

CHAPTER 125

SCHOOL BOARDS; POWERS AND DUTIES

125.01 SCHOOL BOARD; MEMBERSHIP; TERM.

HISTORY. 1861 c. 11 s. 9; 1862 c. 1 s. 10; 1865 c. 13 s. 5; G.S. 1866 c. 36 ss. 10, 58; 1877 c. 74 subc. 2 s. 2; 1877 c. 74 subc. 7 s. 3; G.S. 1878 c. 36 ss. 20, 97; 1881 c. 41 ss. 6, 10; 1885 c. 57 ss. 1, 2; G.S. 1894 ss. 3678, 3794; 1903 c. 38; R.L. 1905 ss. 1312 to 1314; 1909 c. 187 s. 2; G.S. 1913 ss. 2731 to 2733; G.S. 1923 ss. 2804 to 2806; M.S. 1927 ss. 2804 to 2806; 1939 c. 62 ss. 4, 5; M. Supp. ss. 2805, 2806; 1941 c. 169 art. 6 s. 1.

Public offices are incompatible when their functions are inconsistent, their performance resulting in antagonism and a conflict of duty, so that the incumbent of one cannot discharge with fidelity and propriety the duties of both. The office of treasurer of a school district and the office of county commissioner, in view of the duties of each relative to schools, are incompatible. *State ex rel v Sword*, 157 M 263, 196 NW 467.

The offices of town assessor and member of the school board in the same town are not incompatible. OAG March 6, 1933.

The functions and duties of county attorney and school treasurer are inconsistent, their performance resulting in antagonism and a conflict of duty so that the incumbent of one cannot discharge with fidelity and propriety the duties of both, and the two offices are incompatible. OAG July 26, 1934 (358a-1).

A county attorney cannot be a member of a school board. OAG Aug. 2, 1935 (358a-1); 1936 OAG 260.

When five members are present, two members vote for and two vote against a motion, the chairman, by declaring the motion carried, casts his vote in the affirmative, though he did not previously formally declare his vote. *Jensen v Ind. Con. School District*, 160 M 233, 199 NW 911.

Where the board of an independent school is holding a legal meeting and has been in session for six hours and nothing has been done and a motion to adjourn is made and the vote on the motion stands three to three, the chairman has no power to bring the meeting to an end either by declaring a recess or otherwise. OAG Nov. 4, 1933.

If three members of the board of an independent school district leave the meeting, the remaining three have no right to continue to legally conduct business. OAG Nov. 4, 1933.

A board member who moves his business to another community may continue to serve if he has not changed his legal residence. OAG April 2, 1934.

Laws 1939, Chapter 62, has the effect of shortening the term of the incumbent members of the school board. OAG April 5, 1939 (187a-6).

The directors selected by the electors of a common school district to supervise the building of a new school house have no right to vote with the members of the school board on questions having to do with the erection of the building, and are not entitled to any compensation. OAG Aug. 18, 1931.

The school board is a part of the executive department of government; but in the operation of the school system, it exercises not only purely administrative functions but others of a legislative character, and still others of a quasi-judicial character. The tenure act has not taken away from the school board its power to "superintend and manage the schools of the district." *State ex rel v Bd. of Education*, 213 M 569, 581, 7 NW(2d) 544.

While a school meeting may place a maximum on the amount which a school board may spend for a specific purpose, such as paying high school tuition, it may

MINNESOTA STATUTES 1945 ANNOTATIONS

125.02 SCHOOL BOARDS; POWERS AND DUTIES

764

not compel the board to spend the full amount so appropriated. The meeting has no control over the board's action in administrative matters. 1942 OAG 59, Oct. 3, 1941 (180).

Board may employ a janitor by contract which extends beyond the term of a member whose term will expire within the life of the contract. OAG April 25, 1944 (161a-25).

Where the school elections authorized closing of schools, the board under its administrative powers need not obey. OAG April 29, 1944 (161b-2).

Only a qualified voter in the district may be a member of the school board. OAG July 9, 1944 (187a-9).

The school board on its own motion may close one school, and transport its pupils to another school in the same district. OAG Sept. 15, 1944 (161b-2).

125.02 ORGANIZATION OF BOARDS IN INDEPENDENT DISTRICTS.

HISTORY. 1865 c. 13 s. 6; G.S. 1866 c. 36 s. 59; 1877 c. 74 subc. 7 s. 6; G.S. 1878 c. 36 s. 99; 1885 c. 57 s. 3; G.S. 1894 s. 3796; R. L. 1905 s. 1315; G.S. 1913 s. 2734; G.S. 1923 s. 2807; 1925 c. 124; M.S. 1927 s. 2807; 1939 c. 62 s. 6; M. Supp. s. 2807; 1941 c. 169 art. 6 s. 2.

A superintendent for an independent school district may be employed only during the pleasure of the board. *Jensen v Ind. Consol. School Dist.* 160 M 233, 199 NW 911.

Formal action of the board of an independent school district in refusing to reelect a superintendent is a termination of his contract. *Gilbertson v Ind. School District*, 208 M 51, 293 NW 129.

A superintendent may be employed at a meeting other than the organization meeting of a new board, and the new board can abrogate the contract with an attorney or a physician made by the old board. OAG Sept. 4, 1936 (768k-1).

A taxpayer cannot maintain an action to prevent an independent school district from making a contract of employment with a certain person as superintendent. *Jensen v Ind. Con. School District*, 160 M 233, 199 NW 911.

The superintendent of schools of an independent school district is made ex officio a member of the board, but without right to vote. Failure to give him notice of a special meeting of the school board does not invalidate its proceedings. *Gilbertson v Ind. School District*, 208 M 51, 293 NW 129.

Where by reason of a tie, the board has not been able to elect a treasurer, the old treasurer holds over until his successor has been elected, regardless of the fact that he is no longer a member of the board. OAG Sept. 5, 1934 (161a-19).

An official bond covering the term of the officer and "until successor is elected and qualified" extends only for a reasonable time after expiration of term. *American Surety Co. v Ind. School District*, (CCA8) 53 F(2d) 178. Certiorari denied, 284 US 683, 52 SC 200.

See *Teachers' Tenure*, 20 MLR 762.

The school board of an independent district selects the superintendent of schools who "shall hold his office during the pleasure of the board." The superintendent is not within the protection of the "tenure act." Relator's contract having expired, the board need not continue or renew the contract. *Eelkema v Board*, 215 M 592, 11 NW(2d) 76.

125.03 VACANCIES.

HISTORY. 1862 c. 1 s. 15; 1865 c. 13 ss. 6, 9; G.S. 1866 c. 36 ss. 15, 59, 62; 1877 c. 74 subc. 2 s. 3; 1877 c. 74 subc. 7 ss. 6, 9; G.S. 1878 c. 36 ss. 21, 99, 102; 1885 c. 57 s. 3; G.S. 1894 ss. 3679, 3796, 3799; 1899 c. 193; R.L. 1905 s. 1316; 1909 c. 187 s. 3; G.S. 1913 s. 2742; G.S. 1923 s. 2811; M.S. 1927 s. 2811; 1941 c. 169 art. 6 s. 3.

The office of a member of the school board leaving to reside elsewhere is automatically vacated. OAG Feb. 24, 1933.

MINNESOTA STATUTES 1945 ANNOTATIONS

765

SCHOOL BOARDS; POWERS AND DUTIES 125.05

Vacancy in the office of directors occasioned by the absence of an election in the spring of 1930 may be filled by appointment under this section. OAG Nov. 27, 1929.

An appointment to fill a vacancy should be until the next annual election at which time it will be filled for the balance of the unexpired term. OAG March 1, 1933. •

Where the leading two candidates for the office of director of an independent school district receive an equal number of votes, the result was a vacancy at the expiration of the term of the present member. OAG July 24, 1933.

Where three candidates ran to fill vacancies on board and two tied for second place, the tie vote had the effect of creating a vacancy at the expiration of the term of office of incumbent. OAG Aug. 2, 1933.

In case of a tie vote at a school election a second ballot cannot be taken, and there is a vacancy. OAG July 31, 1934 (187a-1).

125.04 SPECIAL ELECTION TO FILL VACANCY.

HISTORY. 1862 c. 1 s. 15; G.S. 1866 c. 36 s. 15; 1877 c. 74 subc. 7 s. 3; G.S. 1878 c. 36 s. 21; G.S. 1894 s. 3679; R.L. 1905 s. 1317; G.S. 1913 s. 2743; G.S. 1923 s. 2812; M.S. 1927 s. 2812; 1941 c. 169 art. 6 s. 4.

A vacancy in the board need not be filled by appointment as a condition precedent to filling such vacancy by the electors at the annual meeting. OAG July 25, 1934 (768o).

A vacancy in the office of members of a school board occasioned by lack of an election in the spring of 1930 may be filled under this section. OAG Nov. 27, 1929.

Where there is a tie vote in the election for a school officer and thereafter the board failed to fill the vacancy for a period of ten days and a special election was called and another tie vote resulted, the board may make an appointment to fill the vacancy. OAG Sept. 29, 1931.

A treasurer who had not filed his bond had no power to vote to elect a chairman of the board to fill a vacancy. OAG Oct. 12, 1933.

