purposes is directory and not mandatory. Op. Atty. Gen. (519h), Dec. 23, 1935.

City may pay salary of band director out of entertainment fund, but a city may not transfer money from general fund or any other fund to band fund. Op. Atty. Gen. (59b-3), July 28, 1936.

City council of Worthington under its home rule charter may transfer surplus moneys from water and light fund to musical entertainment fund in such amount as in exercise of its official judgment and discretion may be necessary to subservise public purpose. Op. Atty. Gen. (519h), May 18, 1937.

Villages should furnish musical entertainment in form of band concerts pursuant to §1192 and §1933-17 rather than under Laws 1937, c. 233. Op. Atty. Gen. (469c-1), June 5, 1937.

Municipality may hire more than one band and may hire an instructor as an incident to maintenance and employment. Op. Atty. Gen. (519h), June 16, 1937.

Appropriation for bands or musical entertainment purposes cannot be made where no tax has been levied for such purpose. Op. Atty. Gen. (469c-1), May 9, 1938.

Village may levy a tax to assist in maintenance of American Legion post drum and bugle corps providing public musical entertainment. Op. Atty. Gen. (519h), July 27, 1938.

Village council is not required to levy entire amount authorized. Op. Atty. Gen., (519h), Oct. 31, 1938.

**1933-18. Same—Petition for election.**—Said authority shall be initiated by a petition signed by ten per cent of the legal voters of the city, village, borough or township, as shown by the last regular municipal election. Said petition shall be filed with the governing body of each city, village, borough, or township, and shall request that the following question be submitted to the voters, to-wit: "Shall a tax of not exceeding . . . . . mills be levied each year for the purpose of furnishing a band fund?" (As amended Mar. 23, 1937, c. 82, §2.)

Section 1192 was not impliedly repealed by §1933-18, and village may levy one mill tax without vote of electors. Op. Atty. Gen. (519h), July 29, 1937.

**1933-19. Same—Election.**—When such petition is filed, the governing body of such city, village, borough or township shall cause said question to be submitted to the voters at the first following general municipal election of such city, village, borough or township. (As amended Mar. 23, 1937, c. 82, §3.)

Notice of submission of proposition may be incorporated in regular notice of annual village election. Op. Atty. Gen. (785e-1), Nov. 13, 1935.

**1933-20. Same—Election—Vote required to carry.**—Said levy shall be deemed authorized if a majority of the votes cast at said election be in favor of the proposition, and the governing body of such city, village, borough or township shall then levy a tax sufficient to support or employ such band, not to exceed the rate authorized by the election. (As amended Mar. 23, 1937, c. 82, §4.)

Unmarked ballots must be considered in opposition to band tax. Op. Atty. Gen., Mar. 18, 1929.

Submission of a ballot to vote on a two mill tax does not work a cancellation or rescission of an existing one mill tax if it fails to carry. Op. Atty. Gen. (469c-1), Feb. 21, 1939.

**1933-21. Same—Petition and election for rescission of tax levy.**—A like petition may at any time be presented to the governing body of each city, village, borough or township asking that the following proposition be submitted, to-wit: "Shall the power to levy a tax for the maintenance or employment of a band be canceled?" Said submission shall be made at any general municipal election as heretofore provided, and if a majority of the votes cast at such election be in favor of said question no further levy for said purpose shall be made until such time as the said question may again be voted upon favorably as heretofore provided. (As amended Mar. 23, 1937, c. 82, §5.)

**1933-22. Same—Use of funds.**—All funds derived from said levy shall be expended as set out in Section one hereof by the governing body of each city, village, borough or township. (As amended Mar. 23, 1937, c. 82, §6.)

Laws 1895, c. 8, §285 [Mason's Minn. Stat. 1927, §1933-32, note].  
Op. Atty. Gen., May 3, 1930.

Under Sp. Laws, 1891, c. 2, subc. 9, chief of police of Chaska must be a resident of the city. Op. Atty. Gen., Apr. 8, 1929.

This section is controlling over Mason's Minn. Stat., §§2211-2215, as to a city organized and operating under this act. Op. Atty. Gen., Dec. 26, 1929.

**1933-23. Civil Service Commission for Firemen created in certain cities.**—There may be created in every city except cities of the first class, and in villages having a population of 2,000 inhabitants or more, and having a fire department consisting of two or more regularly employed and paid firemen, a firemen's civil service commission with powers and duties as hereinafter provided. (Act Mar. 11, 1929, c. 57, §1; Jan. 13, 1936. Ex. Sess. c. 13.)

Laws 1929, c. 57, held not violative of Const. Art. 4, §§33, 34, 36. 189M352, 230NW830(2).

This act is constitutional. State v. McDonald, 188M157, 246NW900. See Dun. Dig. 6560.

The purpose of Laws 1931, c. 347, was to make operative §§4368, 4369, and it operated as an amendment to Laws 1929, c. 57, Id.

Act does not apply to a city or village having a fire department consisting of two regularly employed and paid firemen and volunteers. Op. Atty. Gen. (688b), Aug. 11, 1934.

City of International Falls with two regularly paid firemen on a monthly salary may accept benefits of act. Op. Atty. Gen. (688b), July 9, 1937.

**1933-24. Last Federal census to control.**—In determining the population of any such municipality, the last federal census or the last census taken therein by authority of the State of Minnesota, shall be conclusive as to the population thereof, for the purpose of this act. (Act Mar. 11, 1929, c. 57, §2.)

**1933-25. City or Village Council to adopt resolution.**—Any city or village in the class mentioned in Section 1 [§1933-24] of this act which may wish to avail itself of the provisions of this act, shall do so by a resolution of its common council, expressly accepting the provisions hereof, which resolution shall be adopted by a vote of a majority of all the members of said council, and be approved by the mayor of such city or the president of such village council, and this act shall not apply to any such city or village until the adoption as aforesaid of such resolution. (Act Mar. 11, 1929, c. 57, §3.)

Resolution adopting this act is in nature of a legislative act required to have three readings under charter of city of Hastings. Op. Atty. Gen. (62b), May 2, 1938.

**1933-26. Membership—Duties—terms of office.**—Said commission shall consist of three members who shall be citizens of the state and resident of such city or village, and shall be appointed by the council of said city or village, as the case may be, and when first created one commissioner shall be appointed for the term of one year, who shall be president of said commission, one for the term of two years, and one for the term of three years, and all said commissioners shall hold their office until their successors are appointed and qualified. No commissioner shall at the time of his appointment or while serving, hold any other office or employment under the city or village, the United States, the State of Minnesota, or any public corporation or political division thereof, other than the office of notary public. Each commissioner, before entering upon his duties, shall subscribe and file with the city clerk or village recorder, an oath for the faithful discharge of his duties. There shall be appointed each year thereafter by the said council one member of the said commission whose term of office shall be for three years, and each member of said commission shall be president of the term for which he is appointed. (Act Mar. 11, 1929, c. 57, §4.)

Same person cannot hold offices of police civil service commissioner and firemen's civil service commissioner. Op. Atty. Gen., Jan. 22, 1934.

**1933-27. Meetings.**—The commission shall first meet immediately after its appointment and thereafter on the first Monday in February of each year at which said meetings it shall select from its members a secretary who shall serve until his successor is elected. The commission shall from time to time

fix the times of its meetings, and adopt, amend, and alter rules for its procedure. (Act Mar. 11, 1929, c. 57, §5.)

**1933-28. Members to serve without pay.**—Each commissioner shall serve without pay but the council may allow the secretary such compensation, not exceeding one hundred dollars per year, as it shall deem commensurate with the additional services rendered by said secretary. The council shall pay from the municipal treasury all expenses incurred by the commission in connection with the performance of its duties and shall furnish said commission with all supplies, stationery and equipment it may require, but all bills and accounts shall be audited and approved by the president and secretary of said commission before being paid by the council. (Act Mar. 11, 1929, c. 57, §6.)

Power to purchase fire truck and equipment is vested in city council and not in civil service commission. Op. Atty. Gen. (688c-1), Mar. 5, 1937.

**1933-29. Powers and duties of Commission.**—The commission shall have absolute control and supervision over the employment, promotion, discharge and suspension of all officers and employees of the fire department of such city or village and these powers shall extend to and include the chief and assistant chief of such, and all inspectors, fire wardens, electricians, engineers, auto mechanics, clerks and other persons exclusively engaged in the fire prevention and protection service in said city or village.

The commission shall immediately after its appointment and organization grade and classify all of said employees of the fire department of said city or village and a service register shall be prepared for the purpose, in which shall be entered, in their classes, the names, ages, compensation, period of past employment and such other facts and data with reference to each employee as the commission may deem useful.

The commission shall keep a second register to be known as the application register in which shall be entered the names and addresses in the order of the date of application of all applicants for examination and the offices, or employments they seek. All applications shall be upon forms prescribed by the commission and shall contain such data and information as the commission shall deem necessary and useful. (Act Mar. 11, 1929, c. 57, §7.)

This act is complete in itself and controls over §4368 which provides that age shall not prevent a preference if the applicant is qualified. State v. McDonald, 185M 194, 240NW361. See Dun. Dig. 6560, 6600, 7986.

State v. Ritchel, 192M63, 255NW627; note under §9722. Police and fire departments civil service commissions cannot act for both policemen and firemen. Op. Atty. Gen., Feb. 2, 1934.

City council and not civil service commission fixes salary of members of department. Op. Atty. Gen. (688b), Apr. 30, 1935.

