

Towns and Town Officers

CHAPTER 365

GENERAL PROVISIONS RELATING TO TOWNS

365.01 BOUNDARIES.

HISTORY. 1860 c. 14 art. 2 s. 1; G.S. 1866 c. 10 s. 7; G.S. 1878 c. 10 s. 7; G.S. 1894 s. 920; R.L. 1905 s. 621; G.S. 1913 s. 1096; G.S. 1923 s. 998; M.S. 1927 s. 998.

Where 22 townships were dissolved under Laws 1933, Chapter 377, the authority to establish election districts in unorganized territory rests in the board of county commissioners. *Hankey v Bowman*, 82 M 328, 84 NW 1002; 1934 OAG 382, July 31, 1933 (185a-5).

365.02 CORPORATE POWERS.

HISTORY. 1858 c. 75 art. 2 s. 1; P.S. 1858 c. 8 s. 10; 1860 c. 14 art. 2 s. 2; G.S. 1866 c. 10 s. 8; G.S. 1878 c. 10 s. 8; G.S. 1894 s. 922; R.L. 1905 s. 622; G.S. 1913 s. 1097; G.S. 1923 s. 999; M.S. 1927 s. 999.

A statutory town is not liable to a private person in a civil action for damages resulting from the disrepair of a public highway. *Altnow v Sibley*, 30 M 186, 14 NW 877; *Weltsch v Town of Stark*, 65 M 5, 67 NW 648.

Where plaintiff owned land adjoining the highway and to whom, as such owner, the town owed the sum due as the law imposes upon adjacent owners of real property to each other, the town had no more right to cause damage to his land in constructing or repairing the adjoining highway than any other adjacent owner would have. *Peters v Town of Fergus Falls*, 35 M 549, 29 NW 586.

As the town is not liable for the illegal or unauthorized acts of its officers, though done under color of office, it is necessary to allege or show in a complaint in an action brought against such town for damages caused by attempting to drain and improve a highway ditch, that such acts were within the scope of the power or authority of the officers. *Kreger v Bismarck*, 59 M 3, 60 NW 675.

The township within which a dissolved incorporated village was located is not, in the absence of a statute so providing, the legal successor of the village; or the owner of any of its property; or the owner of surplus funds remaining in the village treasury after dissolution; and cannot maintain an action therefore. *Township of Highland Grove v Winnipeg Junction*, 125 M 280, 146 NW 974.

Where an organized township constructs and maintains a town telephone system under the authority conferred by sections 237.33 to 237.37, and furnishes ordinary telephone service to private residents of the township, and charges rentals the same as a private person engaged in the telephone business, the town is engaged in operating a public utility, and is liable for the negligence of its officers and agents in so doing. *Storti v Town of Fayal*, 194 M 628, 261 NW 463.

Town supervisors who unlawfully and forcibly remove an alleged pauper from her freehold, without her consent, are personally liable for all actual damages proximately resulting from their acts; and if their conduct was wilful, arbitrary and malicious, punitive damages may be assessed. In the absence of statute the town is not liable for the acts of its supervisors. *Thiede v Town of Scandia Valley*, 217 M 218, 14 NW(2d) 400.

A town board is not authorized to purchase a building and lots for use as a township garage to maintain road equipment without first having received authority to make such purchases by an annual township meeting; if it be authorized at the town meeting, it is not necessary to advertise for bids. 1934 OAG 878, March 3, 1934 (434a-5).

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Townships have no authority to expend public money to pay expenses of delegates to taxpayer association meetings. OAG March 18, 1933.

The township may purchase stock in a rural electric company for the purpose of lighting a town hall. OAG Nov. 19, 1935 (442a-14).

Where an advertisement calling for bids for three lots stated that "each parcel will be sold separately to the highest bidder," a lump sum bid for all three lots could not be accepted, even if it was in excess of combined bids on single lots. OAG Sept. 1, 1939 (437b-8).

A town may not employ an attorney at a monthly salary. OAG April 19, 1933.

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

Governmental responsibility for torts. 26 MLR 336.

Real estate may be purchased for public purposes. Procedure. OAG Oct. 5, 1944 (377b-10j).

365.03 LIMITATION OF POWERS.

HISTORY. 1858 c. 75 art. 2 s. 2; P.S. 1858 c. 8 s. 11; 1860 c. 14 art. 2 s. 3; G.S. 1866 c. 10 s. 9; G.S. 1878 c. 10 s. 10; G.S. 1894 s. 924; R.L. 1905 s. 623; G.S. 1913 s. 1098; G.S. 1923 s. 1000; M.S. 1927 s. 1000.