The only qualified member of a school board could not proceed to appoint a chairman to fill a vacancy. OAG Oct. 12, 1933.

A special meeting may be called for the purpose of electing a member of the board to fill a vacancy created by the removal of a member from the district. OAG May 11, 1934 (172c-1).

When the office of treasurer becomes vacant and the appointment by the board is only until the next succeeding annual election of the district, at which election a member be elected for the unexpired term, and where a vacancy is filled by a special election, the person elected holds office for the unexpired term. OAG April 23, 1936 (768n).

125.05 QUORUM.

HISTORY. 1865 c. 13 s. 8; G.S. 1866 c. 36 s. 61; 1877 c. 74 subc. 2 s. 5; 1877 c. 74 subc. 7 s. 8; G.S. 1878 s. 36 ss. 23, 101; 1879 c. 17; 1881 c. 41 s. 3; G.S. 1894 ss. 3681, 3798; R.L. 1905 s. 1319; G.S. 1913 s. 2745; G.S. 1923 s. 2814; M.S. 1927 s. 2814; 1933 c. 238; M. Supp. s. 2814; 1941 c. 169 art. 6 s. 5.

In an independent school district the majority of the board constitutes a quorum and the act of the majority of the quorum is the act of the board. Jensen v Ind. Con. School District, 160 M 233, 199 NW 911.

A director or trustee is not permitted to be a party to a contract entered into between himself and other trustees of a school district, stipulating for his services or employment upon terms, or for a compensation, fixed by such contract. Such a contract is voidable at the election of the district. Neil Currie v School District, 35 M 163, 27 NW 922; See, 16 MLR 871, 20 MLR 564.

In order to bind the district, contracts must be made or ratified by at least a majority of the board, after notice and opportunity to all the trustees to participate in the transaction. Currie v School District, 35 M 163, 27 NW 922. See, Andrews v

MINNESOTA STATUTES 1945 ANNOTATIONS

125.06 SCHOOL BOARDS; POWERS AND DUTIES

766

School District, 37 M 96, 33 NW 217; Kreatz v St. Cloud School District, 79 M 14, 81 NW 533; 82 M 516, 85 NW 518.

The notice required by this section to be given members of a school board of a meeting of the board must be a personal notice, must be given or authorized by the proper authority, and must be sufficient to give the member a reasonable opportunity to attend the meeting. Wood v School District, 137 M 138, 162 NW 1081.

Where two members of the board undertake to hold a meeting, without notice to the third member, and then prepare, execute, and submit in form a teacher's contract reciting that it was made "by the school board at a meeting called for that purpose" and the teacher executes it, the board is not estopped from urging the invalidity of the contract while it is executory. The voters of the school district cannot ratify such contract. The board is the only body that has the power of ratification thereof, and then only by acts as formal as those which were necessary to enter into the contract in the first instance. Martin v Common School District, 163 M 427, 204 NW 320.

Where all members of the school board are present and take part in a meeting of the board, any irregularity in giving of notice of such meeting is waived, and actions taken at such meeting by the majority of the members of the board are valid. Hlavka v Common School Dist. 192 M 169, 255 NW 820.

There was no legal notice where member of board was called on telephone but was out of town and had no actual notice of the meeting at which the architect was employed. OAG Nov. 23, 1931.

Where a board of education advertised for bids for painting, and accepted a bid, there was a contract, and the board could not thereafter reject the accepted bid. OAG May 19, 1932.

A special meeting of a school board having six members cannot be held where only three members are present, though the others were notified. OAG Feb. 24, 1933.

Where three members of a school board vote for the election of a teacher and three against, the motion fails to carry. OAG Feb. 24, 1933.

Where two brothers serve on same board of a common district, a teacher may be legally elected at a properly called meeting of the board attended by one of the brothers and a third member of the board. OAG June 8, 1934 (172c-2).

125.06 POWERS AND DUTIES OF SCHOOL BOARDS.

HISTORY. 1861 c. 11 ss. 11, 12, 13, 19; 1862 c. 1 ss. 10, 12, 13, 14, 26; 1864 c. 3 s. 1; 1865 c. 13 ss. 5, 6, 7, 17, 18, 20; 1865 c. 14 s. 1; G.S. 1866 c. 36 ss. 10 to 14, 26, 58, 59, 70, 71, 73; 1877 c. 74 subc. 2 s. 14; 1877 c. 74 subc. 7 s. 18; 1877 c. 74 subc. 8 s. 1; G.S. 1878 c. 36 ss. 32, 111, 116; 1881 c. 41 s. 5; 1881 c. 127 ss. 1 to 3; 1887 c. 125; G.S. 1878 Vol. 2 (1888 Supp.) c. 36 ss. 23a, 23b, 23c, 32a; 1893 c. 23 ss. 1, 4; G.S. 1894 ss. 3682, 3683, 3684, 3686, 3687, 3697, 3698, 3808, 3817, 3897, 3900; 1897 c. 205; R.L. 1905 s. 1320, 1321, 1324; 1907 c. 445 s. 1; G.S. 1913 ss. 2746, 2747, 2756; 1915 c. 25; 1917 c. 112 ss. 1, 2; 1917 c. 417; 1923 c. 431 s. 1; G.S. 1923 ss. 2815 to 2818, 2825; 1925 c. 98; 1927 c. 34; 1927 c. 370 ss. 1, 2 M.S. 1927 ss. 2815, 2816, 2816-1, 2816-2, 2816-3, 2817, 2818, 2823-1, 2825; 1929 c. 12; 1933 c. 105; 1937 c. 88 ss. 1, 2; 1937 c. 167 s. 1; M. Supp. ss. 2816, 2849-4, 2849-5; 1941 c. 169 art. 6 s. 6; 1941 c. 516; 1943 c. 118 s. 1; 1943 c. 266 s. 1; 1945 c. 365 s. 1.

1. General powers
2. School houses and sites
3. Equipment of schools
4. Improvements, insurance, and repairs
5. Heating and care of schools and garages
6. Use of schools for other than school purposes
7. Rules and regulations
8. Employment of teachers
9. Admission of nonresident and over-age pupils
10. Instruction of pupils in other districts

11. Organization of schools
12. Transportation of pupils
13. Control of school and quasi school activities
14. Claims against school district
15. Actions by or against the district

1. General powers

The school board did not have authority to purchase a mortgage, and the assignment may be rescinded. OAG Dec. 23, 1931.

A school board has authority to lease land for a gasoline filling station. OAG Dec. 21, 1931.

School district funds cannot be used to vaccinate school children to prevent the spread of smallpox during an epidemic. OAG Feb. 1, 1935 (611a-9).

While a school board has no power to expend money for medical or physical examination of children generally, it may provide for such examination of children who may apply for attendance at the next school session. OAG April 28, 1930; May 6, 1930.

A school district may employ a dentist to make examination of the teeth of pupils and to recommend dental work, but it is not legal for the district to divide or pay for the doing of the work itself. OAG Sept. 11, 1931.

A school district may employ a dentist to make examination of the teeth of school children and report their findings and to care for the teeth of students injured on playgrounds, but cannot pay for dental work such as filling and cleaning teeth, bridgework, and other similar services. OAG Aug. 8, 1934 (159b-7).

An independent school district may purchase a building to be used as a skating rink, etc. The school board cannot be compelled to purchase by a vote of the electors. OAG April 17, 1929.

A school district may not legally require of students in training departments payment of any fixed charges for any purpose. OAG Nov. 15, 1933.

A district has power to contract with a public accountant to audit its books and affairs. OAG Dec. 9, 1929.

School board has authority to retain an attorney for legal services. OAG March 8, 1935 (166b-2).

A school district may pay a part of the office rent, etc., in connection with a reemployment office where the district receives direct benefits from conducting such offices. OAG April 20, 1934 (159b-10).

School district may appropriate funds to pay the additional salary of a superintendent of construction under WPA project, the WPA furnishing all labor, including a superintendent of construction. OAG April 23, 1937 (159b-14).

The school district may not use its funds to purchase class pins and class colors for pupils. OAG April 4, 1932.

School district cannot expend funds for a private tutor for a backward pupil. OAG April 20, 1937 (159b-10).

School districts, not being liable for the negligence of their employees, may not take out liability and collision insurance. OAG Oct. 13, 1934 (159b-4).

School board is authorized to pay a fee for accrediting its high school to an association of colleges and high schools extending over the northern part of the United States. OAG June 30, 1933.

Independent school districts may, within certain limitations, purchase their own bonds at a discount before maturity and issue warrants in payment thereof, but only in such an amount that it will be able to issue additional warrants necessary to take care of other indebtedness. OAG April 21, 1934 (40).

A school board exercises not only executive or administrative powers but others of a legislative character, and still others of a quasi-judicial character. *State ex rel v Board*, 213 M 569, 7 NW(2d)544.

The law authorizes the attendance of school board members at meetings of the school board association, but the expenses of only one may be paid by the board. 1942 OAG 32, Mar. 5, 1942 (161a-12).

The board may not pay travel expense of a school board member in attending meetings of the board. 1942 OAG 33, Sept. 11, 1942 (161a-12).

The board is not authorized to pay expenses of a booth at a farmer's fair. 1942 OAG 43, Sept. 19, 1941 (159B-10).

