

CHAPTER 275

LEVY AND EXTENSION OF TAXES

275.01 LEVY IN SPECIFIC AMOUNTS.

HISTORY. 1860 c. 1 s. 46; G.S. 1866 c. 11 s. 78; 1874 c. 1 ss. 75 to 78, 80; 1877 c. 6 s. 14; 1878 c. 1 s. 48; G.S. 1878 c. 11 s. 48; 1885 c. 114; G.S. 1894 s. 1557; R.L. 1905 s. 866; G.S. 1913 s. 2048; G.S. 1923 s. 2055; M.S. 1927 s. 2055.

1. "Levy" defined and distinguished
2. Valid levy essential to a valid tax
3. Specific levies

1. "Levy" defined and distinguished

A levy generally refers to the ministerial or executive act of the officials extending taxes on tax books and collecting them; but the term is often used in reference to a legislative or a ministerial act determining that a tax be raised for a specific purpose and fixing the rate of taxation. An invalid levy does not authorize the seizure of property by the tax collector. *McCormick v Fitch*, 14 M 252 (185).

While school taxes for independent school districts are to be extended on the tax lists and collected by the same county officers as county taxes are extended and collected, the county commissioners have nothing to do with "levying" them in the sense of determining the amount to be raised or approving the action of the school district. *State v Lakeside*, 71 M 283, 73 NW 970.

Laws 1899, Chapter 40, regulating the affairs of school districts, held to be special legislation and a tax levy laid thereunder is void. *State ex rel v Johnson*, 77 M 453, 80 NW 620.

2. Valid levy essential to a valid tax

A purchaser of real property at a tax sale invalid by reason of an illegality in the levy of the tax acquires no lien upon the property. A valid levy is essential to a valid tax. That a levy is illegal is a complete defense on an application for judgment. *Barber v Evens*, 27 M 92, 6 NW 445.

Prior to 1874 when proceedings for collection of delinquent real estate taxes were in pais, an illegal levy rendered all subsequent proceedings void and a sale thereunder was subject to collateral attack. Under the present system one of the objects of the judgment is to determine the validity of the levy and it is conclusive as to the levy. A judgment for real estate taxes cannot be collaterally attacked for error, irregularity, or omission in the levy. A tax certificate is prima facie evidence of the validity of the levy. A levy is presumed legal until the contrary is affirmatively shown. The delinquent list, as well as the tax list by the auditor, is prima facie evidence of a valid levy. *County of Olmsted v Barber*, 31 M 256, 17 NW 473.

3. Specific levies

Taxes must be levied or voted in specific amounts and the rate percentage determined from the amount of the property as equalized by the state board of equalization each year. In re *Jefferson*, 35 M 215, 28 NW 256; In re *Cloquet Lumber Co.* 61 M 233, 63 NW 628.

Taxability of personal property upon the winding up of the business. *Standard v Wolf*, 219 M 128, 17 NW(2d) 329.

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275.02 CERTIFICATION OF STATE TAX LEVY.

HISTORY. 1860 c. 1 s. 46; G.S. 1866 c. 11 s. 78; 1874 c. 1 ss. 75 to 78, 80; 1877 c. 6 s. 14; 1878 c. 1 s. 48; G.S. 1878 c. 11 s. 48; 1885 c. 114; G.S. 1894 s. 1557; R.L. 1905 s. 867; G.S. 1913 s. 2049; G.S. 1923 s. 2056; M.S. 1927 s. 2056; 1935 c. 282.

A tax list or tax duplicate duly certified by the county auditor is prima facie evidence of the due levy of the taxes in it. In re Jefferson, 35 M 215, 28 NW 256.

State auditor has no power to make a tax levy. OAG April 22, 1937 (280b).

275.03 COUNTY TAXES.

HISTORY. 1860 c. 1 s. 46; G.S. 1866 c. 11 s. 78; 1874 c. 1 ss. 75 to 78, 80; 1877 c. 6 s. 14; 1878 c. 1 s. 48; G.S. 1878 c. 11 s. 48; 1885 c. 114; G.S. 1894 s. 1557; R.L. 1905 s. 868; G.S. 1913 s. 2050; G.S. 1923 s. 2057; M.S. 1927 s. 2057.

County taxes are levied by the county board at its annual meeting in July. In re Cloquet Lumber Co. 61 M 233, 63 NW 628; State v Lakeside, 71 M 283, 73 NW 970.

An action to increase the compensation of the judges of the district court of Ramsey county providing that the county shall pay to each of the judges the sum of \$1,500 annually, is constitutional. Steiner v Sullivan, 74 M 498, 77 NW 286.

County boards of equalization, when they are met as appointed by law, must continue in session for the purpose of equalizing assessments on every business day during the week; and an adjournment except from day to day is such an irregularity as to provide a defense against the assessment and collection of tax. Board v Nettleton, 22 M 356.

Where taxes are levied by the county board at its annual meeting in July, the original record of this levy is in the auditor's office and that fact need not be certified to him. In re Jefferson, 35 M 215, 28 NW 256.

Laws 1913, Chapter 183, as amended by Laws 1925, Chapter 300, violates the constitutional provision that taxes must be uniform upon the same class of property, and is invalid. State ex rel v County of Scott, 195 M 111, 261 NW 863.

An emergency levy for tuberculosis tests may be made before the July meeting. OAG Jan. 30, 1934.

The levying of county taxes in July of each year is directory and not mandatory. 1934 OAG 777, Aug. 29, 1934 (519e).