Towns shall not possess or exercise any corporate powers except such as are expressly given by law, or are necessary to the exercise of the powers so given. *Storti v Town of Fayal*, 194 M 628, 261 NW 463.

In selling or conveying lands to the United States there must be a strict compliance with the statutes. Authority may be obtained from the voters at a special election. OAG July 3, 1935 (700d-28).

A town may share the expenses of maintaining a central relief office, but if the town comes under county-state agency, it cannot hire or pay a relief investigator. OAG April 17, 1936 (437a-7).

Counties or towns cannot license games of skill. 1938 OAG 188, March 3, 1937 (733j).

A township has no authority to license dogs. OAG April 3, 1939 (434b-18).

Being authorized by the electors at an annual or special meeting, the chairman of the town board and the town clerk, may execute a conveyance of real estate. OAG July 5, 1939 (434a).

Unless the voters have authorized the expenditure, the town board is not authorized to expend money for the purpose of extinguishing a fire in neighborhood peat bogs. OAG Aug. 19, 1939 (203e-3).

365.04 CONVEYANCES TO TOWNS.

HISTORY. 1858 c. 75 art. 2 s. 3; P.S. 1858 c. 8 s. 12; 1860 c. 14 art. 2 s. 4; G.S. 1866 c. 10 s. 10; G.S. 1878 c. 10 s. 11; G.S. 1894 s. 925; R.L. 1905 s. 624; G.S. 1913 s. 1099; G.S. 1923 s. 1001; M.S. 1927 s. 1001.

365.05 SALE OF REALTY.

HISTORY. R.L. 1905 s. 626; G.S. 1913 s. 1105; G.S. 1923 s. 1007; M.S. 1927 s. 1007.

Upon the dissolution of a town, the county board is vested with power to either continue to maintain township telephone lines, or it may dispose of them in case operation appears impracticable. 1934 OAG 853, June 1, 1933 (441b).

365.06 GUIDEPOSTS.

HISTORY. 1863 c. 49 ss. 1 to 5; G.S. 1866 c. 10 ss. 93 to 97; G.S. 1878 c. 10 ss. 97 to 101; G.S. 1894 ss. 1014 to 1018; R.L. 1905 s. 684; G.S. 1913 s. 1183; G.S. 1923 s. 1091; M.S. 1927 s. 1091.

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365.07 TOWN CHARGES.

HISTORY. 1858 c. 75 art. 13 s. 3; P.S. 1858 c. 8 s. 85; 1860 c. 14 art. 14 s. 3; 1862 c. 66 s. 1; 1862 c. 67 s. 1; G.S. 1866 c. 10 s. 100; G.S. 1878 c. 10 s. 104; G.S. 1894 s. 1021; R.L. 1905 s. 686; G.S. 1913 s. 1185; G.S. 1923 s. 1093; M.S. 1927 s. 1093.

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

Where a village is separated from a township and later reincorporated under the act of 1885, the village still remains liable for its proportion of the general township indebtedness previously incurred, and in this instance, also for its proportion of certain town charges for general township purposes. *Bradish v Lukken*, 38 M 186, 36 NW 454.

The statute makes no provision for the payment to a member of the town board for his personal expenses or for the use of his automobile while transacting official business. OAG June 27, 1934 (442a-11).

There is no statutory authority where the town is building a bridge for the payment to members of the town board, or their minor children, for labor or supplies furnished on said bridge. OAG March 15, 1935 (437a-4).

In the administration of Laws 1937, Chapter 65, members of the board are entitled to mileage and expenses. OAG April 19, 1937 (833k).

Members of the town board are not entitled to additional expenses growing out of the administration of the seed loan act. OAG April 6, 1935 (833k).

A town supervisor cannot collect from the town the upkeep, maintenance or expenses growing out of the use of his automobile in looking after town business. *State v Sandberg*, 168 M 363, 209 NW 943.

Under the item "contingent expenses necessarily incurred for the use and benefit of the town", the compensation of town constables attending an election is fixed by the town board. 1942 OAG 81, Dec. 14, 1942 (185a-5).

Except as to levy of special assessments upon benefited property, a town meeting alone possesses the power to vote moneys for town purposes. 1942 OAG 261, April 16, 1942 (434A-6).

365.08 TOWN CHARGES; DAMAGES CAUSED BY WORK ON SUPPOSED HIGHWAY.

HISTORY. 1907 c. 150 s. 1; G.S. 1913 s. 1186; G.S. 1923 s. 1094; M.S. 1927 s. 1094.

365.09 TOWN TAXES.

HISTORY. 1858 c. 75; P.S. 1858 c. 8; 1860 c. 14 art. 13 s. 4; G.S. 1866 c. 10 s. 101; G.S. 1878 c. 10 s. 105; G.S. 1894 s. 1022; R.L. 1905 s. 689; G.S. 1913 s. 1189; G.S. 1923 s. 1097; M.S. 1927 s. 1097.