Where city has fire department consisting of three full time employees who are paid regular monthly salary and several so-called volunteer employees, including the chief, who are paid by the hour for service as they may render, civil service commission has jurisdiction only over the three employees. Op. Atty. Gen. (688b), Dec. 30, 1938.

**1933-30. Same.**—The commission shall, immediately after its appointment and from time to time thereafter, make, amend, alter and change rules to promote efficiency in the fire department service and to carry out the purposes of this chapter. The rules shall provide among other things, for:

(a) The classification of all offices and employments in the fire department.

(b) Public competitive examinations to test the relative fitness of applicants.

(c) Public advertisement of all examinations at least ten days in advance in a newspaper of general circulation in said city or village and posting said advertisement for ten days in the city or village hall and at each station house.

(d) The creation and maintenance of lists of eligible candidates after successful examination in order of their standing in the examination and without reference to the time of examination. Such lists shall

be embraced in an eligible register. The commission may by rule provide for striking any name from the eligible register after it has been two years thereon.

(e) The rejection of candidates or eligibles who, after the entry of their names shall fail to comply with the reasonable rules and requirements of the commission in respect to age, residence, physical condition or otherwise, or who have been guilty of criminal, infamous, or disgraceful conduct, or of any willful misrepresentation, deception or fraud in connection with the examination or in connection with their applications for employment.

(f) The certification of the name standing highest on the appropriate list to fill any vacancy.

(g) Temporary employment without examination, with the consent in each case of the commission, in cases of emergency, but no such temporary employment shall continue more than 30 days nor shall successive temporary employments be permitted for the same position.

(h) Promotion based on competitive examination and upon records of efficiency, character, conduct, and seniority.

(i) Suspension with or without pay, for not longer than 60 days and for leave of absence, with or without pay.

(j) Such other rules not inconsistent with the provisions of this act as may from time to time be found necessary to secure the purposes of this act.

Copies of such rules shall be kept posted in a conspicuous place at each fire station house and no rules of general application with reference to employment, promotion, discharge or suspension shall be effective until so posted. (Act Mar. 11, 1929, c. 57, § 8.)

(h). Laws 1931, chapter 347, has no effect upon the seniority rights of the members of the fire department. Op. Atty. Gen., Sept. 29, 1931.

Where eight men were appointed firemen at the same time and it later became necessary to discharge three of them to make room for veterans, commission could not discharge the one who stood at the head of the eligible list at time of appointment. State v. Ritchel, 192M63, 255NW627. See Dun. Dig. 6560.

**1933-31. Removal or discharge—Hearings.**—No officer or employee after six months' continuous employment shall be removed or discharged except for cause, upon written charges and after an opportunity to be heard in his own defense as in this chapter hereinafter provided. Such charges shall be investigated by or before such civil service commission. The findings and decision of such commission shall be forthwith certified to the chief or other appointing or superior officer, and will be forthwith enforced by such officer. Nothing in this act shall limit the power of any officer to suspend a subordinate for a reasonable period not exceeding 60 days for the purpose of discipline, or pending investigation of charges when he deems such suspension advisable. (Act Mar. 11, 1929, c. 57, § 9.)

**1933-32. Commission to grade employees.**—The commission shall ascertain the duties of each office, position and employment in the fire protection service of such city or village, and designate by rule as well as may be practicable the grade of each office, employment or position. The commission shall prescribe standards of fitness and efficiency for each office, position and employment and for each grade, and adapt its examinations thereto. (Act Mar. 11, 1929, c. 57, § 10.)

**1933-33. Examinations—Examiners.**—All examinations shall be impartial, fair and practical and designed only to test the relative qualifications and fitness of applicants to discharge the duties of the particular employment which they seek to fill. No question in any examination shall relate to the political or religious convictions or affiliations of the applicant. All applicants for positions of trust and responsibility shall be specially examined as to moral character, sobriety and integrity, and all applicants for positions

requiring special experience, skill or faithfulness shall be specially examined in respect to those qualities. It shall be the duty of the chief of the fire department and of every employee to act as an examiner or assistant examiner, at the request of the commission, without special compensation therefor. The members of the commission collectively or individually may act as examiners or assistant examiners. (Act Mar. 11, 1929, c. 57, § 11.)

**1933-34. Notice of examinations.**—Notice of the time, place and scope of each examination shall be given by publication and posting as specified in Section 8, and by mailing such notice to each applicant upon the appropriate list of the application register ten days in advance. The names of those found eligible upon examinations after giving credit for character and previous successful experience, shall be entered with their addresses and percentages on the eligible register. No name shall remain upon the eligible register more than two years without a new application and, if the rules of the commission so require, a new examination. When a vacancy has been filled or new appointment made the names selected shall be stricken from the eligible register and transferred to the service register. (Act Mar. 11, 1929, c. 57, § 12.)

**1933-35. Charges to be filed—Trial.**—Charges of inefficiency or misconduct may be filed with the secretary of the commission by a superior officer or by any member of the commission of his own motion, and thereupon the commission shall try the charges after not less than ten days written notice to the accused. Such notice shall set forth the charges as filed. In the event that the charges are filed by a member of the commission the complaining commissioner shall not sit. The trial of said charges shall be open to the public and each commissioner shall have the power to issue subpoenas and to administer oaths and to compel the attendance and testimony of witnesses and the production of books and papers relevant to the investigation. The commission shall require by subpoena the attendance of any witness requested by the accused who can be found in the county in which such city or village is located. The commission may make a complaint to the district court of disobedience of its subpoenas or orders under this section, and the court shall prescribe notice to the person accused and require him to obey the commission's subpoena and order, if found within the lawful powers of the commission, and punish disobedience as a contempt of court. Witnesses shall be entitled to the same fees and mileage as for attendance upon the district court, except that any officer, agent, or employee of said city or village who receives compensation for his services, shall not be entitled to fees or mileage. (Act Mar. 11, 1929, c. 57, § 13.)

**1933-36. Suspension or removal.**—If after investigation and trial by the civil service commission as herein provided an employee is found guilty of inefficiency, breach of duty, or misconduct, he may be removed, reduced or suspended and his name may be stricken from the service register. If the board shall determine that the charges are not sustained, the accused, if he has been suspended pending investigation, shall be immediately reinstated and shall be paid all back pay due for the period of suspension.

Findings and determinations hereunder and orders of suspension, reduction, or removal, shall be in writing and shall be filed within three days after the completion of such hearing with the secretary of the commission and it shall be the duty of the secretary to notify such employee of said decision in writing. Any person suspended, reduced, or removed by the commission after investigation may appeal from the order to the district court by serving written notice thereof upon the secretary within ten days after the filing of said order or the receipt by said employee of written notice of said order as above provided.



Within five days thereafter, the secretary shall certify to the clerk of the district court, the record of the proceedings, including all documents, testimony and minutes. The case shall then be at issue and shall be placed on the calendar by the clerk to be tried before the court without jury at the next general term thereof to be held in the county where said city or village is located at the place nearest said city or village. The question to be determined by the court shall be:

"Upon the evidence was the order of the commission reasonable?" After trial in the district court an appeal may be taken from the decision thereof to the supreme court by the employee or the commission in the same manner as provided for other court cases. (Act Mar. 11, 1929, c. 57, §14.)

**1933-37. Certain acts to be misdemeanors.**—An applicant for examination, appointment or promotion in the fire prevention service of said city or village who shall, either directly or indirectly, give, render or pay or promote to give, render or pay any money, service or other thing to any person, for or on account of or in connection with his examination, appointment or proposed appointment or promotion shall be guilty of a misdemeanor and shall also be subject to suspension or removal. (Act Mar. 11, 1929, c. 57, §15.)

**1933-38. Same.**—Any officer or employee of the fire department, when operated under civil service in accordance with the provisions of this chapter, who shall in any manner directly or indirectly solicit, receive or pay, or be in any manner concerned in soliciting, receiving or paying any assessment, subscription or contribution for any party or political purpose shall be guilty of a misdemeanor and shall be subject to suspension or removal. (Act Mar. 11, 1929, c. 57, §16.)

Local civil service commission may not prohibit firemen "from rendering any political service." Op. Atty. Gen., Feb. 10, 1933.

**1933-39. Same.**—Any person who shall solicit or receive directly, or indirectly, or be in any manner concerned in soliciting or receiving any assessment, contribution, or payment for any political purpose whatever from any officer or employee in a fire department operated under civil service as in this chapter provided for, shall be guilty of a misdemeanor. (Act Mar. 11, 1929, c. 57, §17.)

**1933-40. Commission may be abolished.**—Any firemen's civil service commission hereafter created, pursuant to the provisions of this act, except where such civil service commission has been continuously in operation for eight years or more, may be discontinued and abolished as follows: A petition signed by 25 per cent of the number of legal voters voting at the last general municipal election, shall be filed with the governing body of such city or village, and shall request that the following question be submitted to the voters, to-wit: "Shall the Firemen's Civil Service Commission be abolished?" (Laws 1929, c. 57, §18; Apr. 13, 1931, c. 152, §1; Apr. 21, 1939, c. 379.)

**1933-41. Elections.**—When such petition is filed, the governing body of such city or village shall cause said question to be submitted to the voters at the first following general municipal election.

Such commission shall be deemed to be abolished if two-thirds of the votes cast in said election be in favor of such abolishment; and the status of the fire department and all of the employees thereof shall thereafter be deemed to be the same as if said commission had not been created. (Laws 1929, c. 57, §19; Apr. 13, 1931, c. 152, §2.)