The annual dues of school servants paid to national associations of which they are members may only be paid out of school funds, if the connection is definitely to the school district. OAG July 21, 1944 (159b-10).

2. School houses and sites

Where the officers of a school district, without lawful authority, borrow and expend money for the completion of a school house, no liability attaches to the district therefor, notwithstanding the benefit received from such expenditure. No estoppel or ratification can be inferred from its retention or enjoyment of the improvement in such case, for it has not opportunity to reject it. *Young v Board of Education*, 54 M 385, 55 NW 1112.

The purchase of a new school house site by the directors of the school district, followed by the board's order upon its treasurer for the amount of the purchase price and the payment thereof, was ratified by the action of the voters of the district at the next annual meeting. *Sorenson v School District*, 122 M 59, 141 NW 1105.

In 1881 the officers of the school district purchased a site for a school house, erected a school house thereon, and the district has ever since continued to use and occupy the same for educational and school purposes. All the records of the district relating to the selection and designation of such site by the voters have been lost. In view of such facts, it must be presumed that the site for the school house was selected and designated by the legal voters of the district and that the officers, in purchasing the same and in erecting the school house thereon, acted within the scope of their authority. *Webb v School District*, 83 M 111, 85 NW 932. See *Martin v School District*, 93 M 409, 101 NW 952.

Under the statute, a school district has authority to employ part of a dwelling house as a school house. *Gould v Eagle Creek School District*, 7 M 203 (145). See *Robbins v School District*, 10 M 340 (268).

An independent school district owning a half block of land in a village has authority to purchase the other half without first securing authorization of voters. OAG May 21, 1934 (622i-1).

If the additional land to be purchased, together with the existing site, does not equal a full block, the electors must authorize the purchase. OAG May 25, 1936 (622i-1).

School board, by a majority vote, may acquire an addition to an existing school site when authorized by voters, but in a village such a vote is unnecessary if the entire site would not exceed one block after the purchase of such addition. OAG March 23, 1937 (90c-8).

A school site bounded by four streets is a "block" and cannot be increased in size by the vacation of a street and the purchase of additional land without a vote of the electors, though the parcel is very small in comparison with other blocks in the village. OAG Nov. 9, 1934 (622i-1).

As regards the construction of an addition to a school on land to be secured, a ballot designating the site, authorizing construction of addition, and authorizing a bond issue is not correct unless such three questions are placed on the ballot so as to permit each separate issue to be voted upon. OAG Feb. 7, 1935 (159a-3).

Where a school site contains more than one block, a vote of the electors is necessary to add thereto. OAG May 12, 1937 (622i-2).

The site of a school house may be changed at a special meeting of the voters. *School District v Bolstad*, 121 M 376, 141 NW 801.

MINNESOTA STATUTES 1945 ANNOTATIONS

769

SCHOOL BOARDS; POWERS AND DUTIES 125.06

School board may refuse to change the site of a school voted for, after lapse of years, during which time the voters defeated an issue of bonds for the purpose. OAG Aug. 24, 1933.

A school district may sell a school site and building when authorized by the voters at a regular meeting or a special meeting called for that purpose, but the Duluth school district created by Sp. L. 1891, c. 312, may sell a school site and building without a vote of the electors. OAG June 25, 1934 (622i-8).

A school district desiring to sell a school site need not call for bids, but such course is advisable. OAG June 25, 1934 (622i-8).

It is not necessary for the school board to call for bids when selling property under the authority of a vote of the electors. OAG Dec. 19, 1936 (622i).

Where the electors authorize the sale of school property no longer required for school purposes, the board may sell without advertising for bids, and at such price as it deems advisable; but the board is without power to donate the land to a city in the district, or to enter into a long term lease. OAG March 19, 1930.

A district is without power to convey its school auditorium building to an American Legion Post for conversion into a war memorial, the only consideration being \$1.00 and the use of the building by the district as a community house. OAG April 10, 1930.

A school district may sell a school site and building on a credit basis, but it is recommended that sale be made on a contract for deed rather than the taking of a mortgage. OAG June 25 1934 (622i-8).

The Mankato school board has power to sell an abandoned school building several blocks removed from the site of a new building without any vote of the district. OAG March 7, 1933.

It is the duty of the school board to act in good faith in selling an abandoned building and to obtain the best price possible, and the board is not bound by a favorable voice vote of the electors on a proposition to sell the building at a nominal sum to an organization which pledges to use the same as a community building. OAG April 28, 1930.

Where the electors of an independent school district authorized the sale of a small school building, the school board, on discovering it could not sell it at a fair price, had no authority to wreck the building and use the material for other purposes. OAG April 29, 1931.

School board, on cancellation of lease of property on which it has a school house, may not wreck the building and sell the same to the highest bidder without a vote of the electors of the district. OAG Oct. 2, 1931.

The school board of an independent district has no authority to tear down an abandoned school building and dispose of the salvage thereof without a vote of the electors. OAG Nov. 20, 1934 (622i-8).

The board is authorized to pay architects' charges for plans and specifications out of the proceeds of a bond issue for "constructing a school building." OAG Jan. 14, 1930.

School board has no authority to contract for preliminary plans for a school building without authority from the voters. OAG Dec. 26, 1933.

A school district may condemn without first making an unsuccessful attempt to purchase. School District v Bolstad, 121 M 376, 141 NW 801.

A school district may obtain title to a school house site by adverse possession. OAG Dec. 23, 1931.

School districts may acquire title to school sites by adverse possession and also by condemnation proceedings. OAG April 14, 1934 (622i-14).

The board may condemn land without a vote of the people where the site is less than one block. OAG April 27, 1935 (622i-4).

Where a school house burns, the board, when duly authorized by the electors, may legally expend school funds for the erection of a temporary building. OAG Dec. 23, 1931.

The board may specify the minimum wage at the time of letting a contract for the construction of an addition to a school building. OAG March 6, 1935 (846).

MINNESOTA STATUTES 1945 ANNOTATIONS

125.06 SCHOOL BOARDS; POWERS AND DUTIES

770

If a school board expends money in the purchase of real estate without authority from the voters, an individual member of the board who participates therein is liable to the district for the money so expended. *Tritchler v Bergeson*, 185 M 414, 241 NW 578.

School board has authority to rent a school house site which is no longer used for school purposes, without the authorization of the voters, but has no authority to sell without the authorization of the voters. OAG May 9, 1933.

A school district having two years of junior college, in addition to grades in high school, has authority to construct a stadium or bleachers around its athletic field, including a fence and necessary lighting equipment. OAG April 10, 1934 (159b-1).

A vote of the electors is necessary to authorize the lease of land for an athletic field. OAG May 28, 1936 (622b).

The pendency of a petition to divide a school district does not, as a matter of law, prevent the district from proceeding with the erection of a permanent school house. OAG Dec. 23, 1931.

There was no necessity for receiving new bids because the question of making an addition to the high school was submitted to the voters after the bids were received. OAG Jan. 28, 1936 (707a-12).

Where a balance remains in a building fund which resulted from a tax levy made for the particular buildings completed, it may be transferred to the general operating fund of the district. OAG Sept. 30, 1931.

In a contract for grading an athletic field, the plan was loosely drawn, and there was little supervision by the school authorities, and the errors in performance were slight, so the contractor may recover. *Park Construction v Ind. School*, 216 M 27, 11 NW(2d) 649.

Change of boundary for convenience in building a new building is not a change of site. 1942 OAG 36, March 7, 1941 (622-I-4).

There must be authority of voters in order that the board may purchase more than one block or expend money to acquire an option. OAG March 1, 1944 (622i-1).

To obtain school property for highway use, the electors of the school district must authorize the conveyance or the land must be acquired by condemnation proceedings. OAG March 8, 1944 (622i-7).

The board may acquire land in the block where the school is located, but to acquire land outside the block a vote by the electors must be had. OAG July 28, 1944 (622i-2).

3. Equipment of schools

Where extra-curricular activities are not required as a part of the requirements of school program, the board cannot use school buses to transport pupils to athletic or debating contests. OAG May 28, 1936 (622d).

A school district cannot transport members of a citizenship class at the expense of the district. OAG Feb. 18, 1937 (159b-13).

School board has the right to buy school supplies and sell them to students at cost, plus handling charges, but not for the purpose of making a profit. OAG March 20, 1937 (161b-11).

4. Improvements, insurance, and repairs

The driver of a school bus may secure liability insurance at his own expense for his own protection, but this does not impose a liability on the district. OAG April 10, 1937 (844f-6).

A school district may insure its buildings in a mutual insurance company, provided there is a limitation within the maximum indebtedness limit of the district. OAG Dec. 22, 1933.

MINNESOTA STATUTES 1945 ANNOTATIONS

771

SCHOOL BOARDS; POWERS AND DUTIES 125.06

A school district cannot insure in a mutual company where there is an unlimited liability, but can where there is a fixed limited liability. OAG Dec. 28, 1934 (487c-5).

A common school district had authority to spend money for the repair of a building belonging to the district, which it had constructed under a contract with the government for the vocational instruction of former service men. OAG Jan. 6, 1934.