The town of Stanton entered into road and bridge contracts greater in amount than its appropriation, but the contracts indicated that the payment was to come not only from the town appropriation but also from a certain appropriation from the county of Goodhue. Although the town had exceeded its appropriation, the town is still liable on the contract because of the additional appropriation by the county. *Evans v Town of Stanton*, 23 M 368.

365.10 POWERS OF TOWN MEETINGS.

HISTORY. 1858 c. 75 art. 3 s. 4; P.S. 1858 c. 8 s. 16; 1860 c. 14 art. 3 s. 4; 1863 c. 48 ss. 1, 2; G.S. 1866 c. 10 s. 15; 1869 c. 28 s. 1; G.S. 1878 c. 10 s. 16; 1887 c. 20; G.S. 1894 s. 930; 1903 c. 36; R.L. 1905 s. 625; 1909 c. 350; 1913 c. 14 s. 1; G.S. 1913 s. 1100; 1921 c. 246; G.S. 1923 s. 1002; 1925 c. 158; M.S. 1927 s. 1002.

Where a town board levied the assessment to pay "bounty bonds," the relief which the plaintiffs asked affects all of the taxpayers, and consequently certiorari in the discretion of the court may be denied when only a part of the taxpayers pray for relief. *Libby v Town of West St. Paul*, 14 M 248 (181).

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Where a village is separated from a township, the township officers have no jurisdiction or authority within the limits of the village, and consequently the village is not liable to be taxed for the expense of township roads and bridges. *Bradish v Lukken*, 38 M 186, 36 NW 454.

General Statutes 1878, Chapter 10, Section 87, relating to the fees and duties of poundmasters, governs the proceedings for the impounding of animals under this section, and is not inconsistent with the provisions of General Statutes 1878, Chapter 19, Section 1, which refers to estrays or animals doing damage. *Johnston v Kirchoff*, 31 M 451, 18 NW 315.

In the absence of action taken by the town under this section, the common-law rule whereby every man is bound to keep his cattle on his land is enforced. *Locke v St. Paul & Pac. Ry.* 15 M 350 (283); *Johnson v Mpls. & St. L. Ry.* 43 M 207, 45 NW 152.

The original town of Bennington was composed of two congressional townships, one of which is now the town of Clayton. In an action by the town of Clayton against the town of Bennington alleging conversion of certain moneys collected through poll tax and otherwise, if such conversion was prior to the severance from the defendant of the township now composing the town of Clayton, there is no remedy by one town against the other; and there being no location in the complaint as to when the money was converted, the demurrer to the complaint must be sustained. *Clayton v Bennington*, 24 M 14.

The city of Barnesville, formerly a part of the town of Humboldt, being incorporated under Ex. Laws 1889, Chapter 3, was expressly exempted and relieved from all liability on account of debts and obligations of the townships out of which the city was created. *Humboldt v Barnesville*, 83 M 219, 86 NW 87.

The electors of a town having statutory power to direct the institution of actions and to employ attorneys, may ratify the action of the attorneys in bringing to judgment a claim in favor of the town, although such attorneys were, in the first instance, employed by the town board without authority of law. *Town of Partridge v Ring*, 99 M 286, 109 NW 248.

Supervisors have charge of all the affairs of the town not committed to their officers and not reserved to the electors. In this instance the board had authority to purchase a safe in which to preserve the books, papers and files of the town. *State Bank v Goodland*, 109 M 28, 122 NW 468.

A town on May 1st levied its tax for local purposes and listed and assessed personal property therein, and thereafter a city was formed out of a part of said town. The city cannot, the same year, levy a tax for city purposes on personal property so assessed and taxed. *State v Rep. Steel Corp.* 199 M 107, 271 NW 119.

Before a town may accept real estate as a gift for practical purposes, the authority or ratification of the act should be submitted to the voters. 1934 OAG 877, Feb. 15, 1934 (330c-4).

The purchase of real estate must be authorized by the electors and if the authority is granted, the town board need not advertise for bids. 1934 OAG 878, March 3, 1934 (434a-5).

Municipalities may acquire, own, maintain, and improve land jointly for practical purposes where each of such municipalities possesses authority to acquire and maintain separately. 1936 OAG 52, Jan. 8, 1936 (330c-5).

The board may purchase a town hall and sell real estate no longer needed upon authority granted to them by the electors at either a general or special meeting. 1938 OAG 467, March 18, 1938 (434a-13).

Except as based upon a resolution, a town cannot pay an employee the extra compensation between the compensation insurance and the stated salary. OAG Nov. 30, 1944 (442a-19).