The county is required to levy a tax for mothers' pensions. OAG Aug. 7, 1936 (335b).

The county board may amend a tax levy made in July prior to the spreading of taxes on the tax rolls. OAG Nov. 28, 1938 (339p).

County board may amend a resolution levying road and bridge tax at any adjourned meeting prior to certification of taxes to the auditor. 1936 OAG 113, Sept. 5, 1935 (125a-14).

Under the guise of a levy for social welfare the board cannot levy a tax to create a surplus to transfer to the road and bridge fund. OAG Oct. 2, 1944 (519d).

275.04 TAX LEVY FOR ROAD AND BRIDGE PURPOSES IN COUNTIES WHOSE MAXIMUM RATE IS FIXED BY BOARD OF TAX LEVY.

HISTORY. 1925 c. 362 s. 1; M.S. 1927 s. 2057-1.

275.05 LIMIT OF TAX LEVY IN CERTAIN COUNTIES.

HISTORY. 1929 c. 115 s. 1; M. Supp. s. 2057-2.

275.06 COUNTY BOARD TO FIX LEVY.

HISTORY. 1929 c. 115 s. 2; M. Supp. s. 2057-3.

275.07 CITY, VILLAGE, TOWN, AND SCHOOL DISTRICT TAXES.

HISTORY. 1860 c. 1 s. 46; G.S. 1866 c. 11 s. 78; 1874 c. 1 ss. 75 to 78, 80; 1877 c. 6 s. 14; 1878 c. 1 s. 48; G.S. 1878 c. 11 s. 48; 1885 c. 114; G.S. 1894 s. 1557; R.L. 1905 s. 869; G.S. 1913 s. 2051; G.S. 1923 s. 2058; M.S. 1927 s. 2058.

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The state, county, city, village, town, borough, and school district, is each an independent taxing district for its particular purpose. Each levies its own taxes using the county officials as a collection medium. The county board has nothing to do with the levying of school taxes. *Bradish v Lucken*, 38 M 186, 36 NW 454; *St. Paul & Sioux City v Robinson*, 40 M 360, 43 NW 79; *State v Lakeside*, 71 M 283, 73 NW 970; *State ex rel v Minor*, 79 M 201, 81 NW 912.

Taxes voted by cities, villages, boroughs, towns, and school districts are required to be certified by the proper officers to the county auditor on or before October 10th each year, but this requirement is merely directory. In re *Jefferson*, 35 M 215, 28 NW 256; In re *Cloquet Lbr. Co.* 61 M 233, 63 NW 628; *State v Lakeside*, 71 M 283, 73 NW 970; *Nelson v Becker*, 63 M 61, 65 NW 119; *State ex rel v Johnson*, 77 M 453, 80 NW 620; *State ex rel v Minor*, 79 M 201, 81 NW 912; *Fergus Falls v Board*, 88 M 346, 93 NW 126.

The allowance of a writ of certiorari by the supreme court directed to the supervisors of a town, is a matter of legal discretion; and when the writ would arrest proceedings for the collection of an alleged illegal tax affecting all of the taxpayers, the writ should ordinarily be denied if applied for by only a part of them. *Libby v West St. Paul*, 14 M 248 (181).

After a levy for special assessments has been certified to the county auditor for extension on the tax lists, an injunction will not lie against the municipality and its officers to restrain enforcement. If such assessments are wholly void for want of notice, there is an adequate remedy at law. *Schulz v City of North Mankato*, 176 M 76, 222 NW 518.

Where a town has levied its tax for local purposes and listed and assessed the personal property therein on May 1st, a city thereafter organized so as to include part of such town may not levy a tax for city purposes on any of the personal property so assessed and taxed by the town for the same year. *State v Republic Steel Corp.* 199 M 107, 271 NW 119.

The county claimed that the town should stand its proportionate share of the moneys lost through the insolvency of banks; and adopted the expedient suggested by the state public examiner of holding out money payable to the town out of current taxes collected. Town of *Kratka* as relator demanded its proportionate share of the current taxes collected for the town by the auditor and treasurer. *Mandamus* is the proper remedy to compel the county officers to perform their statutory duties. *State ex rel v County of Pennington*, 211 M 569, 2 NW(2d) 41.

Instructions as to where taxes should be assessed and collected in cases where a city administers township territory and a holding as to when the administration was completed. 1940 OAG 293, Sept. 27, 1939 (59a-1).

275.08 AUDITOR TO FIX RATE.

HISTORY. 1860 c. 1 s. 46; G.S. 1866 c. 11 s. 78; 1874 c. 1 ss. 75 to 78, 80; 1877 c. 6 s. 14; 1878 c. 1 s. 48; G.S. 1878 c. 11 s. 48; 1885 c. 114; G.S. 1894 s. 1557; R.L. 1905 s. 870; G.S. 1913 s. 2052; G.S. 1923 s. 2059; M.S. 1927 s. 2059.

In spreading an assessment the auditor has no authority to include items which have not been authorized and in fixing the tax rate the auditor must have in mind statutory restrictions on municipalities and should any municipality return a greater amount than allowed by statute the auditor can extend only such amount of tax as the prescribed rate will produce. *Bradish v Lucken*, 38 M 186, 36 NW 454; *Town of Normania v County of Yellow Medicine*, 205 M 451, 286 NW 881.