**1933-42. Municipalities may pass zoning ordinance.**—That for the purpose of promoting health, safety, order, convenience, prosperity, and general welfare, any city of the third or fourth class or any village in this state, acting by or through its governing body, may by ordinance regulate the location, size,

use and height of buildings, the arrangement of buildings on lots, and the density of population within such city or village; may make different regulations for different districts thereof; and may acquire or prepare and adopt a comprehensive plan for the future physical development and improvement of such city or village, in accordance with the regulations made as aforesaid, and may thereafter alter said regulations or plan, such alterations, however, to be made only by a two-thirds vote of all the members of the governing body of such city or village. Provided that after the adoption of an ordinance hereunder and within ten days after its publication such ordinance may be suspended in effect upon the filing of a petition signed by resident freeholders of the municipality in a number equal to not less than ten per cent of the legal voters of the municipality requesting that the question of permitting the council to zone the city be submitted to the electors at a general or special election, and the said ordinances shall not again become effective until a majority of the electors voting on the question approve the proposition permitting the governing body to zone the municipality. (Act Apr. 12, 1929, c. 176, §1; Apr. 22, 1935, c. 235, §1; Apr. 29, 1935, c. 376, §1.)

Justification for a zoning ordinance lies in police power exerted in public interest, and legislature may not unreasonably and arbitrarily restrict use of private property, neither may it permit a use of property which unreasonably and arbitrarily infringes rights of others, as by creation of a nuisance. *Gunderson v. A.*, 190M245, 251NW515. See *Dun. Dig.*, 6525.

If reasonableness of a zoning ordinance is debatable, courts will not interfere with discretion which is primarily legislature's, but court is free to find and determine facts upon which reasonableness of a zoning ordinance depends. *Id.*

Zoning ordinance attempting to permit maintenance of funeral home near residences, held void as being unreasonable and arbitrary. *Id.*

City of Mankato may regulate so-called "automobile graveyards" by passing of zoning ordinance. Op. Atty. Gen., Jan. 30, 1930.

A proposal under this act may be submitted at a special election called for that purpose to be held on the same date as the state-wide primary election. Op. Atty. Gen., May 23, 1930.

Where city charter gave city council power to adopt a zoning ordinance, it was not necessary to again submit the matter to the voters under this section. Op. Atty. Gen., Feb. 18, 1931.

A zoning ordinance may not be enacted for a mere aesthetic purpose. Op. Atty. Gen., Feb. 8, 1932.

Entire ordinance should be published verbatim, and not merely synopsis. Op. Atty. Gen., May 20, 1932.

A village council may not enact an ordinance fixing minimum cost of building to be erected within prescribed area. Op. Atty. Gen., Mar. 14, 1934.

Blank ballots are to be excluded in computing total votes cast. Op. Atty. Gen. (59a-32), Apr. 16, 1935.

Zoning ordinance passed where majority voting on such specific question favored it, though election was held at same time as general city election and proposition was contained on same ballot, though there was not a majority of all persons voting at the general election. Op. Atty. Gen. (59a-32), May 3, 1935.

Zoning Ordinance may be adopted in cities of second class without vote of electors. Op. Atty. Gen. (59a-32), Oct. 6, 1935.

Laws 1935, c. 376, did not repeal Laws 1935, c. 235, amending this section. *Id.*

Zoning Ordinance for gasoline filling stations held unreasonable and invalid. Op. Atty. Gen. (477b-10), May 25, 1936.

Where Zoning Ordinance is passed, but before it goes into effect state officers granted permit under old Code, right to construct the building depends upon whether any substantial part of the building is constructed before the new Ordinance goes into effect. Op. Atty. Gen. (59a-32), July 24, 1936.

Any village may pass a Zoning Ordinance forbidding construction of filling station within residence district. Op. Atty. Gen. (477b-10), Sept. 10, 1936.

Prohibiting the keeping of turkey ranches within a small village, but permitting families to have a few chickens or turkeys for their own use, would be valid if turkey ranches were in fact a nuisance. Op. Atty. Gen. (477b-20), Nov. 5, 1936.

Village may pass ordinance governing kind of material to be used in construction of building, requiring plumbers, plasterers and electricians to have license from village, regulate height of ceilings, so long as regulation tends to protect health, safety and comfort. Op. Atty. Gen. (477b-11), Jan. 22, 1937.

Filing of application for a permit to construct filling station gives no person such right as will prevent amendment of ordinance prohibiting filling stations, unless he does something of a substantial character

toward construction of station before enactment of new zoning ordinance. Op. Atty. Gen. (59a-32), Dec. 7, 1937.

In absence of an ordinance regulating construction of buildings, it is not necessary that one obtain a permit before erecting a building. Op. Atty. Gen. (471e), Apr. 25, 1938.

Village council may adopt ordinance regulating location, size and use of buildings to be erected, and in order to ascertain whether any proposed building complies with ordinance, may require building permits to be obtained from council. Id.

Village may not fix minimum cost of buildings to be erected in village. Op. Atty. Gen., (477b-3), Oct. 13, 1938.

**1933-43. May enforce regulations.**—The governing body of any such city or village is hereby authorized to pass ordinances for the enforcement of the provisions of this act and of the regulations of the governing body under this act, and to provide, in and by such ordinances, penalties for the violation thereof. Such governing body is also hereby authorized to enforce its regulations under this act by mandamus, injunction, or any other appropriate remedy in any court having jurisdiction thereof. (Act Apr. 12, 1929, c. 176, §2.)

**1933-44. To be construed as additional to existing laws.**—In any such city or village having a planning commission, the provisions of this act shall be construed as an addition to existing powers and not as an amendment to or a repeal thereof, and the governing body may adopt a plan or plans prepared by such planning commission. (Act Apr. 12, 1929, c. 176, §3.)

**1933-45. Application.**—This act shall also apply to cities operating under home rule charters adopted pursuant to Section 36, Art. 4, of the State Constitution, but shall not modify, limit or affect in any way the power to enact planning and zoning regulations contained in any such charter in the manner prescribed therein. (Laws 1929, c. 176, §4; Apr. 15, 1931, c. 163.)

**1933-46. Cities and villages may levy taxes for advertising purposes.**—That the governing body of any village, borough, or city of the fourth class may, when authorized by the electors thereof as hereinafter provided, annually levy a tax of not to exceed one-half mill on all the taxable property within such village, borough or city, but in no event shall more than \$1,000.00 be raised in any one year for the purpose of advertising the said village, borough or city and its resources and advantages. Such tax shall be levied in the same manner and at the same time as taxes for other municipal purposes are levied, and shall be collected in the same manner. The proceeds of such tax shall be used only for the purpose of advertising such village, borough or city and its resources and advantages; provided, however, that the annual expenditure for such purposes by any such village, borough or city is hereby limited to the sum of \$1,000.00, provided, however, nothing in this act shall permit the levy of any tax in excess of the amount authorized by Chapter 417, General Laws 1921 [§§2061 to 2066]. (Act Apr. 20, 1929, c. 276, §1.)

**1933-47. To be voted on by city or village.**—Such governing body may by resolution adopted at least 20 days before any general village, borough or city election provide for submitting to the voters at such election, to be voted upon by ballot, the question of levying a tax as provided in Section 1 [1933-46] hereof. If a majority of the votes cast on the question be in favor of the proposition, the same shall be deemed carried, and the governing body may levy such tax annually for two successive years. No such tax shall be levied thereafter unless again authorized by the electors as herein provided. (Act Apr. 20, 1929, c. 276, §2.)

**1933-48. Police civil service commissions in certain cities.**—There may be created in every village or city, except a city of the first class, of this state, a police civil service commission with powers and duties as hereinafter provided.

Any city or village in the class mentioned in this Act which may wish to avail itself of the provisions hereof, shall do so by a resolution of its governing body, expressly accepting the provisions hereof, which resolution shall be adopted by a vote of a majority of all the members of said governing body, and be approved by the mayor of such city or the president of such village governing body, and this Act shall not apply to any such city or village until the adoption as aforesaid of such resolution. (Act Apr. 23, 1929, c. 299, §1; Apr. 10, 1933, c. 197, §1; Mar. 1, 1935, c. 34, §1.)

Statute is not unconstitutional as special legislation, as lacking uniformity of operation, or because it embraces a subject not expressed in title. *Naeseth v. V.*, 185M526, 242NW6. See *Dun. Dig.* 1631.

This act did not affect the general power of supervision of the Mayor of Eveleth over the police department. Op. Atty. Gen., Nov. 25, 1930.

A commission created by resolution cannot be abolished by vote of the electors. Op. Atty. Gen., Jan. 21, 1931.

A city council wishing to create a police civil service commission may proceed either by ordinance or by resolution. Op. Atty. Gen., Jan. 21, 1931.

An ordinance creating a police civil service commission cannot provide that it may be repealed and the commission abolished by a repealing ordinance or by a vote of the electors. Op. Atty. Gen., Jan. 21, 1931.

City council of Eveleth had authority to place juvenile officer within the Police Department under the jurisdiction of the Police Civil Service Commission. Op. Atty. Gen., Feb. 3, 1932.

City may adopt civil service commissions relating to police departments, notwithstanding home rule charter provisions. Op. Atty. Gen., Oct. 11, 1933.

This act applies to all cities within the class, including cities operating under home rule charters, notwithstanding inconsistent provisions in home rule charters, and it is unnecessary to amend home rule charters. Op. Atty. Gen. (785E), Nov. 16, 1934.

Adoption of resolution and appointment of police civil service commission on December 31, at a ballot meeting of old village board could not be rescinded at meeting of newly elected board, but there must be an election to determine the question of abolishment. Op. Atty. Gen. (785e-1), Mar. 19, 1935.