365.105 TAXES IN CERTAIN TOWNS.

HISTORY. 1913 c. 165 s. 1; G.S. 1913 s. 1104; G.S. 1923 s. 1006; M.S. 1927 s. 1006.

Laws 1937, Chapter 379, does not repeal the tax limitation provision found in this section. OAG Nov. 1, 1937 (519o).

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365.11 GENERAL PROVISIONS RELATING TO TOWNS

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The town board has no authority to construct water mains and street hydrants except as passed and voted on by the electors at the annual meeting. OAG Sept. 20, 1937 (427-5).

365.11 BY-LAWS TO BE POSTED.

HISTORY. 1860 c. 14 art. 14 s. 5; G.S. 1866 c. 10 s. 11; G.S. 1878 c. 10 s. 12; G.S. 1894 s. 926; R.L. 1905 s. 627; G.S. 1913 s. 1106; G.S. 1923 s. 1008; M.S. 1927 s. 1008.

365.12 PLACES FOR POSTING LEGAL NOTICES.

HISTORY. 1873 c. 100; G.S. 1878 c. 10 s. 113; G.S. 1894 s. 1030; R.L. 1905 s. 687; G.S. 1913 s. 1187; G.S. 1923 s. 1095; M.S. 1927 s. 1095; 1931 c. 182.

The notice of the meeting was sufficient. Section 365.12 does not apply. State ex rel v Sharp, 27 M 43, 6 NW 408.

This section is to be reasonably construed so as to effectuate the obvious purpose of the legislature to provide effective means to secure the posting of the notice at public places. Lutgen v Board, 99 M 499, 110 NW 1.

In the matter of the laying out of a cartway, the plaintiff having participated in the hearing before the supervisors, and in an appeal in the district court for a new assessment of damages, is estopped to assert that the notices were insufficient. Bruns v Town of Nicollet, 181 M 192, 231 NW 924.

365.13 POUNDS.

HISTORY. 1858 c. 75 art. 13 s. 1; P.S. 1858 c. 8 s. 83; 1860 c. 14 art. 14 s. 1; G.S. 1866 c. 10 s. 98; G.S. 1878 c. 10 s. 102; G.S. 1894 s. 1019; R.L. 1905 s. 685; G.S. 1913 s. 1184; G.S. 1923 s. 1092; M.S. 1927 s. 1092.

The village reincorporated under Laws 1885, Chapter 145, and it still remains liable for its proportion of the general township indebtedness previously incurred; and also for its proportion of certain town charges for general township purposes not inconsistent with the provisions of the 1885 law. Bradish v Lucken, 38 M 186, 35 NW 454.

The resolution annexing certain lands in Lansing township to the city of Austin was adopted by the city council of the city on July 21, 1939, filed for record with the register of deeds and the county auditor on Sept. 9, 1939. The annexed lands should be taxed in the taxing district of which it was a part on May 1st, when the lien attached. That is the town of Lansing. The special assessments, however, should be listed in the political subdivision of which the land was a part at the time of the levy, which was in the city of Austin. 1940 OAG 293, Sept. 27, 1939 (59a-1).

365.14 TOWN BUILDINGS.

HISTORY. R.L. 1905 s. 628; G.S. 1913 s. 1107; G.S. 1923 s. 1009; M.S. 1927 s. 1009.

The question of providing fire protection, purchasing fire apparatus, and determining the amount of money to be raised may be considered annually, at an annual town meeting and not at a special meeting. 1936 OAG 431, May 13, 1936 (434b-13a).

Funds properly expendable by the town for general fire protection include not only the amount levied and collected in the current year, but also any balance carried over in the general fire fund. Expenditures for forest fire protection would be additional, and would be limited to a maximum of \$500.00 in one year. 1940 OAG 125, Oct. 21, 1940 (916b).

Town in which the assessed valuation of private land exceeds 50 per cent of assessed valuation of all lands, may vote to establish water-works system but are not authorized to issue bonds. OAG March 13, 1934.

The town board must furnish fire protection under the provisions of this section, but has no authority to employ fire wardens and pay salaries out of general town funds. OAG Oct. 13, 1934 (442a-17).

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Where the electors have authorized the purchase of fire apparatus, the town board may issue warrants in anticipation of taxes about to be levied. OAG March 18, 1939 (442b-6).

Unless authorized to do so by the voters, the town board has no authority to expend money to extinguish a fire in peat lands. OAG Oct. 19, 1939 (203e).

If the telephone service is necessary for fire protection the town may appropriate money to a private telephone company. OAG Feb. 21, 1936 (916b).

Proper notice having been given, a town at a special meeting may authorize the construction or purchase of a town hall, alone or by joining with a village. OAG May 1, 1944 (434c-2).