The auditor calculates the rates and completes the levy and makes out the tax lists based upon the amounts certified to him under sections 275.02 to 275.07. *Libby v Town of West St. Paul*, 14 M 248 (181); In re *Jefferson*, 35 M 215, 28 NW 256; *Nelson v Becker*, 63 M 61, 65 NW 119.

The commissioner of taxation has the power to reduce the valuation of real or personal property of any individual or corporation below that fixed by the city assessor or county board without the approval of the city or county taxing authorities. The evidence sustains the order of the commissioner in reducing the assessed valuation of the property in question. *State ex rel v Minnesota Tax Commission*, 137 M 20, 162 NW 675.

The auditor and treasurer cannot refuse to pay over to a town the amount of current taxes collected for the town, even though the town is liable to the county for its proportionate share in prior losses caused by the insolvency of certain banks and even though the state public examiner advised them to hold up the payment. *State ex rel v Pennington*, 211 M 569, 2 NW(2d) 41.

A village operating under a cash basis law must be governed by Laws 1923, Chapter 72, when making a levy for bond and interest payments. OAG July 8, 1938 (519q).

275.09 RATE OF LEVY.

HISTORY. 1860 c. 1 ss. 46, 73, 74; 1861 c. 6 s. 2; G.S. 1866 c. 11 ss. 78 to 80; 1874 c. 1 ss. 75 to 78, 80; 1877 c. 6 s. 14; 1878 c. 1 s. 49; G.S. 1878 c. 11 s. 49; G.S. 1894 s. 1558; 1899 c. 117; 1905 c. 69; R.L. 1905 s. 871; G.S. 1913 s. 2053; G.S. 1923 s. 2060; 1927 c. 313; M.S. 1927 s. 2060; 1937 c. 379 s. 1; 1939 c. 170; 1943 c. 183 s. 1; 1945 c. 450 s. 1.

"County purposes," for which the maximum annual tax is limited to three mills on the dollar without reference to the electorate, includes only the ordinary expenses of the county. The payment of the county debt or the interest thereon, or certain extraordinary expenses is not within the limitation. *McCormick v Fitch*, 14 M 252 (185).

The commissioners of Meeker county could legally levy in 1865 a tax of four mills on the dollar necessary to pay the current expenses of the county. *Piper v Branham*, 14 M 548 (418).

County commissioners may provide for paying the interest on county bonds issued to railroad companies although such bonds have not been registered with the state auditor as provided by law. *Board v Nettleton*, 22 M 356.

It is the duty of the commissioners of a sinking fund to report to the common council the amount of money necessary to be raised by taxation in that year to provide such fund and the council shall thereupon cause such tax to be levied; but the common council has no authority to cause such a tax to be levied when the board of commissioners of the sinking fund had made no report of the amount necessary. *Board v Nettleton*, 22 M 356.

The commissioners contracted for a jail to be built, agreeing to pay \$1,300 in county orders. This agreement, if valid, incurred a pecuniary liability on the county; and the county board was bound to inquire whether such an amount in money could be raised by the levy of ten mills on the dollar as the same appeared on the subsisting grand list of the county; and as \$930.45 was all that could be levied on such grand list the contract for building the jail and payment therefor was void. *Johnson v Board*, 27 M 64, 6 NW 411.

The county board has no power to incur liability for the county which, with the ordinary current yearly expenses and other liabilities payable within a year, will exceed both the funds in the county treasury and the maximum which can be assessed for one year's taxes for the county purposes. Under the general laws the board has no power to issue bonds for the erection of a court-house. *Rogers v Le Sueur County*, 57 M 434, 59 NW 488.

Plaintiff, a non-resident owner of real estate, failed to pay his taxes for the last half of the year 1901, and the property was sold for this unpaid tax in 1903 and the time for redemption expired, and in an action to determine adverse claims it was adjudged that the certificate holder was the owner of the land, free from any claim by plaintiff. The county auditor did not at any time after such tax sale place on the tax list furnished to the county treasurer the words "sold for taxes." Had the words "sold for taxes" been written or stamped on tax receipts, plaintiff would have redeemed from the sale. Plaintiff had no notice of the action to determine adverse claims. The facts showed a failure by the county auditor to perform a duty imposed upon him, and a public officer is liable for the failure or neglect to perform a duty imposed upon him when such a duty is a ministerial one. The complaint stated a cause of action against the auditor and the joint demurrer of the auditor and treasurer was properly overruled. *Howley v Scott*, 123 M 159, 143 NW 257.

The reasonable cost and expense of making repairs upon a court house is incidental to the affairs of a county and not unlawful even though the amounts there-

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of added to other items of current expenses exceed the statutory limitation of the taxing power of the county. *Upton v Strommer*, 101 M 97, 111 NW 956.

Village warrants issued prior to the enactment of Laws 1921, Chapter 417, and presented but not paid for want of funds, should be paid in the order of their presentation and take precedence over warrants subsequently issued; and the holders of part due village warrants may enjoin a village and its officers from putting into effect a resolution of the council directing the treasurer to devote all funds to the payment of the current expenses of the village for 1921. Such resolution was an attempt to impair the obligation of a contract between the village and the holders of past due warrants. *Bank v Village of Buhl*, 151 M 206, 186 NW 306.

A county cannot levy for revenue purposes a sum in excess of \$40,000 where a five-mill tax upon the assessed valuation of the property of the county the preceding year will not produce \$40,000, even though under statutes fixing salaries and expenses such sum is insufficient. *State v Keyes*, 188 M 79, 246 NW 547.