The board has authority to make ordinary repairs to school property without the authorization of the electors. OAG Sept. 7, 1934 (166c-3).

School board has authority to improve the school grounds and expend money therefore without a vote of the district where there is sufficient money on hand and no bond issue is necessary. OAG June 26, 1933.

Insurance may be carried in a mutual company. OAG July 27, 1944 (487c-5).

5. Heating and care of schools and garages.

A school board may discharge a janitor at any time unless the power of removal is restricted by statute. *Oikari v Ind. School District*, 170 M 301, 212 NW 598.

If the school board had authority to hire men to do the work about the buildings, the expenditures were legal, though the work was timed by the board to afford relief to workers. OAG June 26, 1933.

6. Use of schools for other than school purposes

An independent school district has the right to rent a town, village, or other municipal body a school house, school building, or a part thereof to be used as a polling place. OAG April 21, 1934 (185b-4).

A school board may permit the use of a school house for a political meeting. OAG Feb. 26, 1934.

A school board has authority to lease a vacant school building to private or civic organizations for recreational or community purposes and charge therefor and obtain the benefit of repairs to be made by the lessee, but a town board has no authority to enter into an agreement to make repairs on a vacant school building to be used as a community hall other than for town purposes. OAG Dec. 11, 1934 (622a-14).

A city cannot lease an auditorium added to the high school building for a long term, or issue bonds therefor, though the auditorium is built for the purpose of obtaining federal money and to take care of unemployed. OAG May 17, 1935 (63b-2).

A school district cannot lease a school bus to the chamber of commerce for the purpose of transporting drum corps throughout the state. OAG April 20, 1935 (166a-9).

7. Rules and regulations

The school board of an independent school district may make a regulation compelling members of a graduating class to wear a cap and gown at graduation exercises, and exclude any pupil from such exercises who refused to wear the same, but could not prevent his graduation. OAG March 12, 1932.

A school district may not use school district funds to provide pupils hot lunches. OAG April 11, 1932.

School board may adopt a rule that hot lunches be served to all students at noon. OAG Jan. 17, 1934.

8. Employment of teachers

The board of trustees of a school district may, prior to the regular annual election held in July employ a teacher for the ensuing year and bind the district, not only for the period of five months required by law but during such further

MINNESOTA STATUTES 1945 ANNOTATIONS

time as may be fixed or established by the electors at such meeting. Norton v Wilkes, 93 M 411, 101 NW 619.

The mandatory provision of the statute requiring a specified written contract between a teacher and a school district in order to create a lawful employment does not apply to a teacher entitled to the benefit of the teachers tenure act. Oxman v Ind. School District, 178 M 422, 227 NW 351.

Where the contracts of employment of the public school teachers in a special school district stipulate a monthly salary, but provide that the board of education may reduce the same, no certain or definite rights spring from such contracts so that mandamus will lie to enforce the same; and the fact that when so reducing the stipulated salary the board promised that if more money came from tax collections than estimated when the reduction was made such excess would be distributed pro rata to the teachers, and there is such excess, does not legally obligate the board to distribute the same. Mandamus may not issue to enforce a moral obligation. State ex rel v Bauman, 194 M 439, 260 NW 523.

The decision of the board of education discharging a teacher "for cause" is controlling upon the courts in an action for breach of contract, unless the board acted in bad faith or arbitrarily or capriciously upon facts before it or properly within its knowledge, and the burden of proof was upon the plaintiff. Anderson v Cons. School District, 196 M 256, 264 NW 784.

A salary schedule adopted by the defendant prior to the enactment of the teachers tenure act does not determine the yearly salary to be paid its teachers after such act went into effect. The power of the defendant to contract for the yearly salary of teachers is limited to the funds it is authorized to provide for conducting the schools for the same period. Teachers, as well as others, dealing with the defendant are charged with knowledge of the extent of its power to contract. Sutton v Board of Education, 197 M 125, 266 NW 447.

The school board's recognition of plaintiff as a school teacher by receiving her services, paying for the same, and listing her in the manual as a regular teacher is a ratification of the superintendent's act in reemploying plaintiff. Hosford v Board of Education, 201 M 1, 275 NW 81.

A resignation by a teacher at the end of her probationary period given without any intention of terminating her employment as a teacher and upon a promise of reemployment, is not effective as a resignation and does not defeat the teacher's right to tenure upon reemployment. Hosford v Board of Education, 201 M 1, 275 NW 81.

The yearly salaries of the permanent teachers in the public schools of the city of St. Paul for the calendar year may not be fixed in such amounts as to exceed the budget item appropriated therefor under the provisions of the city's charter. All teaching in such schools must be under express contract fixed by ordinance as to salary; and no recovery can be had on the theory of quasi contract. By whatever method the yearly salary is fixed, the charter provisions become a part of the agreement. Doyle v City of St. Paul, 204 M 558, 284 NW 291.

A school board has no authority to employ a superintendent of schools whose term is to extend beyond the year for which the members of the board are elected. OAG July 2, 1930.

The electors of a school district have no power to fix the length of the school term, and the length of the term depends on the contract entered into by the teacher and the school board, regardless of the action of the electors at the meeting. OAG Nov. 26, 1934 (161b-14).

The voters do not have authority to revoke a teacher's contract, that being a matter for the school board to act upon. OAG May 11, 1934 (172c-1).

A school board of six members may not elect a teacher by a vote of three members when the other three members remain silent. OAG April 2, 1934.

A school district cannot pay the salaries of teachers unless they are under contract, but has the right to use teachers not under contract who are paid by the federal government. OAG Oct. 8, 1934 (172c).

The school board of a consolidated district may make rules and regulations governing the selection and removal of teachers. *Backie v Cromwell Cons. School Dist.* 186 M 38, 242 NW 389.

A qualified teacher employed subject to the rules of the board against marriage was not entitled to teach against the board's wishes when she married prior to the commencement of the term. *Backie v Cromwell Cons. School Dist.* 186 M 38, 242 NW 389.

A substitute teacher must have a teacher's certificate and may not be a board member. OAG March 28, 1935 (161b-14).

A board member cannot be compensated, either by the board or by the voters, for teaching services. OAG Feb. 9, 1935 (768b).

Maternity is not sufficient cause for termination of a teacher's contract. 1942 OAG 54, Sept. 15, 1941 (172C-3).

Contracts must be directly with teachers, not through another agency. OAG Feb. 25, 1944.

9. Admission of nonresident and over-age pupils

A person who owns an undivided interest in a quarter section of land in a district of which he is not a resident is entitled to school privileges and need not pay any tuition if his interest is equivalent to 80 acres. OAG Sept. 16, 1931.

10. Instruction of pupils in other districts

A common school district discontinuing its high school could use any money on hand to pay for the transportation of pupils to an adjoining city without calling a special meeting to vote an increased levy. OAG Aug. 10, 1932.

A minor person, a resident of the school district, may be transported to a school in another district irrespective of his parent's residence. OAG Dec. 27, 1933.

11. Organization of schools

The school board of an independent consolidated school district may disregard a petition by the electors demanding that the board call a special election to determine whether or not the district should continue the high school course. OAG April 20, 1931.

The electors of a school district have no power to fix the length of the school term, and the length of the term depends on the contract entered into by the teacher and the school board, regardless of the action of the electors at meeting. OAG Nov. 26, 1934 (161b-14).

12. Transportation of pupils

Where a district is compensating the parents of students for transporting them to school, a nonresident is entitled to payment for transporting his child from the point where he crosses the district line. OAG Feb. 14, 1929.

Furnishing of transportation for pupils is discretionary with the school board. OAG Nov. 1, 1933.

A common school district without a high school has authority to furnish transportation so as to meet the bus of an independent school district maintaining a high school. OAG Sept. 5, 1934 (166a-3).

The section confers no right upon a non-resident to transportation of children to a high school in another district. OAG Jan. 2, 1932.

Special school district No. 1 in Dakota county has no authority to expend public money for transportation of pupils. OAG Nov. 22, 1933.

Special school district in South St. Paul has authority to expend public moneys for the transportation of pupils. OAG Feb. 1, 1934.

Neither a school board nor the district is liable for injuries inflicted in the operation of its buses, and school funds may not be used to pay the premium on an indemnity bond. OAG Aug. 12, 1931.

Where a common school district has provided school bus transportation service for its "non-resident" high school pupils, "family transportation" of one's own children to such high school cannot be charged to the district. *Perszyk v School District*, 212 M 513, 4 NW(2d) 321.

The board in common school districts determines the policy and details regarding transportation of pupils. OAG June 20, 1944 (166a-7).

13. Control of school and quasi school activities

A school district without an athletic field cannot appropriate money to a city for the improvement of city property to be used by the school as an athletic field. OAG June 22, 1931.

School board has no right to pay the expense of an athletic contest incident to the training of high school teams. OAG Nov. 15, 1933.

It is not legal to purchase through a special athletic fund from business men who are on the school board. OAG Sept. 30, 1931.

An auxiliary fund cannot be used to pay for the treatment and hospitalization of students receiving injuries in school athletic events. OAG April 10, 1935 (159a-16).

A school district cannot maintain a band to be used for municipal purposes or employ instructors for special classes in physical education, music, etc., during the summer months and pay for them from the school district fund. OAG Feb. 27, 1935 (159b-10).