Resolution adopting this act is in nature of a legislative act required to have three readings under charter of city of Hastings. Op. Atty. Gen. (62b), May 2, 1938.

There is no requirement for approval or disapproval by city attorney. Op. Atty. Gen. (785E), April 14, 1939.

**1933-49. Membership—Appointment—Oath.**—Said commission shall consist of three members who shall be citizens of the state and residents of such city or village, and shall be appointed by the mayor or president of said city or village, as the case may be, and the appointment of each of said commissioners, to be confirmed by a majority vote of the governing body thereof, and when first created one commissioner shall be appointed for the term of one year, who shall be president of said commission, one for the term of two years, and one for the term of three years, and all said commissioners shall hold their office until their successors are appointed and qualified. No commissioner shall at the time of his appointment or while serving hold any other office or employment under the city or village, the United States, the State of Minnesota, or any public corporation or political division thereof, other than the office of Notary Public. Each commissioner, before entering upon his duties, shall subscribe and file with the city clerk or village recorder an oath for the faithful discharge of his duties. There shall be appointed each year thereafter by the said mayor or president one member of the said commission whose term of office shall be for three years, and each member of said commission shall be president of said commission during the last year of the term for which he is appointed. (Act Apr. 23, 1929, c. 299, §2.)

Same person cannot hold offices of police civil service commissioner and firemen's civil service commissioner. Op. Atty. Gen., Jan. 22, 1934.

Where term of office of commissioner has expired and mayor attempted to reappoint same person and his confirmation was unanimously voted down by council and mayor refuses to appoint any other, mayor may be compelled to make appointment by mandamus. Op. Atty. Gen. (785e-2), Apr. 24, 1934.

Terms of office cannot be lengthened or shortened by a municipal ordinance. Op. Atty. Gen. (785e-1), Apr. 25, 1935.

President of council of city of Marshall, in absence of mayor who is in distant hospital and unable to act, may call special meeting of council and appoint a police civil service commissioner to fill a vacancy, and may also vote on question of confirmation of such appointment. Op. Atty. Gen. (61a), May 14, 1938.

Police civil service commissioner may not hold office of school trustee. Op. Atty. Gen. (785d), July 18, 1938.

As affecting residence of commissioner, a person's place of residence is that place in which his habitation is fixed and to which, whenever he is absent he intends to return. Op. Atty. Gen. (785e), Aug. 10, 1938.

Where a police civil service commissioner is appointed by mayor and council refuses to confirm, president of council cannot make appointment in case mayor fails to submit a person satisfactory to council, but mayor may be compelled by mandamus to act in the matter. Op. Atty. Gen. (785e), March 13, 1939.

**1933-50. Meeting.**—The commission shall first meet immediately after its appointment and thereafter on the first Monday in February of each year at which said meetings it shall select from its members a secretary who shall serve until his successor is elected. The commission shall from time to time fix the times of its meetings, and adopt, amend, and alter rules for its procedure. (Act Apr. 23, 1929, c. 299, §3.)

**1933-51. Commissioners to serve without pay.**—Each commissioner shall serve without pay but the council may allow the secretary such compensation, not exceeding \$100.00 per year, as it shall deem commensurate with the additional service rendered by said secretary. The council shall pay from the municipal treasury all expenses incurred by the commission in connection with the performance of its duties and shall furnish said commission with all supplies, stationery and equipment it may require, but all bills and accounts shall be audited and approved by the president and secretary of said commission before being paid by the council. (Act Apr. 23, 1929, c. 299, §4.)

**1933-52. Duties of commission.**—The commission shall have absolute control and supervision over the employment, promotion, discharge and suspension of all officers and employees of the police department of such city or village and these powers shall extend to and include all members of the police department.

The commission shall immediately after its appointment and organization grade and classify all of said employees of the police department of said city or village and a service register shall be prepared for the purpose, in which shall be entered, in their classes, the names, ages, compensation, period of past employment and such other facts and data with reference to each employee as the commission may deem useful.

The commission shall keep a second register to be known as the application register in which shall be entered the names and addresses in the order of the date of application of all applicants for examination and the offices or employments they seek. All applications shall be upon forms prescribed by the commission and shall contain such data and information as the commission shall deem necessary and useful. (Act Apr. 23, 1929, c. 299, §5.)

Law vests in commission the exclusive power to discharge a chief of police, thereby depriving municipal councils of power of removal. *Naeseth v. V.*, 185M526, 242NW6. See Dun. Dig. 6591.

Where city police civil service commission classified all police employees of city, and classification made is alleged to be erroneous, and in violation of soldiers' preference act, proper remedy is certiorari to review the classification made and not mandamus to compel a reclassification. *State v. Ernest*, 197M599, 268NW208. See Dun. Dig. 6560.

City welfare worker appointed by mayor of city of Rochester under ordinance No. 283 did not come under jurisdiction of police civil service commission by reason of ordinance No. 467, and could be removed by mayor. *Mestad v. C.*, 198M558, 270NW577. See Dun. Dig. 6558a.

Where additional classes of officers or employees are added to the Police Department, the commission has power to change its classifications and add thereto. Op. Atty. Gen., Feb. 3, 1932.

Police and fire departments civil service commissions cannot act for both policemen and firemen. Op. Atty. Gen., Feb. 2, 1934.

The only powers of the police civil service commission are in connection with employment, promotion, discharge, suspension of employees, while the general powers of control and supervision remain with governing body of municipality. Op. Atty. Gen. (785e-1), Mar. 19, 1935.

Commission has exclusive power to discharge chief of police. Op. Atty. Gen. (785e-4), Apr. 12, 1935.

City council and not civil service commission fixes salary of members of department. Op. Atty. Gen. (688b), Apr. 30, 1935.

Commission may not establish rule requiring retirement from active duties upon reaching certain age. Op. Atty. Gen. (785i), Nov. 10, 1936.

Powers of a police civil service commission are in connection with employment, promotion, discharge and suspension of police officers and general powers of control and supervision over police force remain with mayor and city council as provided in city charter. Op. Atty. Gen. (785e-1), Jan. 20, 1937.

Mayor and council of city have power to determine number of police officers who shall be employed. Op. Atty. Gen. (785e-2), Oct. 11, 1937.

Although mayor and city council have power to determine number of police officers who shall be employed and to fix amount of appropriations for police department and salaries of officers and employees, police civil service commission should determine which officer or employee should be discharged to reduce number to that provided for. Id.

Mayor and city council have power to determine whether position of night watchman should be established in the police department and determine his hours of employment and nature of his duties, but civil service commission has control over appointment. Id.

Adoption of police civil service commission did not affect duty placed by charter upon mayor to appoint head of police department, except that such appointment must be made from eligible list provided by commission. Op. Atty. Gen. (785-2), Oct. 26, 1937.

Number of police is to be determined by city council, but appointment thereof must be by civil service commission. Op. Atty. Gen. (785e-2), Mar. 18, 1938.

General powers of control and supervision, as well as power of determining number of employees, is still vested in mayor or city council according to city charter, and only provisions of city charter inconsistent with this act are superseded. Op. Atty. Gen. (785e-2), June 3, 1939.

**1933-53. May make rules for police department.**—The commission shall, immediately after its appointment and from time to time thereafter, make, amend, alter and change rules to promote efficiency in the police department service and to carry out the purposes of this chapter. The rules shall provide among other things for:

(a) The classification of all offices and employments in the police department.

(b) Public competitive examinations to test the relative fitness of applicants.

(c) Public advertisements of all examinations at least ten days in advance in a newspaper of general circulation in said city or village and posting said advertisement for ten days in the village or city hall and at each station house.

(d) The creation and maintenance of lists of eligible candidates after successful examination in order of their standing in the examination and without reference to the time of examination. Such lists shall be embraced in an eligible register. The commission may by rule provide for striking any name from the eligible register after it has been two years thereon.

(e) The rejection of candidates or eligibles who, after the entry of their names, shall fail to comply with the reasonable rules and requirements of the commission in respect to age, residence, physical condition or otherwise, or who have been guilty of criminal, infamous, or disgraceful conduct, or of any willful misrepresentation, deception or fraud in connection with their applications for employment.

(f) The certification of the name standing highest on the appropriate list to fill any vacancy.

(g) Temporary employment without examination, with the consent in each case of the commission, in cases of emergency but no such temporary employment shall continue more than 30 days nor shall successive temporary employments be permitted for the same position.

(h) Promotion based on competitive examination and upon records of efficiency, character, conduct, and seniority.

(i) Suspension with or without pay for not longer than 60 days and for leave of absence, with or without pay.

(j) Such other rules not inconsistent with the provisions of this act as may from time to time be found necessary to secure the purposes of this act.

Copies of such rules shall be kept posted in conspicuous place at each police station house and no rules of general application with reference to employment, promotion, discharge or suspension shall be effective until so posted. (Act Apr. 23, 1929, c. 299, §6.)

*Mayor has no voice in matter of rules and regulations by commission.* Op. Atty. Gen., (785e-2), July 14, 1939.

Civil service commission by a majority vote may at any time adopt a rule as to retirement aid though it affects a police officer who has been steadily employed since establishment of commission. Id.

(e). Civil service rule requiring chief of police to be resident of city is valid. Op. Atty. Gen. (785b-3), June 25, 1936.