There are three different statutory provisions relating to the maximum levy which may be made by a town for road and bridge purposes, and in this instance the auditor may extend on the tax lists the proposed amount though the levy exceeded the ten-mill limitation. 1936 OAG 429, Dec. 19, 1935 (519k).

Where the county commissioners of Lyon county determined it was advisable to provide proper fire-proof vaults for the county auditor, register of deeds, and others, where there are sufficient funds in the general revenue fund of the county to pay the county share of the cost over and above "available to take care of other expenses of the county," the county board may use such funds from the general revenue fund. 1938 OAG 125, Oct. 29, 1938 (125a-20).

A levy for a village hall is allowable in addition to the two-mill limitation. OAG Dec. 21, 1938 (519q).

Tax-exempt real estate must not be included in total assessed value for the purpose of determining the maximum amount of the tax levy. OAG July 27, 1939 (104a-9).

Outline of municipal bond procedure in Minnesota. 20 MLR 583.

Tax levy. 20 MLR 592.

Governmental responsibility for torts. 26 MLR 336.

275.10 TAX LEVY IN TOWNS.

HISTORY. 1927 c. 110 ss. 1 to 3; M.S. 1927 ss. 2060-2, 2060-3, 2060-4.

Where a town has duly levied its tax for local purposes and listed and assessed the personal property therein taxable on the first of May in any year, a city thereafter organized to include part of such town may not levy a tax for city purposes on any of the personal property so assessed and taxable by the town for the same year. *State v Republic Steel*, 199 M 107, 271 NW 119.

There are so many special acts as well as special charter provisions applying to particular municipalities that it may depend upon those acts and charters as to whether or not, in order to take advantage of the federal emergency administration of public works, the municipalities are limited by Laws 1929, Chapter 206, wherein the taxing power is limited to \$70.00 per capita per year. 1934 OAG 60, Mar. 2, 1934 (442a-5).

Tax levy for road and bridge purposes is limited by section 275.10 where it is applicable and may be exceeded only when necessary to provide funds to pay minimum expenses. OAG Aug. 21, 1936 (519a).

Analysis of basis, method and limitation on town levy. OAG Dec. 21, 1944 (519K).

275.11 TAX LEVY FOR GENERAL PURPOSES LIMITED.

HISTORY. 1921 c. 417 s. 1; G.S. 1923 s. 2061; M.S. 1927 s. 2061; 1929 c. 206 s. 1; 1941 c. 543 s. 1.

Laws 1929, Chapter 303, is constitutional and the indebtedness therein referred to is valid. *Tetzlaff v Village of Chisholm*, 178 M 342, 237 NW 202.

Laws 1921, Chapter 417 (275.11 to 275.16), fixing \$60.00 per capita as the maximum tax levy in all school districts in the state, is not unconstitutional as special

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legislation, nor because the population may be determined in the alternative, nor because the law is unworkable. *Ind. School Dist. v Borgen*, 187 M 539, 246 NW 119.

Section 426.04 supersedes the provision in the home rule charter of Hastings in regard to the limitation upon total tax levies, and it may levy a tax up to 25 mills for general city and municipal purposes; and in addition may make a levy for its valid bonded indebtedness and the interest thereon incurred prior to 1929; and special school district No. 26 whose boundaries are co-terminous with those of the city, may levy a tax up to 35 mills under the authority of Laws 1921, Chapter 292, the constitutionality of which is sustained. *State v Brown*, 189 M 257, 248 NW 822, 249 NW 569.

Section 426.04 is not a limitation on cities having home rule charters providing for higher levies. 1934 OAG 97, May 11, 1934 (519c).

It was not within the contemplation of the legislature at the time of the enactment of the per capita tax laws to cut off the rights of the judgment creditor; nor was it the intention of the legislature that a municipality operating under a per capita tax law could not levy in excess of the limitations therein provided where it becomes necessary to do so in order to take care of unpaid judgments. This overrules the opinion of the attorney general dated Dec. 31, 1930. 1934 OAG 102, Oct. 12, 1934 (519i).

There is no statute which imposes a personal obligation on members of a village council for returning to a county auditor a greater levy than the levy which is permitted by law. 1936 OAG 352, Oct. 10, 1936 (519q).

Taxes levied for special assessments for local improvements upon property specifically benefited are expressly excluded from limitations contained in Laws 1935, Chapter 134, Section 2. 1938 OAG 77, Oct. 6, 1937 (476a-4).

Where the statute places a limit on amount of a tax levy for schools, there is no prohibition against expenditures if the board has a surplus on hand from previous years. 1942 OAG 52, Sept. 23, 1941 (519M).

Procedure for and by the cities of Eveleth and Chisholm under the tax limitation enactment, Laws 1941, Chapter 543. 1942 OAG 334, April 6, 1942 (519-I); 1942 OAG 335, April 6, 1942 (519-I).

An outline of municipal bond procedure; tax levy. 20 MLR 593.

275.12 TAX LEVY FOR SCHOOLS LIMITED.

HISTORY. 1921 c. 417 s. 2; G.S. 1923 s. 2062; M.S. 1927 s. 2062; 1941 c. 543 s. 2.

Method of determining rates of taxation in certain school districts. 1936 OAG 389, Nov. 9, 1935 (519m).

School board has authority to use the proceeds from insurance policies to construct and equip a new school house and need not use the money to retire outstanding school district bonds. OAG Jan. 20, 1939 (159b-4).