Where student activities are not under the control of the school board by the vote of the people, the students have the privilege of determining for themselves who shall have the custody of funds secured and how they shall be expended. OAG May 5, 1937 (707a-12).

The school board of an independent district may make a regulation compelling members of a graduating class to wear a cap and gown at graduation exercises, and exclude any pupil from such exercises who refused to wear the same, but could not prevent his graduation. OAG March 12, 1932.

14. Claims against school district

A judgment entered in a taxpayers' suit against a school district restraining the performance of a contract, illegal for want of previous authorization by the voters, is not a bar to a suit by one of the contracting parties to recover for the reasonable value of the benefits which the district received from him. Under such circumstances the law substitutes the quasi contractual obligation of the district to pay the reasonable value of any benefits which it receives in the transaction. *Olsen v Ind. and Con. School Dist.* 175 M 201, 220 NW 606.

A district may pay the reasonable value of the services of attorneys in defending an action brought against the members of the school board. OAG Oct. 26, 1935 (779a-3).

It is no part of the official duties of the city attorney of Duluth to act for the board of education of the city; and the board has the power to retain an attorney and pay him upon a continuing basis, from month to month. *Lindquist v Abbett*, 196 M 233, 265 NW 54.

A school district may employ an attorney to defend the superintendent of the high school in an action for damages for refusing to give a student passing marks. OAG June 29, 1932.

A school board has power to compromise a claim in favor of the district. OAG March 21, 1934.

A school district is not liable at common law for injuries to a pupil which result from the negligent operation of a bus used in the transportation of pupils at public expense. *Allen v Ind. School Dist.* 173 M 5, 216 NW 533.

Neither the school board nor the district is liable for injuries inflicted in the operation of its busses, and school funds may not be used to pay the premium on an indemnity bond. OAG Aug. 12, 1931.

MINNESOTA STATUTES 1945 ANNOTATIONS

775

SCHOOL BOARDS; POWERS AND DUTIES 125.07

School board has no authority to pay for the services of an attorney in successfully defending the individual members of the board in an action for injuries growing out of a collision between school bus and an automobile. OAG March 24, 1934.

The expenses of an election contest of board members are not payable by the school district. OAG Aug. 22, 1933.

During the previous school year plaintiff had been transporting certain children for the school district under a written contract. Without any renewal of the contract, but supposing it would be renewed, plaintiff, without invitation from the district, began transporting the children at the beginning of the next school year and continued until, upon asking payment for services already performed, he was refused, the district having decided not to have the children transported that season. Under these circumstances, plaintiff performed the services as a mere volunteer and cannot recover upon the theory of either implied or quasi contract. *Johnson v Unorganized School District*, 159 M 226, 198 NW 463.

15. Actions by or against the district

A member of a school board, who joins with the other members in purchasing and paying out the money of the school district for property which the school board is not authorized to purchase or pay for without a vote of the electors of the district, where no authority has been given, acts unlawfully and is liable to the school district for the money so expended; but if the school district receives and appropriates such property, elects to retain it, and is benefited thereby, then such school board member may offset the value of the property purchased against his liability to the school district for the money unlawfully expended, or to have his liability reduced to that extent. *Johnson v Ind. School Dist.* 189 M 293, 249 NW 177.

This section does not authorize suit against a school district to recover damages for personal injury caused by the negligence of its officers or agents in the performance of its governmental functions. No distinction is made as to liability for torts arising out of the performance of mandatory or permissive governmental functions of the school district. *Mokovich v Ind. School Dist.* 177 M 446, 225 NW 292. See *Bang v Ind. School Dist.* 177 M 454, 225 NY 449. See OAG 1940, 59, March 27, 1939.

A school board has authority to take an appeal despite the action of the voters at a special school meeting expressing an almost unanimous desire that no appeal be taken. OAG Jan. 3, 1934.

125.065 SCHOOL BUSES MAY BE BOUGHT.

HISTORY. 1941 c. 333; 1945 c. 373 s. 1.

In the purchase of a school bus the highest rate of interest on deferred payments is four per cent per annum. 1942 OAG 38, Nov. 10, 1941 (622-D).

125.07 ADDITIONAL POWERS AND DUTIES OF SCHOOL BOARD IN COMMON DISTRICT.

HISTORY. 1877 c. 74 subc. 2 ss. 6, 7; G.S. 1878 c. 36 ss. 24, 25; G.S. 1894 ss. 3686, 3687; R.L. 1905 s. 1324; 1913 c. 476 s. 1; G.S. 1913 ss. 2756, 2758; 1917 c. 306; G.S. 1923 ss. 2825, 2831; M.S. 1927 ss. 2825, 2831; 1931 c. 109; 1931 c. 188 s. 1; M. Supp. ss. 2803-1, 2849-1; 1941 c. 169 art. 6 s. 7.

This statute confers upon common school district boards, duty of school boards of independent districts to publish the official proceedings as provided in section 125.08. OAG March 30, 1932.

School boards in common school districts possessing the powers of independent school districts may publish an official proceedings in the same manner as independent districts. OAG Nov. 20, 1933.

The common school districts mentioned in this section are not thereby made independent school districts within the meaning of section 127.05. OAG April 6, 1934 (161b-11).

MINNESOTA STATUTES 1945 ANNOTATIONS

125.08 SCHOOL BOARDS; POWERS AND DUTIES

776

Management of the affairs of a common school district is vested in the school board, except where the statute otherwise expressly provides. The school meeting has no veto or control of the board in administrative matters. If the board fails to carry out the wishes of the voters the only remedy is political. 1942 OAG 59, Oct. 3, 1941 (180).

125.08 ADDITIONAL POWERS AND DUTIES OF SCHOOL BOARD IN INDEPENDENT DISTRICTS.

HISTORY. 1865 c. 13 ss. 5, 17; G.S. 1866 c. 36 ss. 59, 70; 1871 c. 4 s. 2; 1877 c. 74 subc. 7 ss. 6, 18; G.S. 1878 c. 36 ss. 99, 111; 1885 c. 57 s. 3; G.S. 1894 ss. 3796, 3808; R.L. 1905 ss. 1323, 1325; G.S. 1913 ss. 2752, 2757; 1915 c. 360 s. 1; 1919 c. 496 s. 1; G.S. 1923 ss. 2797, 2824, 2826; M.S. 1927 ss. 2797, 2824, 2826; 1941 c. 169 art. 6 s. 8.

Funds received by school district from the federal government may be considered as reimbursement for the taxes lost by reason of the federal ownership of lands in the district. OAG April 26, 1937 (159a-19).

Where student activities are not under the control of the school board, as provided for by section 125.06, a high school athletic association in an independent district may purchase land and donate it to the district. OAG May 5, 1937 (702a-12).

Whether the failure of a board member to attend meeting constitutes a failure of his duties is a question of fact. OAG June 30, 1937 (161a-21).

The attorney general cannot express an opinion as to whether certain facts constitute cause for removal of a board member. OAG Feb. 15, 1933.

Before removing an officer, the board should call a meeting for that purpose, and the clerk should give written notice to the offending member. OAG Feb. 15, 1933.

Section 125.07 confers upon school boards of common school districts the duty to publish the official proceedings of the board. OAG March 30, 1932.

The matter of what shall be published is left to the sound discretion of the school board. OAG Sept. 16, 1929.

The proceedings of a school district cannot be published in a newspaper outside of the district if there is a newspaper published in the district. OAG Jan. 21, 1933.

The school board of a city of the fourth class in an independent district is not required to publish an annual financial statement. OAG Dec. 13, 1933.

An independent school district in connection with an educational exhibit may not expend funds for a booth at a farmers' fair. 1942 OAG 43, Sept. 14, 1941 (159-B-10).

125.09 ADDITIONAL POWERS OF SCHOOL BOARD IN CONSOLIDATED DISTRICTS.

HISTORY. 1901 c. 262 s. 6; 1905 c. 326 s. 9; 1907 c. 304 s. 1; 1911 c. 207 s. 6; G.S. 1913 s. 2691; 1915 c. 238 s. 8; G.S. 1923 s. 2761; M.S. 1927 s. 2761; 1933 c. 50 ss. 1, 2; M. Supp. ss. 2780-18, 2780-19; 1941 c. 169 art. 6 s. 9.

125.10 POWER OF EMINENT DOMAIN IN CERTAIN CASES.

HISTORY. 1921 c. 266 s. 1; G.S. 1923 s. 2819; M.S. 1927 s. 2819; 1941 c. 169 art. 6 s. 10.

The board may condemn land without a vote of the people where the site is less than one block. OAG April 27, 1934 (622i-4).

125.11 CONDEMNATION OF CERTAIN TRACTS IN SCHOOL DISTRICTS.

HISTORY. 1925 c. 286; M.S. 1927 s. 2819-1; 1941 c. 169 art. 6 s. 11.

MINNESOTA STATUTES 1945 ANNOTATIONS

777

SCHOOL BOARDS; POWERS AND DUTIES 125.165

125.12 CONDEMNATION OF PUBLIC EASEMENTS IN CITIES OF THE FOURTH CLASS.

HISTORY. 1927 c. 35; M.S. 1927 s. 2819-2; 1941 c. 169 art. 6 s. 12.