**1933-54. Officers discharged only after hearing.**—No officer or employee after six months' continuous employment shall be removed or discharged except for cause upon written charges and after an opportunity to be heard in his own defense as in this chapter hereinafter provided. Such charges shall be investigated by or before such civil service commission. The finding and decision of such commission shall be forthwith certified to the chief or other appointed or superior officer, and will be forthwith enforced by such officer. Nothing in this act shall limit the power of any officer to suspend a subordinate for a reasonable period not exceeding 60 days for the purpose of discipline, or pending investigation of charges when he deems such suspension advisable. (Act Apr. 23, 1929, c. 299, §7.)

*Mestad v. C.*, 198M558, 270NW577; note under §1933-52. Police civil service commission had power of summary removal of police officers during first six months of its regime. *Saholt v. C.*, 185M510, 242NW4. See Dun. Dig. 6591.

Where city police civil service commission classified all police employees of city, and classification made is alleged to be erroneous, and in violation of soldiers' preference act, proper remedy is certiorari to review the classification made and not mandamus to compel a reclassification. *State v. Ernest*, 197M599, 268NW208. See Dun. Dig. 6560.

Police civil service commission could, at any time within six months after it was created, discharge an employe without cause even though such employe may have been employed by the department for more than six months prior to the creation of the commission. Op. Atty. Gen., May 23, 1931.

By enactment of §1933-63(a) legislature intended to take from commission power to summarily remove employees of police department employed at time of establishment of commission, and who have been so employed for six months or longer. Op. Atty. Gen. (785e-2), May 16, 1938.

A policeman passing examination and employed as an extra may be discharged by commission at any time unless he has actually been employed for one continuous period of six months, though he has been an extra policeman for several years. Op. Atty. Gen. (785d), July 6, 1938.

Police commission may reconsider order removing police officer, even though district court found removal order reasonable. Op. Atty. Gen. (785e-2), August 3, 1939.

**1933-55. Commission to make rules and prescribe standards.**—The commission shall ascertain the duties of each office, position and employment in the police protection service of such city or village, and designate by rule as well as may be practicable the grade of each office, employment or position. The commission shall prescribe standards of fitness and efficiency for each office, position, and employment and for each grade, and adapt its examination thereto. (Act Apr. 23, 1929, c. 299, §8.)

**1933-56. Examinations.**—All examinations shall be impartial, fair and practical and designed only to test the relative qualifications and fitness of applicants to discharge the duties of the particular employment which they seek to fill. No question in any examination shall relate to the political or religious convictions or affiliations of the applicant. All applicants for

positions of trust and responsibility shall be specially examined as to moral character, sobriety and integrity, and all applicants for position requiring special experience, skill or faithfulness shall be specially examined in respect to those qualities. It shall be the duty of the chief of the police department and of every employee to act as an examiner or assistant examiner, at the request of the commission, without special compensation therefor. The members of the commission collectively or individually may act as examiners or assistant examiners. (Act Apr. 23, 1929, c. 299, §9.)

**1933-57. Notice of examinations.**—Notice of the time, place and scope of each examination shall be given by publication and posting as specified in Section 6 [§1933-53], and by mailing such notice to each applicant upon the appropriate list of the application register ten days in advance. The names of those found eligible upon examination, after giving credit for character and previous successful experience, shall be entered with their address and percentages on the eligible register. No name shall remain upon the eligible register more than two years without a new application, and, if the rules of the commission so require, a new examination. When a vacancy has been filled or new appointment made, the names selected shall be stricken from the eligible register and transferred to the service register. (Act Apr. 23, 1929, c. 299, §10.)

**1933-58. Charges to be filed with Secretary of commission.**—Charges of inefficiency or misconduct may be filed with the secretary of the commission by a superior officer or by any member of the commission of his own motion, and thereupon the commission shall try the charges after no less than ten days' written notice to the accused. Such notice shall set forth the charges as filed. In the event that the charges are filed by a member of the commission the complaining commissioner shall not sit. The trial of said charges shall be open to the public and each commissioner shall have the power to issue subpoenas and to administer oaths and to compel the attendance and testimony of witnesses and the production of books and papers relevant to the investigation. The commission shall require by subpoena the attendance of any witness requested by the accused who can be found in the county in which such city or village is located. The commission may make complaint to the district court of disobedience of its subpoenas or orders under this section, and the court shall prescribe notice to the person accused and require him to obey the commission's subpoena and order, if found within the lawful powers of the commission, and punish disobedience as a contempt of court. Witnesses shall be entitled to the same fees and mileage as for attendance upon the District Court, except that any officer, agent, or employee of said city or village who receives compensation for his services, shall not be entitled to fees or mileage. (Act Apr. 23, 1929, c. 299, §11.)

Charges of inefficiency and misconduct in office may not be filed by private citizens. Op. Atty. Gen. (785a), March 29, 1939.

**1933-59. Suspension and removal—Reinstatement.**—If, after investigation and trial by civil service commission as herein provided, an employee is found guilty of inefficiency, breach of duty, or misconduct, he may be removed, reduced, or suspended and his name may be stricken from the service register. If the board shall determine that the charges are not sustained, the accused, if he has been suspended pending investigation, shall be immediately reinstated and shall be paid all back pay due for the period of suspension.

Findings and determinations hereunder and orders of suspension, reduction, or removal, shall be in writing and shall be filed within three days after the completion of such hearing with the secretary of the commission and it shall be the duty of the secretary

to notify such employee of said decision in writing. Any person suspended, reduced, or removed by the commission after investigation may appeal from the order to the district court by serving written notice thereof upon the secretary within ten days after the filing of said order or the receipt by said employee of written notice of said order as above provided.

Within five days thereafter, the secretary shall certify to the clerk of the district court, the record of the proceedings, including all documents, testimony and minutes. The case shall then be at issue and shall be placed on the calendar by the clerk to be tried before the court without jury at the next general term thereof to be held in the county where said city or village is located at the place nearest said city or village. The question to be determined by the court shall be:

"Upon the evidence, was the order of the commission reasonable?" After trial in the district court an appeal may be taken from the decision thereof to the supreme court by the employee or the commission in the same manner as provided for other court cases. (Act. Apr. 23, 1929, c. 299, §12.)

**1933-60. Certain acts a misdemeanor.**—An applicant for examination, appointment or promotion in the police department service of said city or village who shall, either directly or indirectly, give, render or pay or promise to give, render, or pay any money, service or other thing to any person, for or on account of or in connection with his examination, appointment or proposed appointment or promotion shall be guilty of a misdemeanor and shall also be subject to suspension or removal. (Act Apr. 23, 1929, c. 299, §13.)

**1933-61. Certain acts a misdemeanor.**—Any officer or employee of the police department, when operating under civil service in accordance with the provisions of this chapter, who shall in any manner directly or indirectly solicit, receive or pay, or be in any manner concerned in soliciting, receiving or paying, any assessment, subscription or contribution for any party or political purpose, shall be guilty of a misdemeanor and shall be subject to suspension or removal. (Act Apr. 23, 1929, c. 299, §14.)

**1933-62. Certain acts a misdemeanor.**—Any person who shall solicit or receive directly or indirectly, or be in any manner concerned in soliciting or receiving any assessment, contribution, or payment for any political purpose whatever from any officer or employee in a police department operated under civil service as in this chapter provided for, shall be guilty of a misdemeanor. (Act Apr. 23, 1929, c. 299, §15.)

**1933-63. Commission to be vested with powers in certain cases.**—Whenever any city or village has a civil service commission, the council may provide that such commission be vested with the powers and duties of the police civil service commission, as set forth herein. (Act Apr. 23, 1929, c. 299, §16.)

**1933-63a. Officers to come under commission.**—Any police officer regularly employed at the time of the creation of the civil service commission shall automatically come under the jurisdiction of the civil service commission. (Added to Act Apr. 23, 1929, c. 299 by Act Apr. 10, 1933, c. 197, §1.)

An employee of park board was not a police officer, though he had authority to arrest persons in park and carried a star. *McDougall v. B.*, 194M550, 261NW180. See *Dun. Dig.* 6558a.

By passage of this section legislature intended to take from commission power to summarily remove employees who were so employed at time of establishment of commission and who have been so employed for six months or longer. *Op. Atty. Gen.* (785e-2), May 16, 1938.

Only men regularly employed come within jurisdiction of commission, and men only employed temporarily while regular officers were on vacation or traffic was heavy were not "regularly employed". *Op. Atty. Gen.* (785e-2), June 3, 1939.

**1933-63b. Discontinuance of commission.**—Any police civil service commission hereafter created, pursuant to the provisions of this Act may be discontinued

and abolished as follows: A petition signed by 25 per cent of the number of legal voters voting at the last general municipal election shall be filed with the governing body of such city or village and shall request that the following question be submitted to the voters, to-wit: "Shall the police civil service commission be abolished?" (Added to Act Apr. 23, 1929, c. 299, by Act Apr. 10, 1933, c. 197, §1.)

A police civil service commission created prior to April 10, 1933, cannot be abolished either by city council or electors. *Op. Atty. Gen.* (785e-1), Dec. 31, 1934.

Adoption of resolution and appointment of police civil service commission on December 31, at a ballot meeting of old village board could not be rescinded at meeting of newly elected board, but there must be an election to determine the question of abolishment. *Op. Atty. Gen.* (785e-1), Mar. 19, 1935.

Police civil service commission created after April 10, 1933, can only be abolished by submitting proposition to vote of electors. *Op. Atty. Gen.* (785e-2), Apr. 26, 1935.

**1933-63c. To be submitted to voters.**—When such petition is filed, the governing body of such city or village shall cause said question to be submitted to the voters at the first following general municipal election.