365.15 MAY PROVIDE FIRE PROTECTION AND APPARATUS.

HISTORY. 1927 c. 30 s. 1; M.S. 1927 s. 1027-1.

To provide for fire protection the electors at the annual meeting may: (1) authorize the town board to provide general fire protection for the town including apparatus, and (2) by ballot determine the amount of money to be expended. 1942 OAG 140, Feb. 10, 1941 (688K); 1942 OAG 141, Nov. 28, 1941 (916B); OAG, Dec. 8, 1944.

365.16 TAX LEVY; CONTRACTS; CONTROL OF APPARATUS.

HISTORY. 1927 c. 30 s. 2; M.S. 1927 s. 1027-2.

Where the township maintains telephone line principally for fire protection, the switching charges may be paid out of the fire fund. OAG Nov. 30, 1938 (98a-23).

365.17 ADJACENT TOWNS.

HISTORY. 1927 c. 30 s. 3; M.S. 1927 s. 1027-3.

Town may enter into an agreement with nearby municipalities, or with groups of individuals, living in adjoining townships, for fire protection and for the use of fire apparatus. OAG Aug. 19, 1938 (688k).

365.18 TAX LEVY; CONTRACTS WITH ADJACENT CITY OR VILLAGE.

HISTORY. 1927 c. 30 s. 4; M.S. 1927 s. 1027-4; 1943 c. 389 s. 1.

As to whether a village desires to carry liability insurance covering its fire department employees is a matter of policy to be determined by the village council. The city is liable for compensation to members of its fire department while on county or village calls. 1934 OAG 93, Aug. 29, 1934 (688p).

Members of the city fire department are entitled to benefits of the compensation act when injured in service outside of the city limits. OAG Sept. 21, 1935 (688h).

In the absence of a contract expressed or implied, cities and villages cannot recover for services in answering fire calls outside the corporate limits. OAG March 23, 1937 (688a).

365.19 LIMIT ON TAX LEVY; EXCEPTIONS.

HISTORY. 1927 c. 30 s. 5; M.S. 1927 s. 1027-5.

If there is a fire fund, the town may contract with a rural telephone company for use of its lines for fire protection purposes. If there is no fire fund, one may be created out of a surplus from some other fund. OAG Oct. 5, 1937 (98c-2).

365.20 MAY PROVIDE FIRE PROTECTION, POLICE PROTECTION, AND USE OF ROADS, STREETS, AND GROUNDS OR WATER MAINS IN CERTAIN TOWNS.

HISTORY. 1927 c. 219 s. 1; M.S. 1927 s. 1027-6; 1935 c. 249.

The electors may authorize the supervisors to employ police officers to enforce laws regulating traffic on town roads. OAG May 20, 1939 (989b-4).

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365.21 GENERAL PROVISIONS RELATING TO TOWNS

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A town may purchase water from fire plugs and sell it to the inhabitants of the town, if such purchase and sale is incidental to furnishing fire protection. OAG Sept. 20, 1937 (427c-5).

Governmental responsibility for torts; towns. 26 MLR 328.

365.21 SPECIAL ELECTION.

HISTORY. 1927 c. 219 s. 2; M.S. 1927 s. 1027-7.

365.22 CONDUCT OF ELECTION.

HISTORY. 1927 c. 219 s. 3; M.S. 1027-8.

365.23 POWERS TO BE EXERCISED ONLY AT TOWN MEETING.

HISTORY. 1927 c. 219 s. 4; M.S. 1927 s. 1027-9.

365.24 ELECTION TO REVOKE POWERS GRANTED.

HISTORY. 1927 c. 219 s. 5; M.S. 1927 s. 1027-10.

365.25 DYNAMITE MAY BE FURNISHED RESIDENTS.

HISTORY. 1917 c. 89 ss. 1 to 4; G.S. 1923 ss. 1024 to 1027; M.S. 1927 ss. 1024 to 1027.

365.26 CEMETERIES.

HISTORY. 1899 c. 264 ss. 1, 2; R.L. 1905 s. 629; G.S. 1913 s. 1109; G.S. 1923 s. 1011; M.S. 1927 s. 1011; 1943 c. 464 s. 1.

A will, directing the executrix to invest a fund in some safe manner for the purpose of using the income in the upkeep of a lot in a town cemetery, if unable to take personal charge of said fund to dispose of it for the purpose of taking care of the lot "according" to a statute permitting the town board to accept gifts, did not create a gift in trust to the town board. *Town v Henle*, 174 M 568, 219 NW 919.

NOTE: Section 306.245 provides that the town board may maintain cemeteries abandoned or neglected for more than ten years.