125.13 LANDS FOR USE IN AGRICULTURAL EDUCATION.

HISTORY. 1913 c. 258 ss. 1, 2; G.S. 1913 ss. 2748, 2749; G.S. 1923 ss. 2820, 2821; M.S. 1927 ss. 2820, 2821; 1941 c. 169 art. 6 s. 13.

125.14 DISCONTINUANCE OF SCHOOLS IN CERTAIN DISTRICTS; TRANSPORTATION OF PUPILS.

HISTORY. 1903 c. 61; R.L. 1905 s. 1322; 1911 c. 167; G.S. 1913 s. 2750; 1921 c. 467 s. 15; G.S. 1923 s. 2822; M.S. 1927 s. 2822; 1939 c. 184 s. 1; M. Supp. s. 2822; 1941 c. 169 art. 6 s.14.

Where a district has discontinued its school and sends its pupils to another independent district, the latter district may charge more tuition than it does for pupils from other districts. OAG Jan. 15, 1931.

A school board which makes arrangement for the education of pupils of the district in an adjoining district after its school house is destroyed may terminate such arrangement in its discretion. OAG Dec. 23, 1931.

A common school district could transport pupils to an independent school district which has a high school, though separated from such district by two common school districts. OAG Sept. 7, 1933.

A school district which has discontinued all schools in its district and is paying tuition at a school out of the district where the pupils are attending is not liable to the parents of the pupils for the value or cost of transportation. OAG June 6, 1934 (166a-6).

A district may close its high school, transport its pupils to a neighboring district, without a vote of the electors. OAG May 5, 1937 (161b-2).

A school board may discontinue a school or a grade in a school in any emergency or upon authority of a majority of voters, and transport the pupils to another school. 1942 OAG 50, Oct. 1, 1941 (161B-z); OAG Aug. 17, 1944 (180a).

125.15 TRANSPORTATION OF NON-RESIDENT PUPILS.

HISTORY. 1929 c. 68; M. Supp. s. 2822-1; 1941 c. 169 art. 6 s. 15. (Repealed by 1945 c. 373 s. 2).

The statute does not authorize the school district to transport, without charge, non-resident pupils who present themselves within the district on a regular transportation route. OAG Aug. 10, 1932.

School boards of districts providing transportation for high school pupils from their districts to nearby accredited high schools have no authority to accept pupils on their buses who are not residents of the districts providing funds for operating the buses. OAG Nov. 9, 1934 (166a-8).

125.16 EMERGENCY EXITS FOR SCHOOL BUSES.

HISTORY. 1877 c. 74 subc. 2 s. 14; 1877 c. 74 subc. 7 s. 18; G.S. 1878 c. 36 ss. 32, 111; 1881 c. 41 s. 5; 1881 c. 127 ss. 1 to 3; 1887 c. 125; G.S. 1878 Vol. 2 (1888 Supp.) c. 36 ss. 23a, 23b, 23c, 32a; G.S. 1894 ss. 3682 to 3684, 3697, 3698, 3808; 1897 c. 205; 1901 c. 262 s. 6; R.L. 1905 s. 1321; 1907 c. 445 s. 1; G.S. 1913 s. 2747; 1917 c. 417; G.S. 1923 s. 2816; M.S. 1927 s. 2816; 1929 c. 12; 1937 c. 167 s. 1; M. Supp. s. 2816; 1941 c. 169 art. 6 s. 16. (Repealed by 1945 c. 373 s. 2).

125.165 RENTAL OF SCHOOL BUSES.

HISTORY. 1943 c. 412 ss. 1 to 3.

MINNESOTA STATUTES 1945 ANNOTATIONS

125.17 SCHOOL BOARDS; POWERS AND DUTIES

778

125.17 TRANSPORTATION INSURANCE.

HISTORY. 1937 c. 301 ss. 1, 2; M. Supp. ss. 2816-8, 2816-9; 1941 c. 169 art. 6 s. 17. (Repealed by 1945 c. 373 s. 2.)

See as to the use of automobiles by servants of the university and as to liability insurance. 1942 OAG 281, Jan. 26, 1942 (618a-9).

Governmental responsibility for torts; statutes providing for indirect assumption of liability. 26 MLR 857.

125.18 CONTRACTS.

HISTORY. 1913 c. 244 ss. 1, 2; G.S. 1913 ss. 2773, 2774; G.S. 1923 ss. 2846, 2847; M.S. 1927 ss. 2846, 2847; 1941 c. 169 art. 6 s. 18.

The rule of law applicable to a case where a school district contracts for an improvement, which it has power to make, but the contract is void because not made after competitive bidding as required by law, is that the district is obliged to pay for the reasonable value of any benefits it receives through part performance of the contract. *Williams v National Contracting Co.* 160 M 293, 199 NW 919.

By the taking over of a substantial part of the improvement and using it in the permanent project, the whole of the improvement was taken over. *Williams v National Contracting Co.* 160 M 293, 199 NW 919.

As section 275.27 expressly makes every officer of a school district who participates in making a contract in its behalf individually liable for performance of the same when funds to meet such contracts are not available but does not make the contract void, except so far as it imposes an obligation on the district, it follows that contractors are legally and morally entitled to perform their contracts and, if any contract fails to impose an obligation on the district, taxpayers are not harmed and have no standing in court to restrain performance. *Ind. School District v Oliver Iron Mining Co.* 169 M 17, 19, 208 NW 952, 210 NW 856.

Laws 1913, Chapter 244, (125.18) requiring common and independent school districts to advertise for bids before letting contracts for the purchase of school furniture, does not apply to the board of education of the city of Mankato, created by Sp. L. 1878, c. 156. *Merritt v Hughes*, 175 M 30, 220 NW 164.

A judgment entered in a taxpayers' suit against a school district, restraining the performance of a contract, illegal for want of previous authorization by the voters, is not a bar to a suit by one of the contracting parties to recover for the reasonable value of the benefits which the district received from him. *Olsen v Ind. and Cons. School District*, 175 M 201, 220 NW 606. See 13 MLR 71.

A member of a school board, in making contracts for the district, where bids are not required, if he participates in the payment of more money therefor than the subject matter is reasonably worth and more than the benefit is reasonably worth to the district, is legally liable to the district for the resulting loss. *Tritchler v Bergeson*, 185 M 414, 241 NW 578. See, *Individual Liability of Member of School Board for Illegal and Excessive Expenditures*, 16 MLR 871.

A member of a school board who votes to make a contract for the district in violation of a statute requiring an advertised call for bids therefor and who participates in the expenditure of money pursuant to such contract is legally liable to the district for the resulting loss, which is determined by deducting the reasonable cost from the amount actually expended. *Tritchler v Bergeson*, 185 M 414, 241 NW 578.

This section does not apply to personal services such as those of architects for a school district in furnishing preliminary sketches, plans, and specifications for a school building, and superintendence during construction. *Krohnberg v Pass*, 187 M 73, 244 NW 329. See, 17 MLR 102.

This section does not apply to engineers to lay out the plans and specifications for the heating, plumbing, and other mechanical equipment; and it is not objectionable that the architects, as a part of their contract, agree to employ designated engineers for such service. *Krohnberg v Pass*, 187 M 73, 244 NW 329.

The superintendent of construction, who is to be on the work of construction and see that the plans are carried out and proper material furnished, is a personal

MINNESOTA STATUTES 1945 ANNOTATIONS

779

SCHOOL BOARDS; POWERS AND DUTIES 125.19

representative of the school district and not within the statute. *Kronberg v Pass*, 187 M 73, 244 NW 329.

Where identical bids are submitted, a school board may divide the contract for coal equally among the bidders, in the absence of collusion between them. OAG Sept. 15, 1932.

A school board may establish a minimum wage scale in a contract for buildings. OAG Dec. 3, 1935 (159h-14).

A district may return a bidder's deposit, if an honest mistake is made in submitting the bid. OAG May 4, 1937 (622J-6).

It is not legal to have either the exterior or the interior of a building painted, costing in excess of \$500.00, without calling for bids.

It is not legal to install new light fixtures in one building or replace old with new, costing in excess of \$500.00, without calling for bids.

It is not legal to purchase school furniture or permanent equipment in one order from one dealer, in excess of \$500.00, without calling for bids.

It is not legal to purchase school supplies, janitor or athletic supplies in one order from one dealer, in excess of \$500.00, without calling for bids. OAG Sept. 30, 1932.

It is not legal to repair or construct projects on school grounds, such as sidewalks, improving athletic field, etc., costing in excess of \$500.00, without calling for bids.

Where outside concerns can underbid local dealers, it is not legal to place orders through local dealers, if the equipment or supplies exceed the sum of \$500.00, without calling for bids.

It is not legal to break up invoices or bills into two or more to evade the requirement of calling for bids. OAG Sept. 30, 1932.

It is legal to repair patented lockers with parts from the original dealers at a cost in excess of \$500.00, without calling for bids, if such repairs can only be had from the dealer who furnished the original lockers. OAG Sept. 30, 1932.

A school district may purchase copyrighted text or library books in one order from one dealer, in excess of \$500.00, without calling for bids. OAG Sept. 30, 1932.