Such commission shall be deemed to be abolished if two-thirds of the votes cast in said election be in favor of such abolishment; and the status of the police department and all of the employees thereof shall thereafter be deemed to be the same as if said commission had not been created. (Added to Act Apr. 23, 1929, c. 299, by Act Apr. 10, 1933, c. 197, §1.)

Notice of abolition of Police Civil Service Commission may be incorporated in notice of annual village election. *Op. Atty. Gen.* (785e-1), Nov. 13, 1935.

**1933-63d. Application.**—The provisions of this Act, with reference to the abolition of Civil Service Commission, shall not apply and shall have no force or effect, in any village or city in this state where a commission has already been created. (Added to Act Apr. 23, 1929, c. 299, by Act Apr. 10, 1933, c. 197, §1.)

Sec. 21 of Act Apr. 10, 1933, cited, repeals all inconsistent acts.

**1933-63m. Civil service commissions continued.**—Whenever a board or boards of civil service commissioners have been established for police or fire departments, under and pursuant to Chapter 57, Laws of 1929, and Chapter 299, Laws of 1929, and the acts amendatory thereof, in any village having a population of 5,000 inhabitants or more and having an assessed valuation of \$8,000,000.00 or more, exclusive of moneys or credits, such board or boards are hereby authorized and empowered to continue to act in carrying out the duties and terms of office, under and pursuant to such laws and adoption of said commission by the governing bodies of such villages, where such village or villages and adjacent territory, whether incorporated or unincorporated may now or hereafter become incorporated as a city of the second, third, or fourth class, or adopt the provision of a Home Rule Charter. (Act Mar. 8, 1933, c. 64, §1.)

Power to purchase fire truck and equipment is vested in city council and not in civil service commission. *Op. Atty. Gen.* (688c-1), Mar. 5, 1937.

**1933-63n. Policeman and Fireman Civil service continued.**—Any policeman's civil service commission or a fireman's civil service commission, which has been or which shall hereafter be duly established in the manner prescribed by law, by the governing body of any village coming within the classification as set forth in Section 1 of this act, shall continue uninterruptedly in the same manner as heretofore provided by said Chapter 57 of the Laws of 1929, and Chapter 299, Laws of 1929, and the acts amendatory thereof, when any such village adopts the provisions of a Home Rule Charter, or becomes incorporated as a city of the second, third, or fourth class. (Act Mar. 8, 1933, c. 64, §2.)

Sec. 3 of Act Mar. 8, 1933, cited, provides that the act shall take effect from its passage.

**1933-64. Villages and townships may cooperate in support of cemeteries.**—Where a village or township owns and maintains an established cemetery or burial ground, either within or without the municipal limits, said village or township may by mutual agreement with contiguous villages and townships each having an assessed valuation of not less than \$1,000,000.00, join together in the maintenance of such public cemetery or burial ground for the use of the inhabitants of each of such municipalities; and each such municipality is hereby authorized by action of its council or governing body to levy a tax or make an appropriation for the support and maintenance of such cemetery or burial ground, provided, the amount thus levied or appropriated by each municipality shall not exceed a total of \$1,000.00 in any one year. (Act Apr. 20, 1931, c. 262, §1.)

**1933-65. Limit to appropriations.**—Such appropriation by each municipality shall not exceed the per capita amount paid by any other municipality sharing therein, based on the populations of the respective units; provided, also, that any arrangement hereunder shall not alter the management, control of ownership of any cemetery. (Act Apr. 20, 1931, c. 262, §2.)

**1933-66. Certain assessments to be paid in twenty installments.**—Wherever any city of this state having a population of ten thousand or less, or any village or borough of this state, whether organized under a general law or a special law, shall heretofore have extended any existing sewer system or relayed, altered or extended any existing sewer system or established a general system of sewers or created sewer districts, or changed, diminished or enlarged the boundaries of such sewer districts, or established sewer treatment plants, under and pursuant to the provisions of Sections 1880 to 1906, inclusive, General Statutes of Minnesota for 1923, and acts amendatory thereof and supplemental thereto, and shall have heretofore issued warrants under and pursuant to said sections, as amended or supplemented, which warrants were used in making payments on contracts for any of the improvements hereinbefore referred to or were sold by the city, village or borough and the proceeds thereof used in paying for any of such improvements, and the Council of any such city, village or borough shall have heretofore under and pursuant to said sections, as amended or supplemented, adopted a resolution assessing each lot, piece or parcel or land benefited by any such improvement, which resolution provides among other things that such special assessment shall be payable in ten annual installments, and which resolution shall have heretofore been certified by the clerk or recorder of such city, village or borough and filed in his office, and either the whole or a part of said assessments and interest thereon have not been extended upon the tax roll and have not been carried into the tax against the property benefited by such improvement by the County Auditor of the County wherein such improvement is located, the Council of such city, village or borough may by resolution provide that the time of payment of not less than 75% of such unextended portion of said assessments against said real estate benefited by said improvement, shall be postponed, and such unextended portion of said assessments covered by such resolution shall become payable in twenty (20) annual installments; and that the first of said installments shall include any delinquent unextended interest; provided, however, that before any such resolution extending the time of payment of such unextended portion of said assessments shall have any force and effect, the owners of at least 75% of the outstanding warrants issued by said city, village or borough, to pay the cost of such improvement, shall consent in writing to such extension and manner of payment as set forth in such resolution, which said written

consent shall be filed with the Clerk of such city, village or borough.

Within twenty (20) days after the filing of the written consent of 75% or more of the owners of unpaid warrants to the extensions of time of payment of said unextended portion of said assessments, the Council of such city, village or borough shall, by resolution, direct the Clerk or Recorder of such village, city or borough, to make up and file in the office of the County Auditor, a certified statement covering unpaid portions of said assessments and interest which have not yet been extended by the Auditor and included in the tax roll of any year, and the amount of interest thereon which shall become due on the first day of January of the following year, in the amount which bears the same ratio to the total amount of unpaid and unextended assessments as the total amount of warrants owned by the persons consenting to such extension bears to the total amount of unpaid warrants; and the Clerk or Recorder of such village, city or borough shall, within twenty (20) days thereafter, make up and file such certified statement in the office of the County Auditor, which statement shall also contain a description of the real estate affected by the assessment.

A certified copy of such resolution shall also accompany such statement and upon filing said statement and a copy of said resolution with the County Auditor, it shall be the duty of the County Auditor, in accordance with said statement and resolution, to extend upon the tax roll each year, the amount of such assessment or installment thereof, as the case may be, and the amount of interest which shall become due on the first day of January of the following year, and the first installment so extended shall include any unextended delinquent interest, as shown by said certified statement, against the lots and parcels of land therein described, and such amounts, when so extended each year, shall be carried into the tax becoming due and payable in January of the following year, and enforced and collected in the manner provided for the enforcement and collection of State and County taxes. The said installments of assessments and interest shall be paid over by the County Treasurer to the Treasurer of such city, village or borough in the manner provided by law for the collection and payment of the assessments as originally authorized.

Any amount of said unpaid and unextended assessments not included in said statement filed by the said clerk of any city, village or borough with the County Auditor and not included in such extension agreement with the holders of outstanding warrants shall be certified by the said city, village or borough to said County Auditor and extended by him upon the tax roll in the manner originally provided for the collection of said assessments.

The passage of such a resolution by the city, village or borough extending the time of payment of such warrants and the consent to such extension of time of payment by the owners of said warrants shall take the place of and have the effect of invalidating any resolutions theretofore passed for the collection of any unpaid installments of said assessments not yet extended and placed upon the tax roll against the property affected by said improvement, and shall also cure any irregularities in the proceedings of the council of said city, village or borough, or in the official acts of said council, or of the County Auditor, affecting the collection of said unextended portions of said assessments.

In the event the owners of 75% or more of outstanding warrants shall file their consent to the postponement of the payment of said assessments as provided in said resolution, the council of said city, village or borough may, by resolution, authorize the issuance of new warrants to such owners, payable out of the sewer fund, to conform to the terms of said resolution, which said new warrants may be ex-

changed for existing warrants held by said warrant-holders; but such new warrants shall not place any greater obligation upon or liability against said city, village or borough than existed under the original warrants; and there shall be printed or stamped upon the face of such new warrants the following language: "This warrant is issued in lieu of an original warrant of the same number, series and amount, and in no way increases, enlarges or extends the obligation of the municipality." (Act Apr. 1, 1933, c. 138.)

**1933-67. Cities, etc., may indemnify police and fire department employees.**—That all cities, villages and boroughs in this state are hereby authorized to indemnify employees of the police and fire departments thereof against loss or expense arising or resulting from claims for bodily injuries, death or property damage made upon any such employee by reason of his operation of a motor vehicle while in the performance of his duties, and to defend in the name and on behalf of such employee any suit brought against him to enforce a claim, whether groundless or not, arising out of the operation of a motor vehicle by him while in the performance of his duties, and to compromise and settle any such claim or suit and to pay the amount of such settlement or compromise, or the amount of any judgment rendered against him on any such claim, without first requiring such employee to pay same. (Act Apr. 5, 1937, c. 149, §1.)

**1933-68. Municipalities may carry on city planning activities.**—Any municipality in the state is hereby authorized to carry on city planning activities and adopt a plan for the regulation of the future physical development of the municipality and to prepare and adopt an official map of all proposed alteration of existing lands and public spaces, and the future development of unplatted properties, and shall have power to approve subdivisions as hereinafter provided and require such approval prior to the filing of an official plat thereof. The term "municipality" as used in this act shall include any city, village, township or borough however organized. (Apr. 19, 1937, c. 287, §1.)