365.27 SALE OF LOTS; PROCEEDS.

HISTORY. 1899 c. 264 ss. 2, 3; R.L. 1905 s. 630; G.S. 1913 s. 1110; G.S. 1923 s. 1012; M.S. 1927 s. 1012.

The town may sell blocks of cemetery lots to fraternal organizations which, in turn, may resell them to individual members without profit. OAG Dec. 13, 1938 (870i.)

365.28 PUBLIC BURIAL GROUNDS.

HISTORY. 1872 c. 32 s. 1; G.S. 1878 c. 10 s. 9; G.S. 1894 s. 923; R.L. 1905 s. 631; G.S. 1913 s. 1111; G.S. 1923 s. 1013; M.S. 1927 s. 1013.

365.29 PERMANENT FUND FOR CEMETERY PURPOSES.

HISTORY. 1911 c. 224 s. 1; G.S. 1913 s. 1112; 1917 c. 161 s. 1; G.S. 1923 s. 1014; M.S. 1927 s. 1014.

365.30 SUPERVISORS TO FIX PRICE.

HISTORY. 1911 c. 224 s. 2; G.S. 1913 s. 1113; G.S. 1923 s. 1015; M.S. 1927 s. 1015.

365.31 GIFTS.

HISTORY. 1911 c. 224 s. 3; G.S. 1913 s. 1114; 1917 c. 161 s. 3; G.S. 1923 s. 1016; M.S. 1927 s. 1016.

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365.32 TO DEPOSIT MONEY WITH COUNTY TREASURER.

HISTORY. 1911 c. 224 ss. 4, 5; G.S. 1913 ss. 1115, 1116; 1917 c. 161 ss. 4, 5; G.S. 1923 ss. 1017, 1018; M.S. 1927 ss. 1017, 1018.

365.33 INTEREST; USE.

HISTORY. 1911 c. 224 ss. 6, 7; G.S. 1913 ss. 1117, 1118; 1917 c. 161 ss. 6, 7; G.S. 1923 ss. 1019, 1020; M.S. 1927 ss. 1019, 1020.

365.34 TRANSFER OF FUND.

HISTORY. 1911 c. 224 s. 8; G.S. 1913 s. 1119; G.S. 1923 s. 1021; M.S. 1927 s. 1021.

365.35 DISPOSAL OF EXCESS.

HISTORY. 1911 c. 224 s. 9; G.S. 1913 s. 1120; 1917 c. 161 s. 8; G.S. 1923 s. 1022; M.S. 1927 s. 1022.

365.36 INVESTMENT OF FUND.

HISTORY. 1911 c. 224 s. 10; G.S. 1913 s. 1121; 1917 c. 161 s. 9; G.S. 1923 s. 1023; M.S. 1927 s. 1023.

365.37 OFFICERS; CONTRACTS.

HISTORY. 1877 c. 136 s. 1; G.S. 1878 c. 10 s. 46; G.S. 1894 s. 960; R.L. 1905 s. 688; 1911 c. 351; 1913 c. 164 s. 1; G.S. 1913 s. 1188; G.S. 1923 s. 1096; M.S. 1927 s. 1096.

In an action by a town to recover money paid out without authority while defendants were acting as town supervisors, it was held that payment of money to a member of the board of supervisors of a township on account of drains constructed upon his private property is not legalized by a curative act. *Martinsburg v Bulter*, 112 M 1, 127 NW 420.

A town treasurer who pays out money upon orders issued in payment of illegal claims presented to and allowed by the town board, knowing all the facts, disclosing the irregularity of the claims, is liable in an action by the town for the return of the money. *Town v Buyck*, 112 M 94, 127 NW 452.

Persons appointed by the state forester are state appointees, and there is no provision for paying them for service rendered, except as authorized by Laws 1925, Chapter 407. *State v Danculovic*, 168 M 359, 209 NW 941.

A town supervisor cannot collect from the town for the upkeep, maintenance and expense of his automobile while engaged in town business. *State v Sandberg*, 168 M 363, 209 NW 943.

A town cannot let a valid bridge contract where the price exceeds \$500.00 unless the plans and specifications are on file with the town clerk when the bids are called for. Even if the statute is fully complied with, the contract is not valid unless a properly executed bond is filed. The plaintiff cannot recover for the reasonable value of the labor and material furnished if there is no evidence that the town received any benefit, the bridge having been destroyed before it was finished and accepted by the town. *Lundin v Township*, 172 M 259, 214 NW 888.

Even in a case of emergency, the town board may not employ one of its own members to act as timekeeper and foreman. 1934 OAG 872, July 23, 1934 (90d).

A town treasurer may draw pay for work performed on roads in the town. 1936 OAG 436, March 13, 1936 (707b-6).