It is legal to have a school building repaired, at a cost exceeding \$500.00 without calling for bids, only where the building has been injured and the public interest would suffer by delay. OAG Sept. 30, 1932.

A school district cannot pay its share of registration under a combined registration system, without a call for bids, where its share is in excess of \$500.00, unless the articles purchased are copyrighted or patented and can only be purchased from the one concern. OAG April 12, 1934 (185a-5).

A school district having a private sewer from the school house may, by contract, permit a creamery to connect with the sewer, if there is adequate compensation and the school sewerage is not impeded. OAG May 8, 1934 (161b-11).

It is not necessary to advertise for bids for the construction of an addition to a school house costing less than \$500.00. OAG Aug. 23, 1934 (707a-12).

It is not necessary to call for bids before hiring bus drivers for the transportation of pupils. OAG Aug. 1, 1934 (707a-12).

A school board may enter into a contract for the transportation of school children without calling for bids. OAG Aug. 30, 1934 (707a-12).

The board of education of the city of Rochester school district organized under Sp. L. 1891, Chapter 48, subc. 10, has the powers of a board of an independent school district with respect to contracts. OAG Dec. 3, 1935 (159h-14).

A district cannot enter into a sale agreement for the hire and purchase of a coal stoker. OAG Sept. 24, 1936 (90c-4).

If it is desired to extend the time for opening bids, there must be a readvertising for bids. OAG Feb. 24, 1937 (707a-12).

125.19 CONTRACTS FOR SNOW REMOVAL.

HISTORY. 1937 c. 375 s. 1; M. Supp. s. 2816-10; 1941 c. 169 art. 6 s. 19.

MINNESOTA STATUTES 1945 ANNOTATIONS

125.20 SCHOOL BOARDS; POWERS AND DUTIES

780

School board may enter into contract with highway department regarding snow removal. 1942 OAG 37, Nov. 15, 1941 (377a-11).

125.20 CONTRACTS WITH MUNICIPALITIES FOR HEAT.

HISTORY. 1931 c. 134 ss. 1, 2; Ex. 1936 c. 31 ss. 1, 2; M. Supp. ss. 2816-4, 2816-5; 1941 c. 169 art. 6 s. 20.

125.21 EMPLOYMENT OF PUBLIC ACCOUNTANTS, CERTAIN CASES.

HISTORY. 1937 c. 216 ss. 1 to 3; M. Supp. ss. 2816-5a, 2816-6, 2816-7; 1941 c. 169 art. 6 s. 21; 1943 c. 514 s. 1.

125.22 CLAIMS AGAINST DISTRICT, HOW PAID.

HISTORY. 1935 c. 263 ss. 1, 2; M. Supp. ss. 2849-2, 2849-3; 1941 c. 169 art. 6 s. 22.

125.23 CHAIRMAN, POWERS AND DUTIES.

HISTORY. 1861 c. 11 ss. 12 to 14; 1862 c. 1 ss. 13 to 15; G.S. 1866 c. 36 ss. 13 to 15; 1877 c. 74 subc. 2 ss. 15, 18; 1877 c. 74 subc. 7 s. 14; G.S. 1878 c. 36 ss. 33, 36, 107; G.S. 1894 ss. 3699, 3702, 3804; R.L. 1905 s. 1330; 1907 c. 445 s. 3; 1911 c. 240 s. 1; G.S. 1913 s. 2767; G.S. 1923 s. 2840; M.S. 1927 s. 2840; 1941 c. 169 art. 6 s. 23.

125.24 COMPENSATION OF CHAIRMAN IN COMMON SCHOOL DISTRICT.

HISTORY. 1861 c. 11 ss. 12 to 14; 1862 c. 1 ss. 13 to 15; G.S. 1866 c. 36 ss. 13 to 15; 1877 c. 74 subc. 2 ss. 15, 18; 1877 c. 74 subc. 7 s. 14; G.S. 1878 c. 36 ss. 33, 36, 107; G.S. 1894 ss. 3699, 3702, 3804; R.L. 1905 s. 1330; 1907 c. 445 s. 3; 1911 c. 240 s. 1; G.S. 1913 s. 2767; G.S. 1923 s. 2840; M.S. 1927 s. 2840; 1941 c. 169 art. 6 s. 24.

The salary of the chairman may be determined at the annual meeting without the notice specifying that such action will be taken. OAG Aug. 2, 1933.

125.25 CLERK; DUTIES.

HISTORY. 1861 c. 11 ss. 9, 29; 1862 c. 1 ss. 7, 17 to 21; 1865 c. 13 s. 12; G.S. 1866 c. 36, ss. 7, 17 to 21, 65; 1870 c. 1 s. 1; 1871 c. 3 s. 1; 1871 c. 4 s. 3; 1871 c. 5 s. 1; 1872 c. 2 s. 1; 1877 c. 74 subc. 2 ss. 2, 19, 27; 1877 c. 74 subc. 7 s. 12; G.S. 1878 c. 36 ss. 20, 37, 47, 105; 1881 c. 41 s. 6; 1885 c. 57 ss. 1, 4; G.S. 1894 ss. 3678, 3703, 3713, 3802; 1901 c. 350; R.L. 1905 s. 1326; G.S. 1913 s. 2759; G.S. 1923 s. 2832; M.S. 1927 s. 2832; 1939 c. 62 s. 7; M. Supp. s. 2832; 1941 c. 169 art. 6 s. 25.

The issuance of an order by the clerk of a school district, drawn by him upon the treasurer, for the payment of the wages of a teacher known to him not have been licensed to teach, and paid out of the funds appropriated for teachers' wages, is an unlawful diversion of the public school funds from their legitimate channel, and subjects him to the penalty prescribed. *School District v Thelander*, 31 M 333, 17 NW 866.

It is the duty of a clerk of a school district to draw orders upon the treasurer for the payment of teachers' wages as they become due, without requiring that a bill therefor be first presented to and allowed by the school board. *State ex rel v Jack*, 126 M 367 148 NW 306.

It would not be legal to make out a warrant to a bank covering the expenditures of a period of two weeks or a month, and deposit the money in the bank to the credit of the school board and disburse it by check for expenses, even though bills and the expenditures to be paid have all been approved by the board. OAG Feb. 21, 25, 1935 (159c-4) (159c-6).

The record entered by the clerk of a school district in the record book as the record of a meeting, and not the notes taken by the clerk during the meeting, are the official records of the meeting. OAG Nov. 15, 1935 (162f).

The commissioner of education may fix June 30 as the cut-off date for the report provided for in this section. OAG April 12, 1937 (162c).

125.26 COMPENSATION OF CLERK OF COMMON SCHOOL DISTRICT.

HISTORY. 1865 c. 13 s. 7; G.S. 1866 c. 36 s. 60; 1877 c. 74 subc. 2 s. 23; G.S. 1878 c. 36 s. 41; G.S. 1894 s. 3707; R.L. 1905 s. 1332; 1913 c. 409 s. 1; G.S. 1913 s. 2769; G.S. 1923 s. 2842; M.S. 1927 s. 2842; 1941 c. 169 art. 6 s. 26.

Upon proper notice, the voters at the annual meeting may fix the compensation of the clerk for the past year and for the following year. OAG July 31, 1933.

The clerk's compensation cannot be increased at the annual meeting unless the notice of the meeting specified that such action will be taken. OAG Aug. 2, 1933.

125.27 CLERK IN SPECIAL DISTRICTS.

HISTORY. 1909 c. 277 s. 1; G.S. 1913 s. 2741; G.S. 1923 s. 2810; M.S. 1927 s. 2810; 1941 c. 169 art. 6 s. 27.

125.28 TREASURER; DUTIES.

HISTORY. 1861 c. 11 ss. 32 to 34, 36, 38; 1862 c. 1, ss. 14, 16; G.S. 1866 s. 36 ss. 14, 16; 1877 c. 74 subc. 2 ss. 17, 18; G.S. 1878 c. 36 ss. 35, 36; Ex. 1881 c. 30; G.S. 1894 ss. 3701, 3702; R.L. 1905 s. 1327; 1907 c. 445 s. 2; G.S. 1913 s. 2760; G.S. 1923 s. 2833; M.S. 1927 s. 2833; 1931 c. 187; M. Supp. s. 2833; 1941 c. 169 art. 6 s. 28; 1943 c. 455 s. 1.

The fact that the treasurer of a school district has lost the public funds by burglary, although without his own fault, constitutes no defense to an action on his official bond for the failure to pay over to his successor the money received and not disbursed by him. *Board of Education v Jewell*, 44 M 427, 46 NW 914.

The rigid rule making absolute the liability of a school district treasurer for school funds may be relaxed by the legislature when such action is properly exercised by the enactment of a law not otherwise objectionable. It is a matter within the legislative discretion. *State ex rel v Kaml*, 181 M 523, 233 NW 802.

A bond, purporting to be the obligation of the treasurer of a school district and of others as sureties, but which has been executed only by the sureties, does not, upon its face, show any obligation on the part of the sureties. *State v Austin*, 35 M 51, 26 NW 506; *School District v Lapping*, 100 M 139, 110 NW 849.