**1933-69. Same—Planning city developments.**—Any municipality may by formal procedure make a study of future developments of the municipality, including proposed public buildings, street arrangements and improvements, public utility services, parks, playgrounds and other similar developments. Such plans may be incorporated in resolutions or ordinances, in reports of officers or agents of the municipality or may be shown on formal planning maps or by a use of these and other methods singly or in combination. (Apr. 19, 1937, c. 287, §2.)

**1933-70. Same—May lay out streets.**—The governing body of any municipality aforesaid may provide for the future laying out of streets outside of platted territory and extending across unplatted territory within the corporate limits of such municipality. When it is thus desired to extend or reserve any lands for streets or other public use which are not yet dedicated to public use by platting or otherwise, or to provide for the future widening and improvement of an existing street or highway, the council shall direct the engineer of the municipality or other competent person to prepare a map of such platted or unplatted district indicating the proposed future extension or widening of existing streets of the municipality within such existing platted and developed territory or across such unplatted territory upon such map.

After such map has been prepared and filed with the governing body of the municipality, it shall be adopted and published as the official map of that portion of the municipality and thereafter whenever any such existing street or highway is widened or improved, or any such new street is opened, or lands for other public purposes are acquired by action of the municipality, it shall not be required in such

proceedings to pay for any building or structure whatsoever constructed upon such mapped street, or situated outside of any building line that may have been established upon the existing street, or within any area thus reserved for public purposes, placed there after the adoption and publication of said map.

No such map shall be adopted, however, or have any effect until approved by resolution duly adopted by the governing body of said municipality after a public hearing held at least 10 days after a public notice thereof is given in a legal newspaper published in that municipality. The adoption of said map shall not give the municipality any right or interest in such unplatted streets or other reserved areas except the right to secure the streets or lands indicated by the usual methods, but without the payment of compensation for any such improvement constructed upon the bed of the mapped street thereafter or outside of the established building line or within the reserved areas as herein provided. (Apr. 19, 1937, c. 287, §3.)

**1933-71. Same—To approve plats, etc.**—The governing body of any municipality is authorized by resolution to approve all plats of land hereafter proposed within that municipality or within two miles of its limit in any direction, provided that where two or more municipalities have contiguous territory or are situated with their boundaries less than four miles apart, each shall have control of the platting of land equidistant from its boundaries within this two-mile radius. After the adoption of planning regulations established under a city plan adopted pursuant to the provisions of this act, approval may be denied if the proposed plat fails to conform to the said plan or with any reasonable regulation of the municipality applicable thereto. No plat shall be filed or accepted for filing unless it is accompanied by a certified copy of the resolution approving it or accepting it as being in accord and conformity with any plans or regulations as herein specified. A copy of this resolution shall be supplied to the applicant.

When a copy of any plat is filed with a municipality for approval, published notice shall be given of a public hearing to be held within 30 days thereafter, in a newspaper published in that municipality or in the county if there is no newspaper published in the municipality. At such hearing all persons interested therein may be heard and the council may thereafter approve or disapprove said plat. Such approval or disapproval shall be given not more than 60 days after the filing of any plat with a formal request for its approval. The grounds for any refusal to approve a plat shall be set forth in the proceedings of the council and reported to the person or persons applying for such approval. Plats after approval as provided herein may then be recorded as now provided by law. (Apr. 19, 1937, c. 287, §4.)

**1933-72. Same—Plats must be checked.**—Before the approval of a plat as herein provided it shall be checked as to measurements of all lots, streets, and public lands. All proposed streets on such plat shall conform to the street plan of the municipality as adopted and laid out in the abutting territory and extended upon any official map of the adjacent district as authorized under this act. In considering requirements for the location and width of streets, the municipality shall take into consideration the prospective character of the development and make any reasonable requirements therefor.

As a condition precedent to the approval of the plat of lands located within the corporate limits of the municipality, the governing body may prescribe requirements of the extent to which and the manner in which streets shall be graded and improved, and water, sewer, and other utility mains, piping, connections, or other facilities shall be installed. The governing body may provide that, in lieu of the completion of such work before the final approval of a plat, the governing body may accept a bond, in an amount

and with such surety and conditions satisfactory to it, providing for the securing to the municipality the actual construction and installation of such improvements and utilities within a period specified by the governing body and expressed in the bond; and the municipality is hereby granted the power to enforce such bonds by all appropriate legal and equitable remedies.

In appropriate plots of subdivisions to be developed for residential uses (where the plot or subdivision is . . . . . acres or more in extent) the governing body of any municipality shall have the power to approve the same as herein provided, and may require that a portion of such land of sufficient size and character (and not less than . . . . . per cent of the total in any case) be set aside and dedicated to the public for public use as parks and playgrounds. (Apr. 19, 1937, c. 287, §5.)

**1933-73. Same—Public utilities must have permits.**—No utility, municipal service or improvement shall be constructed on any street, highway, alley, or other public way until the said street, highway, alley, or other public way has been approved by being designated upon a plat duly approved and accepted or properly indicated upon an official map of the municipality as herein provided. No permit for the erection of any building shall be issued unless it shall be located upon a street or highway giving access thereto which has been duly approved and placed on the official map, and shall conform to the building line established upon a street of the municipality and as projected into this plat or to the lines therein established. (Apr. 19, 1937, c. 287, §6.)

**1933-74. Same—Governing body may create and dissolve planning commission.**—The governing body of any city or village may by ordinance or resolution create, and, by unanimous vote thereof dissolve a planning commission of resident citizens who may or may not be officials to be advisory to that body, which commission when established, shall have the power to carry on the duties conveyed to the municipality hereunder, under direction of the city or village council. The council shall also adopt such penalties as it deems advisable, and impose them upon the violation of any of the provisions of a municipal ordinance or resolution adopted pursuant hereto as a misdemeanor, and may enjoin any such proposed or attempted law violation. (Apr. 19, 1937, c. 287, §7.)

**1933-75. Same—Application of Act.**—The powers conveyed under this act shall be in addition to all powers now possessed by any municipality subject to the provisions of this act, but this act shall not apply to cities now or hereafter containing a population of 50,000 or more inhabitants. (Apr. 19, 1937, c. 287, §8.)

Sec. 9 of Act Apr. 19, 1937, cited, provides that the Act shall take effect from its passage.

**1933-76. Bids for purchase of supplies.**—Whenever any county, township, city, borough, village or school district in this state calls for bids for the purchase of any supplies or equipment, no bid submitted shall be accepted unless competitive bids have also been submitted. (Apr. 24, 1937, c. 416, §1.)

This act applies to city of South St. Paul. Op. Atty. Gen. (707b-2), July 9, 1938.

Term "supplies or equipment", does not refer to contract for construction or repair of sidewalks, sewers, watermains and similar improvements involving work and labor as well as material, but does apply where city purchases material and hires work done. *Id.*

Act does not apply when contract also includes work or labor. Op. Atty. Gen., (707a-1), July 12, 1938.

Where there was not only a purchase of equipment but an installation under a contract requiring a substantial amount of work and labor, contract was not governed by this section and if bids were advertised for properly, even though there was only one bid, it was lawful to accept it. Op. Atty. Gen. (707a-12), May 25, 1939.

Act does not of itself require calling for bids but speaks only to insure competitive bidding when a municipality is otherwise required to call for bids. Op. Atty. Gen. (707b-2), Sept. 14, 1939.

**1933-77. Same—Bids shall not be exclusive.**—Specifications for supplies and equipment shall not be so prepared as to exclude all but one type or kind but shall include competitive supplies and equipment. (Apr. 24, 1937, c. 416, §2.)

**1933-78. Same—Application of act.**—The provisions of this act shall not apply to non-competitive types and kinds of supplies and equipment. (Apr. 24, 1937, c. 416, §3.)

**1933-79. Same—Violation a gross misdemeanor.**—The violation of any of the provisions of this act shall be a gross misdemeanor. (Apr. 24, 1937, c. 416, §4.)

**1933-81. Municipalities to furnish counsel to defend public officials.**—On and after the passage of this act, every city, village, borough, township or county of this State employing sheriffs, police officers or peace officers shall be required to furnish competent legal counsel to defend any sheriff, deputy sheriff, police officer or peace officer employed by any such governmental subdivision in all actions brought against such officer to recover damages for alleged false arrest, when such alleged false arrest was made by such officer in good faith and in the performance of his official duties, and shall pay reasonable costs and expenses of defending such suit, including witness fees and counsel fees, notwithstanding any contrary provisions in the laws of this State or in the Charter of any such governmental subdivision. (Apr. 24, 1937, c. 442, §1.)

**1933-82. Same—Cost and disbursements to be assigned to municipalities.**—If, at the termination of such suit, judgment is rendered in favor of the defendant and against the plaintiff, such judgment for costs and disbursements shall be assigned to such governmental subdivision by such officer, and all moneys collected thereon shall be paid to such governmental subdivision. If judgment be rendered in such action against such officer, such governmental subdivision so employing such officer is hereby authorized to appropriate moneys from any funds available to pay such judgment, if, in the discretion of the governing body of such governmental subdivision, it seems fitting and proper to do so. (Apr. 24, 1937, c. 442, §2.)

Sec. 3 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

INCORPORATION ACT FOR CITIES

ACT OF 1870, AS AMENDED

There is no statute regarding depositaries which is applicable to the City of Marshall. Op. Atty. Gen., June 18, 1931.