Member of the town board may not sell gravel to the township and cannot do so indirectly by selling the gravel-bed to the county. OAG April 27, 1935 (437a-4).

Money paid out of the road and bridge fund to purchase snow removal equipment, does not require bids. OAG March 20, 1937 (434a-35).

Emergency which will excuse advertising for bids must be real, and the public must be in danger of suffering substantial injury because of delay in advertising. OAG Sept. 29, 1938 (707a-1).

Explanation of contract "to be paid from road or poll tax" is not applicable to contract for construction or repair of town roads and bridges. OAG Sept. 29, 1938 (707a-1).

365.38 FILING CLAIMS; DEMAND.

HISTORY. R.L. 1905 s. 695; G.S. 1913 s. 1199; G.S. 1923 s. 1106; M.S. 1927 s. 1106.

In an action in damages for negligence of the town in allowing surface water to flow upon plaintiff's land, the evidence supports a verdict in favor of the plaintiff. *Halvorsen v Town*, 137 M 349, 163 NW 673.

Plaintiff's claim was filed in a manner to satisfy the statute and the evidence sustained a verdict for the plaintiff. The claim need not be itemized or verified as required by section 471.38. *Hawley v Town*, 178 M 411, 277 NW 358.

A physician treating a pedestrian struck by an automobile may file a claim at any time within six years. OAG Dec. 22, 1936 (442a-7).

Town warrants should not outlaw until six years after the time that funds are available or should be available for their payment. But see 56 ALR 830, and *McQuillin's Municipal Corporations*, Revised Edition, Volume 6, Section 2419. 1942 OAG 134, Aug. 13, 1942 (442B-9).

Governmental responsibility for torts; statutes governing presentation, auditing and allowance of claims. 26 MLR 716.

365.39 ACTIONS.

HISTORY. 1858 c. 75 art. 12 s. 1; P.S. 1858 c. 8 s. 74; 1860 c. 14 art. 13 s. 1; G.S. 1866 c. 10 s. 84; G.S. 1878 c. 10 s. 88; G.S. 1894 s. 1005; R.L. 1905 s. 693; G.S. 1913 s. 1197; G.S. 1923 s. 1104; M.S. 1927 s. 1104.

Ex. Laws 1870, Chapter 100, providing for the building of a bridge across the Crow River and expense to be divided in specified proportions between the counties of Hennepin and Wright, and the towns of Dayton and Otsego, is not any violation of Minnesota Constitution, Article 9, Sections 1 to 4, and recovery may be had against the town of Otsego. *Guilder v Town*, 20 M 74 (79).

365.40 ACTIONS, IN WHAT NAME.

HISTORY. 1858 c. 75 art. 12 ss. 2, 4; P.S. 1858 c. 8 ss. 75, 77; 1860 c. 14 art. 13 ss. 2, 4; G.S. 1866 c. 10 ss. 85, 87; G.S. 1878 c. 10 ss. 89, 91; G.S. 1894 ss. 1006, 1008; R.L. 1905 s. 694; G.S. 1913 s. 1198; G.S. 1923 s. 1105; M.S. 1927 s. 1105.

An action against Parker, Irish and Schofield, supervisors of the town of Newport, to recover damages caused by their acts under color of office, is an action against them as private persons and not an action against the town. The evidence is not sufficient to justify the verdict. *Holton v Parker*, 13 M 383 (355).

In an action complaining that the township wilfully, intentionally and carelessly cut and maintained a ditch to the damage of a property owner, is equivalent to charging that it was unreasonably done. In an action to enjoin the township from maintaining the ditch, the supervisors are not necessarily parties defendant. *Koeper v Town*, 106 M 269, 118 NW 1025.

365.41 JUDGMENTS AGAINST TOWNS.

HISTORY. 1858 c. 75 art. 12 s. 9; P.S. 1858 c. 8 s. 82; 1860 c. 14 art. 13 s. 9; 1864 c. 63 s. 1; 1865 c. 11 s. 3; G.S. 1866 c. 10 s. 91; G.S. 1878 c. 10 s. 95; G.S. 1894 s. 1012; R.L. 1905 s. 696; G.S. 1913 s. 1200; G.S. 1923 s. 1107; M.S. 1927 s. 1107.

365.42 TAX TO PAY JUDGMENT.

HISTORY. 1865 c. 11 ss. 1, 2; G.S. 1866 c. 10 s. 92; G.S. 1878 c. 10 s. 96; G.S. 1894 s. 1013; R.L. 1905 s. 697; G.S. 1913 s. 1201; G.S. 1923 s. 1108; M.S. 1927 s. 1108.

Governmental responsibility for torts; distinction between governmental and proprietary functions. 26 MLR 336.