"Population" means the entire number of people residing in the district. OAG Nov. 20, 1944 (519m).

275.13 ADDITIONAL LEVIES TO COVER INDEBTEDNESS.

HISTORY. 1921 c. 417 s. 3; G.S. 1923 s. 2063; M.S. 1927 s. 2063; 1941 c. 543 s. 3.

275.14 SPECIAL CENSUS MAY BE TAKEN.

HISTORY. 1921 c. 417 s. 4; G.S. 1923 s. 2064; M.S. 1927 s. 2064.

The intention of the parties questioned as to whether teachers and students are residents of the districts in question. OAG Oct. 17, 1933.

Procedure outlined for determining the census in municipalities operating under per capita tax limitations. OAG Dec. 13, 1938 (870i).

275.15 NOT TO INCREASE LEVIES.

HISTORY. 1921 c. 417 s. 5; G.S. 1923 s. 2065; M.S. 1927 s. 2065.

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275.16 COUNTY AUDITOR TO FIX AMOUNT OF LEVY.

HISTORY. 1921 c. 417 s. 6; G.S. 1923 s. 2066; M.S. 1927 s. 2066; 1941 c. 543 s. 4.

Unless necessary to meet maturing bond obligations and necessary governmental functions, the county auditor must reduce the levy upon the property in the village where it exceeds two per cent of the assessed valuation. OAG Dec. 5, 1935 (481a-4).

275.161 TO BE CONSIDERED AS ADDITIONAL LIMITATION.

HISTORY. 1941 c. 543 s. 5.

275.17 ISSUE OF MUNICIPAL WARRANTS LIMITED.

HISTORY. 1929 c. 208 s. 1; M. Supp. s. 2066-1.

Laws 1929, Chapter 208, is constitutional. It is not violative of Minnesota Constitution, Article 4, Sections 33, 34. The classification is germane to the purpose of the act; it is remedial and temporary; it is uniform and not optional and applies to all members of the classification. *Giffin v Village of Hibbing*, 178 M 337, 227 NW 41.

Notwithstanding the limitations of the per capita tax laws a village may issue certificates of indebtedness payable out of special assessments against certain benefited property. OAG Oct. 6, 1937 (476a-4).

275.18 BOARD NOT TO CREATE INDEBTEDNESS.

HISTORY. 1929 c. 208 s. 2; 1933 c. 231 s. 1; 1937 c. 125 s. 1; M. Supp. s. 2066-2.

275.19 TAX RECEIPTS TO BE USED FOR PAYING INDEBTEDNESS; EXCEPTIONS.

HISTORY. 1929 c. 208 s. 3; M. Supp. s. 2066-3.

275.20 MAY SELL CERTIFICATES OF INDEBTEDNESS.

HISTORY. 1929 c. 208 s. 4; 1933 c. 231 s. 2; M. Supp. s. 2066-4.

Relative to certificates of indebtedness in excess of the per capita tax. 1934 OAG 106, Aug. 11, 1934 (519a).

Certificates cannot be issued to levy funds for present fiscal year to be taken up with funds to be levied for the next fiscal year; and warrants can only be issued within the levy for the present fiscal year, plus collections made upon a levy of the next preceding year. OAG Oct. 2, 1936 (59a-51).

275.21 BONDS MAY BE ISSUED TO FUND INDEBTEDNESS.

HISTORY. 1929 c. 208 s. 5; M. Supp. s. 2066-5.

275.22 GENERAL PROPERTY TAX LEVY FOR ALL PURPOSES.

HISTORY. 1860 c. 1 ss. 46, 73, 74; G.S. 1866 c. 11 ss. 78, 79, 80; 1874 c. 1 ss. 75 to 78, 80; 1877 c. 6 s. 14; 1878 c. 1 s. 49; G.S. 1878 c. 11 s. 49; G.S. 1894 s. 1558; 1899 c. 117; 1905 c. 69; R.L. 1905 s. 871; 1907 c. 404 s. 1; G.S. 1913 s. 2054; G.S. 1923 s. 2067; M.S. 1927 s. 2067.

Where the contracts of employment of public school teachers in the special school district of Minneapolis stipulated a monthly salary, but provided that the board of education may reduce same whenever it is necessary, no definite rights spring from such contracts and mandamus will not lie, the obligation being only a moral one. *State ex rel v Bauman*, 194 M 439, 260 NW 523.

The town board has no authority to cut a tax levy voted by the electors at a town meeting. OAG March 7, 1933.

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275.23 LIMITATIONS OF SECTION 275.09.

HISTORY. 1860 c. 1 ss. 46, 73, 74; G.S. 1866 c. 11 ss. 78 to 80; 1874 c. 1 ss. 75 to 78, 80; 1877 c. 6 s. 14; 1878 c. 1 s. 49; G.S. 1878 c. 11 s. 49; G.S. 1894 s. 1558; R.L. 1905 s. 872; G.S. 1913 s. 2056; G.S. 1923 s. 2068; M.S. 1927 s. 2068.

275.24 CITIES OF SECOND CLASS, RATE OF TAX LEVY FOR GENERAL FUND, LIMITATION.

HISTORY. 1919 c. 75 ss. 1, 2; M.S. 1927 ss. 2068-1, 2068-2.

275.25 CERTAIN CITIES MAY ISSUE BONDS TO PAY OUTSTANDING INDEBTEDNESS.

HISTORY. 1927 c. 267; M.S. 1927 s. 2068-3; 1929 c. 292.