ACT OF 1895, AS AMENDED

**Laws 1895, c. 8.**  
Laws 1933, c. 181, §§255-3, 255-4, changing time for holding city elections in certain counties operating under this act, is unconstitutional. Op. Atty. Gen., Dec. 12, 1933.

**Laws 1895, c. 8, §42.**  
Laws 1933, c. 181, held unconstitutional as not operating uniformly throughout state. *Hiler v. C.*, 189M618, 250NW579. See *Dun. Dig.* 1683.

Laws 1933, c. 181, being unconstitutional, election of officers of cities coming under this act is to be held in odd numbered years. Op. Atty. Gen. (86a-20), Sept. 29, 1934.

**Laws 1895, c. 8, §51.**  
Lumber company whose local agent, receiving straight salary, is mayor of city, is not disqualified from selling materials to public contractor. Op. Atty. Gen. (90e-5), Jan. 10, 1939.

**Laws 1895, c. 8, §53.**  
Neither members of board of equalization of Red Lake Falls nor assessor of the city are entitled to compensation, other than compensation received as councilmen and assessor. Op. Atty. Gen. (406c), Aug. 3, 1934.

Salary of city assessor of Red Lake Falls should be fixed by the city council as provided by this section. Op. Atty. Gen. (406c), Aug. 3, 1934.

**Laws 1895, c. 8, §64.**  
The only powers of the police civil service commission are in connection with employment, promotion, discharge and suspension of police employees, and general powers of control and supervision remain with mayor. Op. Atty. Gen. (785-e), May 31, 1934.



**Laws 1895, c. 8, §66.**

Mayor has control over contingent fund set aside for use pursuant to §§66 and 149. Op. Atty. Gen., Oct. 5, 1933.

Mayor has no authority to spend money out of contingent fund for purposes not authorized by §§66 and 149. Op. Atty. Gen., Oct. 11, 1933.

**Laws 1895, c. 8, §88.**

Contracts may be entered into and indebtedness incurred only to amount of money in treasury in fund corresponding to indebtedness sufficient to pay or as there is a tax levy in actual process of collection sufficient to pay, but this does not apply to delinquent taxes. Op. Atty. Gen., May 23, 1933.

**Laws 1895, c. 8, §109.**

City council may acquire land outside corporate limits for an airport without submission of question to voters. Op. Atty. Gen. (59a-40), May 20, 1933.

**Laws 1895, c. 8, §126.**

Total bonded indebtedness of Thief River Falls must not exceed 10% of total value of taxable property, but bonds and certificates of indebtedness issued for purchase, construction, maintenance, enlargement and improvement of a water or light plant or local telephone exchange system are not included in arriving at limit. Op. Atty. Gen., May 23, 1933.

Warrants issued under §256, are not to be included in determining bond limit, and sinking funds payment of outstanding bonds may be deducted. Id.

Current indebtedness offset by current tax levy is not included within 10% indebtedness limit. Id.

Cities organized under this act are governed by this section and not by §1941, 1942, of Mason's Stats. of 1927, and city of Cloquet may issue sewage disposal bonds without vote of electors, if effect of issuance will not raise city's indebtedness above 5% of taxable property of city. Op. Atty. Gen. (59a-7), Oct. 10, 1935.

**Laws 1895, c. 8, §132.**

Cities organized under this act may purchase on earnings plan equipment for water and light plants without vote of people. Op. Atty. Gen., July 11, 1933.

**Laws 1895, c. 8, §133.**

City may erect a building or arena to be used as indoor skating rink and bathhouse, and issue bonds therefor. Op. Atty. Gen. (59b-11), Nov. 21, 1935.

City council of Red Lake Falls has authority to purchase land and erect a building to be used as a municipal liquor store without submitting matter to city electors. Op. Atty. Gen. (218p), Apr. 7, 1937.

**Laws 1895, c. 8, §135.**

Mason's Stat. 1927, §1799-1, et seq., does not apply to city of Cloquet with respect to construction of sewage disposal plant, but such city has authority to establish such a plant pursuant to Mason's Stat. 1927, §1880, et seq. Op. Atty. Gen. (387b-9), Aug. 7, 1935.

**Laws 1895, c. 8, §142.**

City of Cloquet cannot grant electric and power franchise without advertisement or bid. Op. Atty. Gen. (624c-6), July 15, 1936.

**Laws 1895, c. 8, §146.**

Mason's Stat., §10939-1, does not take precedence over provisions of this section. Op. Atty. Gen., Dec. 13, 1933.

This act is applicable to 5 cities. Id.

**Laws 1895, c. 8, §149.**

Op. Atty. Gen., Oct. 5, 1933; note under §66.

Op. Atty. Gen., Oct. 11, 1933; note under §66.

**Laws 1895, c. 8, §186.**

City of Cloquet may accept donation of a building to be used as a civic recreational center in connection with its park system. Op. Atty. Gen. (700d-16), Nov. 2, 1936.

**Laws 1895, c. 8, §207.**

Neither members of board of equalization of Red Lake Falls nor assessor of the city are entitled to compensation, other than compensation received as councilmen and assessor. Op. Atty. Gen. (406c), Aug. 3, 1934.

**Laws 1895, c. 8, §256.**

Warrants issued under this section are not included in determining bond limit under §126. Op. Atty. Gen., May 23, 1933.

**Laws 1895, c. 8, §296.**

City of Cloquet may consider an automobile a necessary expenditure for superintendent of poor, for which reimbursement may be had from county. Op. Atty. Gen. (339m), Mar. 31, 1936.

## CHAPTER 10

## Public Indebtedness

**1934. Scope of chapter.**

Utility bonds legalized. Laws 1939, c. 137.

Fourth class cities, villages or boroughs, located in counties having 350 to 400 sq. miles area, 13,500 to 15,000 population and \$5,000,000 to \$10,000,000 valuation, and an area of 225,000 to 230,000 acres, may levy 2 mills for municipal bond purposes. Laws 1939, c. 421.

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., 187 M161, 244NW558. See Dun. Dig. 6669b.

City treasurer cannot pay interest on orders previously presented for payment after there is money available for their payment, it being the duty of the holder to keep himself informed. Op. Atty. Gen., Mar. 28, 1932.

In absence of statute or charter provision, city order, presented for payment and not paid for want of funds, becomes payable as soon as there is money available, but such warrants should be paid in order of their presentation. Op. Atty. Gen., Mar. 28, 1932.

City may not legally enter into conditional sales contract for purchase of personal property. Op. Atty. Gen., June 3, 1932.

A village may not issue bonds to care for its poor. Op. Atty. Gen., Aug. 2, 1932.

City of Winona may use city hall sinking fund, which it has no present intention of immediately using, to meet unemployment crisis by lending it to general fund. Op. Atty. Gen., Aug. 17, 1932.

City of Little Falls under its charter may issue bonds without vote of electors. Op. Atty. Gen. (624d-1), Oct. 22, 1935.

Town board may not issue bonds to improve existing town roads. Op. Atty. Gen. (43b-4), Jan. 30, 1939.

Municipalities may purchase insurance from mutual companies provided there is a limitation upon liability of members and contingent liability is within maximum indebtedness of municipality. Op. Atty. Gen. (487c-1), August 23, 1939.

An outline of municipal bond procedure in Minnesota. 20 MinnLawRev 583.

**1935. Net indebtedness defined.**

174M509, 219NW872.

Finding of nonpayment of certain school district warrants sustained and considered decisive of case. 173M94, 216NW789.

Holder of warrants held entitled to recover from district though treasurer was managing officer of bank and

cashed the warrants with funds of bank and sold them as property of the bank. 175M166, 220NW428.

Purchaser of school warrants from bank was entitled to collect from district, where bank cashed warrants through its managing officer who was treasurer of school district and charged them to bills receivable and not to treasurer's account. 177M30, 224NW51.

Unaccrued rent is not a debt or present obligation of a city. Ambrozich v. C., 200M473, 274NW635. See Dun. Dig. 6579, 6701.

Public service contracts calling for payment in installments as services are rendered do not create an indebtedness against municipality until service is performed at which time installments fall due. Id.

Depository for county funds may deposit and assign county warrants as collateral security. Op. Atty. Gen., May 31, 1932.

Taxes levied and in process of collection cannot be deducted from the present indebtedness in determining debt limit of city. Op. Atty. Gen. (519c), May 26, 1936.

Obligation mentioned under subdivisions, 1, 3, 4, 5 of this section may be deducted in determining indebtedness of village under Laws 1885, c. 145, §22. Op. Atty. Gen. (59a-51), Nov. 20, 1936.

Power of village of Jeffers to issue certificates of indebtedness for purchase of fire apparatus and equipment is derived from Laws 1885, c. 145, and power of erecting a building to house the equipment is derived from §1942, but procedure for issuing certificates of indebtedness and bonds is restricted by general bonding statute, §§1938-3 to 1938-12. Op. Atty. Gen., (688c), June 27, 1938.

Drainage ditch bonds did not lose their character by reason of refunding. Op. Atty. Gen. (140f), June 10, 1939.

(2). Function of a permanent improvement revolving fund is to make fund immediately available to pay for improvements, but to be replenished by special assessments. Op. Atty. Gen. (44a-4), March 6, 1939.

**1935-1. Exemption of Tax Anticipated Loans.—**

Each city of the first class in the state is hereby authorized, in calculating net indebtedness, to deduct from the gross indebtedness thereof, in addition to deductions otherwise authorized by statute, the amount then outstanding of all loans in anticipation of the collection of general ad valorem taxes theretofore levied for city purposes, provided that the amount to be so deducted shall not exceed fifty per cent (50%) of such taxes which are then due and