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365.43 YEARLY ASSESSED TAXES TO LIMIT DEBTS AND EXPENDITURES; EXCEPTION.

HISTORY. 1860 c. 14 art. 14 s. 12; G.S. 1866 c. 10 s. 107; 1869 c. 22; G.S. 1878 c. 10 s. 111; G.S. 1894 s. 1028; R.L. 1905 s. 690; G.S. 1913 s. 1190; G.S. 1923 s. 1098; M.S. 1927 s. 1098.

The town board of supervisors may appropriate the money from the town road fund to aid in the construction of a bridge by a village situated within the town; and the authority to make such appropriation springs solely from the statute (General Statutes 1913, Section 1280), and when made by the town board cannot be nullified by the electors at a subsequent town meeting *Great Northern Ry. v Town*, 133 M 270, 158 NW 392.

Where the plaintiff repaired a mile of town line road under a contract within the power of the town to make, the town may not defend against payment under the contract because there is no proof that more than one member of defendant's town board was present at a meeting with all the members of the adjoining town, and no proof that other members of defendant's board had knowledge the road was being constructed. *Lindgren v Towns of Algoma and Norland*, 187 M 31, 244 NW 70.

In dispensing town funds, supervisors are controlled only by statutory restrictions, and the authority of the voters ends when the town meeting adjourns. OAG March 13, 1933.

The town board may not enter into a contract for an improvement of roads obligating it to spend a greater sum than is in the township treasury plus taxes levied and in the process of collection. OAG April 4, 1939 (442a-21).

If the year's levy for town road and bridge purposes has been exhausted, warrants cannot be issued anticipating the levy for the following year. OAG Nov. 10, 1944 (442a-21); OAG Oct. 23, 1944 (442-21).

365.44 SEPARATION FROM VILLAGE.

HISTORY. 1893 c. 199 s. 1; G.S. 1894 s. 1209; 1895 c. 260 s. 1; R.L. 1905 s. 691; G.S. 1913 s. 1191; G.S. 1923 s. 1099; M.S. 1927 s. 1099.

A sale of intoxicating liquor by one licensed by the common council of the village during the period of his license but after the town in which the village is located has voted "no license," is unlawful where there has been no satisfactory separation of the village and the town and both participate in the election. *State ex rel v McKinnon*, 126 M 505, 148 NW 99.

Statute permits separation, even without action or consent of the town. OAG March 4, 1935 (440e).

A village located in two towns may be separated from one of the towns. OAG March 28, 1938 (440).

When a town wishes to separate from a village, there must be a petition by voters living within or without the village, and residents of both town and village vote on the question. If the village wishes to separate from the town, the residents of the village may vote on the question without notice to the town and without the vote of persons outside of the village. OAG March 30, 1939 (440e).

The matter of separation of a village from a town, for election and assessment purposes, is a matter for local determination. 1942 OAG 103, Aug. 14, 1941 (58-0).

365.45 DISSOLUTION OF TOWNS.

HISTORY. 1931 c. 96 s. 1; 1933 c. 235; M. Supp. s. 1002-9.

Inasmuch as Laws 1933, Chapter 377, fails to prescribe how the debts of a town dissolved by the county board shall be paid, the legislature must have intended that the procedure with reference to this matter, described by Laws 1931, Chapter 96, in case of voluntary dissolution, should also apply to cases of dissolution under Laws 1933, Chapter 377. 1934 OAG 853, June 1, 1933 (441b).

Question of dissolution of a township may be submitted on the same ballot as that used for election of township officer. 1934 OAG 854, April 26, 1934 (434a-4).

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365.46 COPY OF RESOLUTION FILED WITH SECRETARY OF STATE.

HISTORY. 1931 c. 96 s. 2; M. Supp. s. 1002-10.

365.47 DISPOSAL OF FUNDS.

HISTORY. 1931 c. 96 s. 3; M. Supp. s. 1002-11.

The county is not liable for the bonded indebtedness of the dissolved township.
OAG March 23, 1936 (434a-4).

365.48 PAYMENT OF INDEBTEDNESS.

HISTORY. 1931 c. 96 s. 4; 1935 c. 189; M. Supp. s. 1002-12.

The county board of Lake county legally issued funding bonds to take up outstanding orders of township, which had been dissolved, without first submitting the matter to a vote of the electors. 1934 OAG 190, Aug. 9, 1933.

365.49 PROPERTY TO REVERT TO COUNTY.

HISTORY. 1931 c. 96 s. 5; M. Supp. s. 1002-13.

Where a county board dissolves a township, it may continue to maintain the township telephone line, but it cannot levy a special assessment for its maintenance. 1934 OAG 855, July 28, 1934 (98c-3).