275.26 EXCESSIVE LEVY; INJUNCTION.

HISTORY. 1903 c. 153; R.L. 1905 s. 873; G.S. 1913 s. 2057; G.S. 1923 s. 2069; M.S. 1927 s. 2069.

In an action to enforce payment of delinquent real estate taxes the defendant was not confined to the remedy given by section 275.26, but might attack the levies by resort to section 279.15. *State v Keyes*, 188 M 79, 246 NW 547.

A tax levy is based on need, which does not include a large surplus. A surplus cannot be created for one fund in order that it may be transferred to another fund whose tax levy amount is limited. OAG Oct. 2, 1944 (519d).

Relief accorded taxpayer as to taxes illegally assessed or collected. 15 MLR 692.

275.27 CONTRACTS IN EXCESS VOID; LIABILITY OF OFFICERS.

HISTORY. R.S. 1851 c. 29 ss. 6, 12; P.S. 1858 c. 23 ss. 64, 70; G.S. 1866 c. 11 ss. 78 to 80; 1878 c. 1 s. 114; G.S. 1878 c. 11 s. 114; G.S. 1894 s. 1639; R.L. 1905 s. 874; G.S. 1913 s. 2058; G.S. 1923 s. 2070; M.S. 1927 s. 2070.

Under the provisions of Public Statutes 1858, Chapter 23, Sections 64, 70, although the amount of tax which a school district may levy is limited to \$600.00 in any one year, the amount which the district may spend for the building of a school house is not so limited and it may contract for such purposes a debt payable at a future date and give instruments in the form of promissory notes payable at a future date; but a judgment against them can be enforced only against the fund raised by levying the amount of tax authorized. *Robbins v School District*, 10 M 340 (268).

According to the contract between the plaintiff and the county board a jail was to be erected for \$1,300 payable by a county order. As \$935.45 was all that could be levied at the rate of ten mills on the dollar the agreement for the building of the jail and payment thereof was void. *Johnston v Board*, 27 M 64, 6 NW 411.

The county board has no power to anticipate in a year more than the year's uncollected taxes as assessed, plus the amount of the funds in the treasury. The taxes assessed during the previous year for a specific purpose cannot be applied to that purpose during the present year before they are collected. The board has no power to issue bonds for the erection of a courthouse. *Rogers v Le Sueur County*, 57 M 434, 59 NW 488.

In voting on a proposal to construct and equip a village electric light plant, the statutes do not require both a posting and publishing of a notice of election, and the fact that the village council by resolution added to the statutory requirements of notice was not fatal to the validity of the action taken at the meeting inasmuch as the statutes were fully complied with. *Hamilton v Village of Detroit*, 83 M 119, 85 NW 933.

Where the board of trustees of a school district knowingly refused to interpose a valid defense to a suit brought against it allowing judgment by default, upon a change of the board, the discretion of the court was properly exercised in opening the judgment. *Queal v Bulen*, 89 M 477, 95 NW 310.

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Under the charter of St. Cloud the council may license and regulate the business of carrying passengers for hire in motor vehicles within the city. The statute under which such vehicles are taxed and licensed or registered does not conflict with ordinance. *Jefferson v City*, 155 M 463, 193 NW 960.

Laws 1927, Chapter 147, is remedial in character and intended to provide temporary relief for an unusual condition and is constitutional, and bonds issued in pursuance are valid obligations of the county of Itasca. *Thorpe Bros. v County*, 171 M 312, 213 NW 914.

When the statute requires that the county financial statement be made annually on the first Tuesday after the first Monday in January and be published three successive weeks within 30 days thereafter, and the 30-day period having expired before the commencement of an action, a writ of mandamus will not be granted where the relief sought would be nugatory and prove unavailing, the time having lapsed. *State ex rel v Neisen*, 173 M 350, 217 NW-371.

Section 275.27 expressly makes every officer of the school district who participates in making a contract individually liable for performance of the same when funds to meet such contract are not available, but the section 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 contract and if the contract fails to impose an obligation on the district the taxpayers are not harmed, and have no standing in court to restrain the forming of contract. *Ind. School Dist., v Oliver Iron M'ng Co.* 169 M 15, 210 NW 856.

The salary schedule adopted by the board prior to the enactment of the teachers tenure act does not determine the yearly salary to be paid to its teachers after such act went into effect. The board may only contract for such yearly salary of teachers as is within the limit of the fund provided for that purpose. Teachers are charged with the knowledge of the legal extent of the board's power to contract. The plaintiff has no contract on which he can recover from the Duluth school district any more than he has already received. *Sutton v Board of Education*, 197 M 125, 266 NW 447.

That part of Laws 1933, Chapter 359, reducing the rates at which homesteads shall be valued for taxation, but preserving former and higher rates for the purpose of figuring "taxation limitation" does not amend a provision of city charter limiting a school tax to 22 mills on the dollar and does not violate the constitutional demand for uniformity of taxation. *510 Groveland v Erickson*, 201 M 381, 276 NW 287.

Whether or not the contract of insurance in a mutual company will obligate a school district in violation of section 275.27 is a question of fact based upon the provisions of the insurance contract. 1934 OAG 540, Jan. 9, 1934 (487c-5).