The treasurer deposited school funds to his credit in a bank in which he was an officer. School orders were presented to and paid by the bank and indorsed: "Not paid for want of funds". They were then sold and the money used by the bank in carrying on its business. The liability of the school district was not discharged when the payees of the orders received their money. *Solway State Bank v School District*, 170 M 83, 212 NW 25; *Ind. School District v Integrity Mut. Cas. Co.* 171 M 376, 214 NW 258. See *Zalesky v Cons. School Dist.* 175 M 166, 220 NW 428; *First Nat'l Bank v School Dist.* 177 M 30, 224 NW 251.

By statute school district orders can be disbursed only on orders or other authorized vouchers; and it is a breach of a plain legal duty for a school district treasurer to make a payment on a warrant not presented to him for payment; and a payment, without such presentation, to a former holder of a warrant who has assigned it, is not a payment of the warrant, and the assignee may recover. *First Nat'l Bank of Duluth v School District*, 173 M 383, 217 NW 366.

A school treasurer is liable for all that he receives. *Ind. School District v Hackman*, 178 M 199, 226 NW 514.

School district warrants or orders become due when presented to the district treasurer for payment. *First Nat'l Bank v Cons. School District*, 184 M 635, 238 NW 634, 240 NW 662.

The fact that the other two members of the school board failed to require the treasurer to present, with his annual reports, warrants claimed to have been paid, as vouchers, does not estop the district or prevent it from asserting the right

of set-off to such warrants. *First Nat'l Bank v Cons. School District*, 184 M 635, 238 NW 634, 240 NW 662.

The holder of a warrant is not entitled to have it split into two or more warrants, since but one order should be issued for every single bill. OAG March 3, 1930.

A school treasurer must give notice to holders of warrants or orders "not paid for want of funds" when the money becomes available in order to terminate the running of interest, but if the address of the holder is not known, interest ceases as soon as the money becomes available. OAG April 1, 1931.

A school treasurer having reasonable grounds for believing warrants are drawn in payment of improper charges may withhold payment pending an investigation. OAG June 30, 1933.

Outstanding teachers' warrants are not payable out of a current special fund for teachers' wages. OAG Aug. 22, 1933.

A school board cannot set up a special fund for the payment of a bus driver's wages. OAG Aug. 22, 1933.

It is permissible for a school treasurer to leave money in the hands of the county treasurer, with his consent, and thus obtain the advantage of collateral posted with the county. OAG Aug. 23, 1933.

A new treasurer should accept the books and assets of the district without any accounting from the old treasurer for money lost by reason of a bank failure. OAG Sept. 30, 1933.

School warrants bear six per cent interest from the date of presentation to the treasurer and refusal to pay for want of funds. OAG No. 1, 1933.

A school board cannot write a single warrant against the general fund in payment of all bills and obligations passed at a meeting and pay the bills by check on a bank, even though the warrant shows all items and all payees. OAG March 11, 1935 (159c-12).

The annual report of the treasurer need not be published. OAG June 29, 1944 (277e).

When a duly elected school treasurer removes from the district the office becomes vacant, but the bond remains in force. OAG April 3, 1944 (768n).

125.29 TREASURER'S BONDS.

HISTORY. 1861 c. 11 ss. 30, 31; 1862 c. 1 s. 15; G.S. 1866 c. 36 s. 15; 1877 c. 74 subc. 2 s. 16; G.S. 1878 c. 36 s. 34; G.S. 1894 s. 3700; R.L. 1905 s. 1328; 1907 c. 95; G.S. 1913 s. 2761; G.S. 1923 s. 2834; M.S. 1927 s. 2834; 1941 c. 169 art. 6 s. 29.

The statute requires the treasurer's bond to be in double the amount of money, as near as can be ascertained, which will come into his hands during his term; and this refers to the aggregate amount that will come into his hands during his term, and not merely to the probable amount that will be in his hands at any one time. *State ex rel v Teal*, 72 M 37, 74 NW 1024.

The surety on a school treasurer's bond was not liable for the loss of the amount deposited by the treasurer in a bank which was a depository de facto. *School District v Aiton*, 175 M 346, 221 NW 424.

The treasurer of a school district was cashier of a bank which became a de facto, but not a legal, depository of the funds of the district. He deposited therein money of the district which was lost by the failure of the bank. The sureties on his bond were liable for such loss, the bond containing the statutory conditions and no limitation upon the liability imposed thereby. *School District v Aiton*, 173 M 428, 217 NW 496; 175 M 346, 221 NW 424, distinguished. *School Dist. v Nissen*, 177 M 479, 225 NW 444.

Unpaid non-negotiable school district warrants wrongfully issued by the district treasurer to which the district apparently has a good defense or right of set-off do not constitute a present liability as against the surety on the treasurer's official bond. *County Board of Education v Fogarty*, 191 M 9, 252 NW 668.

A surety on an official bond is liable for interest only from the date of notice to such surety of the breach thereof or demand made thereon. *Village of*

MINNESOTA STATUTES 1945 ANNOTATIONS

783

SCHOOL BOARDS; POWERS AND DUTIES 125.31

Hallock v Pederson, 189 M 469, 250 NW 4; County Board of Education v Fogarty, 191 M 9, 252 NW 668.

A payment by a judgment debtor to the district should be applied first to the interest on the judgment debt, then to the principal. County Board of Education v Fogarty, 191 M 9, 252 NW 668.

The chairman of the county board may be compelled, by mandamus, to endorse his name on the bond of the treasurer, if the same is in proper form. OAG Feb. 14, 1933.

Limitations commenced to run, as against the principal and sureties, on a school treasurer's bond from the time of the expiration of the term of office during which the closing of the bank occurred. OAG Sept. 30, 1933.

The bond of a school district treasurer should run to the state. OAG Nov. 23, 1933.

Where money has been lost by a school treasurer, a taxpayer desiring to have an action brought on the treasurer's bond should make a demand on the school board as a prerequisite to bringing suit himself. OAG April 3, 1934 (159a-21).

The respective bonds of a school treasurer covered only the moneys deposited during the terms of the bonds. OAG April 3, 1934 (159a-21).

A school board cannot reduce the school treasurer's bond below the highest amount in his hands at any one time during his entire term. OAG May 9, 1936 (768n).

In matters relating to the school treasurer, United States bonds are construed to be money. OAG Aug. 23, 1944 (451a-5).

125.30 COMPENSATION OF TREASURERS OF COMMON DISTRICTS.

HISTORY. 1861 c. 11 s. 35; 1877 c. 74 subc. 2 s. 14; G.S. 1878 c. 36 s. 35; Ex. 1881 c. 30; G.S. 1894 s. 3701; 1897 c. 198; R.L. 1905 s. 1333; 1913 c. 409 s. 1; G.S. 1913 s. 2770; G.S. 1923 s. 2843; M.S. 1927 s. 2843; 1941 c. 169 art. 6 s. 30.

The voters at the annual meeting have no authority to fix the treasurer's salaries for succeeding years. OAG July 31, 1933.

The salary of the treasurer may be determined at the annual meeting without the notice of the meeting specifying that such action will be taken. OAG Aug. 2, 1933.

The electors could not, at a school meeting, legally vote to pay the treasurer a salary for past years during which he had served without compensation. OAG Aug. 21, 1933.

125.31 COMPENSATION OF OFFICERS OF INDEPENDENT DISTRICTS.

HISTORY. 1865 c. 13 ss. 6, 7; G.S. 1866 c. 36 ss. 59, 60; 1877 c. 74 subc. 7 ss. 6, 7; G.S. 1878 c. 36 ss. 99, 100; 1885 c. 57 s. 3; G.S. 1894 ss. 3796, 3797; R.L. 1905 s. 1334; G.S. 1913 s. 2771; G.S. 1923 s. 2844; M.S. 1927 s. 2844; 1929 c. 151; M. Supp. s. 2844; 1941 c. 169 art. 6 s. 31.

The city recorder of South St. Paul is entitled to compensation for services rendered as clerk of the board of education. OAG Aug. 26, 1931.

A retiring clerk of a school district is entitled to a pro rata share of the clerk's salary for the year. OAG Aug. 31, 1935 (768d).

The treasurer of an independent school district is not entitled to mileage incurred while making bank deposits, though there are no banks in the district, and it is necessary that he journey outside of the district to a bank designated by the board as depository. OAG April 8, 1933.

The members of the board of education of the city of Minneapolis cannot vote salaries for themselves. OAG Oct. 11, 1935 (161b-10).

MINNESOTA STATUTES 1945 ANNOTATIONS

125.32 SCHOOL BOARDS; POWERS AND DUTIES

784

125.32 RECORDS TO BE EVIDENCE.

HISTORY. 1865 c. 13 s. 13; G.S. 1866 c. 36 s. 66; 1877 c. 74 subc. 7 s. 13; G.S. 1878 c. 36 s. 106; G.S. 1894 s. 3803; R.L. 1905 s. 1307; G.S. 1913 s. 2714; G.S. 1923 s. 2796; M.S. 1927 s. 2796; 1941 c. 169 art. 6 s. 32.

The record entered by the clerk of a school district in a record book as a record of a meeting, and not the notes taken by the clerk during the meeting, are the official records of the meeting. OAG Nov. 15, 1935 (162f).