The council of the village of Grand Rapids is prohibited from entering into any contract which will create a debt for the payment of either the principal or interest on which during the current or any subsequent years it shall be necessary to levy a rate of taxes higher than the two per cent maximum prescribed by law. 1938 OAG 82, May 21, 1937 (396g-7).

While a school district is without authority to borrow money except through a bond issue and is not authorized to issue its warrants except where there is money for the payment thereof and taxes have been levied and are in the process of collection, the facts in this case indicated that the 1938 tax levy had actually been made and certified by the county auditor, and the district is therefor authorized to issue warrants in anticipation of the collection of such taxes. 1938 OAG 213, Nov. 16, 1937 (159b-2).

Direction as to the right of villages to purchase personal property under a conditional sales contract and necessary bids. OAG Dec. 4, 1934 (707a-15).

Neither the village council nor the board of park commissioners has authority to issue warrants where there is no money in the treasury, except there be a current tax levy sufficient to cover the warrants. OAG April 19, 1937 (476c-2).

Where the amount raised by a bond issue to build a new school building is inadequate, moneys derived from taxes levied for general school purposes may be used if available. OAG Nov. 16, 1937 (159b-2).

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A municipality may not issue warrants for water and sewer expenses in addition to moneys in the treasury or in the process of collection from taxes actually levied. OAG Sept. 1, 1939 (476c-4).

The subterfuge of calling the contract a lease when in fact it is a purchase on a conditional sales contract, does not give validity to the contract. OAG Sept. 14, 1939 (707b-2).

The contract in the instant matter is not unlawful unless it will result in the village incurring an obligation which will necessitate levying a tax in excess of the statutory rate. 1942 OAG 251, Jan. 29, 1942 (624c-15).

275.28 TAX LISTS.

HISTORY. 1874 c. 1 ss. 106, 107; 1878 c. 1 ss. 50, 52; G.S. 1878 c. 11 ss. 50, 52; G.S. 1894 ss. 1559; 1561; Ex. 1902 c. 2 s. 87; R.L. 1905 ss. 875, 876; G.S. 1913 ss. 2059, 2060; G.S. 1923 ss. 2071, 2072; M.S. 1927 ss. 2071, 2072.

Tax lists are made up from the returns of the various assessors in the county as modified by the auditor or boards of equalization. They are sometimes termed tax duplicates. *Morgan v Smith*, 4 M 104 (64); *McCormick v Fitch*, 14 M 252 (185); *Piper v Branham*, 14 M 548 (418); *Thompson v Tinkcom*, 15 M 295 (226); *Howes v Gillett*, 23 M 231; *Estate of Jefferson*, 35 M 215, 28 NW 256; *Walker v Martin*, 87 M 489, 92 NW 336.

The auditor must determine the specific amount due on each tract of real property and against each person on the amount of his personal property, and set the amounts down on the list opposite the description of the tract or the name of the person. This is called extending the tax and the list is called a tax list, and until the auditor performs this duty there is no tax in existence. *Libby v City of West St. Paul*, 14 M 248 (181); *McCormick v Fitch*, 14 M 252 (185); *Nelson v Becker*, 63 M 61, 65 NW 119.

Special taxes should be placed by the auditor in a column for that purpose, but the statutory direction to that effect is directory and not mandatory. *Scott County v Hinds*, 50 M 204, 52 NW 523; *State v Norton*, 63 M 497, 65 NW 935.

The tax list duly certified as required by law is prima facie evidence of the due levy and assessment of the taxes thereon, and without the certificate it is the only evidence of its own existence and of the facts recited therein. *Howes v Gillett*, 23 M 231; *In re Jefferson*, 35 M 215, 28 NW 256.

The statute allows the auditor from October 10th until the following first Monday in January within which to complete the list. *Nelson v Becker*, 63 M 61, 65 NW 119; *State v West Duluth Land Co.* 75 M 456, 78 NW 115.

The auditor has no authority to extend taxes except as based upon a prior levy and assessment. While his list is presumed to be valid, the list is not prima facie evidence of the levy and assessment unless accompanied by a certificate as required by statute. *Howes v Gillett*, 23 M 231.

Where the auditor simply places unassessed land in the tax duplicate and extends taxes thereon at a valuation, such action does not constitute an assessment. *Walker v Martin*, 87 M 489, 92 NW 336.

Where land has been sold for taxes and is subject to redemption it is the duty of the auditor to place on the list opposite the description the words "sold for taxes", and the treasurer may rely upon the auditor's list. *Howley v Scott*, 123 M 159, 143 NW 257; *Culligan v Cosmopolitan*, 126 M 218, 148 NW 273; *Howley v Scott*, 126 M 271, 148 NW 116.

It was within the power of the electors of Minneapolis to withdraw the city from operation of Special Laws 1879, Chapter 338, by adopting a home rule charter. Taxation for municipal purposes is purely a matter of municipal concern, and may be dealt with in a home rule charter. Laws 1919, Chapter 252, which repealed Chapter 338 in part, did not affect the legal standing of the board of tax levy. *State ex rel v Erickson*, 157 M 200, 195 NW 919.

Where taxes have been extended and spread, and in part collected, it is too late to grant any relief and a petition for an injunction to restrain the spreading of a school tax must be dismissed. *Republic v Borgen*, 187 M 373, 245 NW 615.

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The state constitution does not grant to the taxpayer the right of redemption or any right to notice of expiration of time of redemption. Whatever rights the taxpayer possesses in that respect depend upon statutory enactment; and in a suit by the state to quiet title based upon a tax sale, the original owner of the property cannot collaterally collect the judgment and sale because of an irregularity in assessing, and selling the entire section as one tract when it was in fact made up of 16 40-acre tracts owned by one man. *State v Aitkin County Farm Land Co.* 204 M 495, 284 NW 63.

Where the auditor and the treasurer of Pennington county failed to turn over to the town of Kratka their proportion of current taxes collected on the ground that they had been so advised by the state public examiner, and were withholding the money because of alleged indebtedness of the town to the county growing out of the failure of certain banks, mandamus will lie to compel the officers to perform their statutory duties. *State ex rel v County*, 211 M 569, 2 NW(2d) 41.

275.29 ABSTRACT TO STATE AUDITOR.

HISTORY. 1874 c. 1 s. 71; 1878 c. 1 s. 51; G.S. 1878 c. 11 s. 51; 1885 c. 2 s. 3; G.S. 1894 s. 1560; R.L. 1905 s. 877; G.S. 1913 s. 2061; G.S. 1923 s. 2073; M.S. 1927 s. 2073.

275.30 PERSONAL PROPERTY TAX LISTS IN CERTAIN COUNTIES.

HISTORY. 1917 c. 392 ss. 1 to 3; 1925 c. 229; M.S. 1927 ss. 2073-1, 2073-2, 2073-3; 1943 c. 593 s. 3.

The county board and other county officers are not subject to the federal code and the necessity for bids and the letting of contracts for printing to the lowest bidder are not abrogated by the NRA rules. 1934 OAG 189, Dec. 31, 1934 (707a-9).

The mere failure of the county treasurer to comply with the provisions of section 275.30 is not a defense in an action against the taxpayer to collect taxes. 1934 OAG 827, Jan. 22, 1934 (421a-5).

The treasurer alone designates the newspaper, and the county board has no control over that designation or expenditure. OAG Feb. 25, 1936 (277a-11).

In publishing the list, money and credits tax should be included. OAG Jan. 7, 1939 (614-1).

Where a personal property tax list is given to a newspaper for publication the rate fixed by law as the limit of compensation governs, unless there is a special agreement otherwise. OAG Feb. 25, 1936 (277a-11).

There is no statute requiring a county treasurer to call for bids for the publication of the personal property tax list. 1940 OAG 110, Dec. 29, 1939 (421a-10).

In making up lists under section 275.30 the prescribed statutory form must be followed. OAG Jan. 4, 1944 (421a-10).

275.31 LIMITATION OF SECTIONS 275.31 TO 275.35.

HISTORY. 1935 c. 133 s. 1; M. Supp. s. 2060-5.

275.32 LIMIT OF TAX LEVY.

HISTORY. 1935 c. 133 s. 2; M. Supp. s. 2060-6.

275.33 LIMITATION OF EXPENDITURES.

HISTORY. 1935 c. 133 s. 3; M. Supp. s. 2060-7.

275.34 ADDITIONAL LIMITATION.

HISTORY. 1935 c. 133 s. 4; M. Supp. s. 2060-8.

275.35 COUNTY AUDITOR TO MAKE LEVY WITHIN LIMIT.

HISTORY. 1935 c. 133 s. 5; M. Supp. s. 2060-9.

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275.36 LEVY AND EXTENSION OF TAXES

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275.36 TAX LEVY IN CITIES OF THIRD CLASS.

HISTORY. 1937 c. 66 s. 1; M. Supp. s. 2061-1.

275.37 TAX LEVY IN CERTAIN VILLAGES.

HISTORY. 1937 c. 141 s. 1; M. Supp. s. 2061-2; 1941 c. 133.

275.38 TAX LEVY IN CERTAIN VILLAGES.

HISTORY. 1937 c. 194 ss. 1, 3; M. Supp. ss. 2061-3, 2061-4.

275.39 SCHOOL DISTRICTS; TAX LIMITS.

HISTORY. 1935 c. 132 ss. 1, 2; M. Supp. ss. 2062-1, 2062-2.

275.40 SINKING FUND FOR BONDS AND INTEREST.

HISTORY. 1935 c. 132 s. 3; M. Supp. 2062-3.

275.41 WHICH CENSUS TO GOVERN.

HISTORY. 1935 c. 132 s. 4; M. Supp. s. 2062-4.

275.42 COUNTY AUDITOR TO MAKE LEVY WITHIN LIMIT.

HISTORY. 1935 c. 132 s. 5; M. Supp. s. 2062-5.

275.43 TAX LEVY FOR CERTAIN SCHOOL DISTRICTS.

HISTORY. 1937 c. 260 s. 1; M. Supp. s. 2062-6.

275.44 CERTAIN VILLAGES AND CITIES, LIMITATION OF TAX LEVY.

HISTORY. 1935 c. 134 ss. 1, 2; M. Supp. ss. 2066-7, 2066-8.

275.45 WHICH CENSUS TO GOVERN.

HISTORY. 1935 c. 134 s. 3; M. Supp. s. 2066-9.

275.46 LIMITATION OF LEVY.

HISTORY. 1935 c. 134 s. 4; M. Supp. s. 2066-10.

275.47 COUNTY AUDITOR TO MAKE LEVY WITHIN LIMIT.

HISTORY. 1935 c. 134 s. 5; M. Supp. s. 2066-11.

275.48 ADDITIONAL TAX LEVIES IN CERTAIN MUNICIPALITIES.

HISTORY. 1943 c. 523 ss. 1, 2.