

## CHAPTER 411

## GENERAL INCORPORATION, CITIES FOURTH CLASS

**411.01 INCORPORATION; PETITION; FIRST ELECTION.**

**HISTORY.** 1870 c. 31 sc. 1 s. 2; 1871 c. 38 s. 1; G.S. 1878 c. 10 s. 124; G.S. 1894 s. 1045; 1895 c. 8 ss. 1, 2, 6 to 14; 1897 cc. 61, 308; 1899 cc. 52, 319; Ex. 1902 c. 53 s. 1; 1921 c. 462 s. 1; M.S. 1927 s. 1828-17; 1931 c. 289 s. 1; M. Supp. s. 1828-17.

The duty and power imposed and conferred on judges of probate by General Statutes 1878, Chapter 10, Section 124, are not judicial, and the statute is not unconstitutional as conferring on probate courts, or the judges thereof, judicial power beyond that authorized by the constitution. *State v Ueland*, 30 M 29, 14 NW 58.

Laws 1921, Chapter 462, imposes upon the judge of probate duties not judicial and is to that extent unconstitutional and void, but the invalid portion is separable from the remainder of the act and the main portion of the act is sustained. The act is not a delegation of legislative power. The application of the act is simply conditioned on local action. *State ex rel v City of Nashwauk*, 151 M 534, 186 NW 694, 189 NW 592.

A city organized under Laws 1921, Chapter 462, may include an existing village or borough, but not a part only of such village or borough. *State ex rel v City of Brookside*, 161 M 171, 201 NW 139.

Laws 1921, Chapter 462, authorizes the incorporation only of territory urban in character. That the act applies only to cities of from 1,000 to 10,000 population does not render it void. *State ex rel v City of Nashwauk*, 151 M 534, 186 NW 694, 189 NW 592.

If the act contains provisions void, because they grant unconstitutional privileges to a certain class of cities, the whole act does not therefore fall. *State ex rel v City of Nashwauk*, 151 M 534, 186 NW 694, 189 NW 592.

The question whether the territory is so conditioned as to be properly subject to municipal government is a fundamental condition to incorporation and will be considered by the court, and if it appears that it is not, and that the limits of the territory have been fixed so as to reach taxable property rather than lands and people properly subject to a single municipal government, the incorporation will not be sustained. *State ex rel v City of Nashwauk*, 151 M 534, 186 NW 694, 189 NW 592.

Where for many years an incorporated village has existed and is included in a city incorporated as a city of the fourth class, no part of the territory within the village limits may, by information in quo warranto against the city, be questioned as being not suitable for municipal government. *State v City of Chisholm*, 199 M 403, 273 NW 235.

Laws 1921, Chapter 462, as amended by Laws 1931, Chapter 289, construed to limit rights of voters to include in a city only territory of urban and suburban character and properly conditioned for municipal government. *State v City of Chisholm*, 199 M 403, 273 NW 235.

While lands of the Mesaba range underlain with iron ore are not in the same class as agricultural lands when considered as suitable to become a part of the territory of a municipality, it must be recognized that for industrial purposes they must be distinguished from factories and sites for permanent industrial structures. In determining whether territory beyond mined areas is fit for municipal government, motive in reaching out for it so as to derive revenue therefrom is proper to consider. *State v City of Chisholm*, 199 M 403, 273 NW 235.

An admission of a town in its pleading does not preclude interveners from that town to prove that facts are to the contrary in proceedings involving the validity

# MINNESOTA STATUTES 1945 ANNOTATIONS

2425

## GENERAL INCORPORATION, CITIES FOURTH CLASS 411.06

of the organization and the boundaries of a city. In proceedings involving the validity of the organization and the boundaries of a city, the defense of laches, waiver, and estoppel is not made out from loans obtained from the state board of investment, nor from the fact of judgments being obtained against the city, nor from the fact that the city vacated a road within its territory, or has functioned as a city in other respects. The adoption of a home rule charter does not preclude court from determining whether the territory included in the city is lawfully included. *State v City of Chisholm*, 199 M 403, 273 NW 235.

A water, light, power, and building commission can only be abolished in the manner provided by section 1860-½ (453.08) et seq., and it is immaterial that the village adopting such a commission has become incorporated as a city of the fourth class. OAG Oct. 4, 1934 (624e-11).

Where a village was established as a city of the fourth class by an election held on Sept. 1, 1934, and Oct. 8, city officials were elected and at the same election the home rule charter was adopted, which was to take effect 30 days after the date of election, taxes should be levied in 1934 pursuant to the new home rule charter, though such levy must take place after October 10. OAG Nov. 7, 1934 (484a-2).

### 411.02 CORPORATE POWERS.

**HISTORY.** 1895 c. 8 s. 40; 1921 c. 462 s. 2; M.S. 1927 s. 1828-18; 1931 c. 289 s. 2; M. Supp. s. 1828-18.

New Ulm, regardless of charter provisions, has the power to open and deepen the channel of the river below the city to facilitate the flow of the sewerage downstream and prevent the contamination of the city water. OAG Aug. 11, 1931.

Dry vote in village of North Mankato was without effect upon the right of the city of North Mankato to issue liquor licenses. OAG March 19, 1934.

On incorporation of city of fourth class with home rule charter right of those holding position under the soldiers' preference law in village to retain their positions depends upon whether the departments in which they were employed are continued or discontinued under the new government. OAG Nov. 7, 1934 (484a-2).

### 411.03 FIRST ELECTION.

**HISTORY.** 1872 c. 91 ss. 1, 9; G.S. 1878 c. 10 ss. 125, 134; G.S. 1894 ss. 1046, 1055; 1895 c. 8 s. 15; 1921 c. 462 s. 3; M.S. 1927 s. 1828-19; 1931 c. 289 s. 3; M. Supp. s. 1828-19.

The newly elected treasurer was entitled to the books and the records of the former village treasurer's office. OAG Nov. 15, 1934 (851).

### 411.04 TERMS OF OFFICE OF OFFICERS.

**HISTORY.** 1870 c. 31 sc. 2 s. 13; G.S. 1878 c. 10 s. 138; G.S. 1894 s. 1059; 1895 c. 8 ss. 43, 44; 1921 c. 462 s. 4; M.S. 1927 s. 1828-20.

The term of village municipal judge may not be changed by the electors in incorporating as a city of the fourth class. OAG Sept. 13, 1934 (307k).

### 411.05 BIENNIAL ELECTIONS.

**HISTORY.** 1870 c. 31 sc. 2 s. 1; G.S. 1878 c. 10 s. 126; G.S. 1894 s. 1047; 1895 c. 8 s. 42; 1921 c. 462 s. 3; M.S. 1927 s. 1828-21.

Elections in city of St. James are to be called and held under the procedure set out in the general statutes. OAG June 24, 1933.

### 411.06 WARDS.

**HISTORY.** 1870 c. 31 sc. 2 s. 2; G.S. 1878 c. 10 s. 127; G.S. 1894 s. 1048; 1921 c. 462 s. 6; M.S. 1927 s. 1828-22.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 411.07 GENERAL INCORPORATION, CITIES FOURTH CLASS

2426

### 411.07. CORPORATE NAME; SERVICE OF PROCESS AND NOTICES.

HISTORY. 1870 c. 31 sc. 2 s. 3; G.S. 1878 c. 10 s. 128; G.S. 1894 s. 1049; 1921 c. 462 s. 7; M.S. 1927 s. 1828-23.

### 411.08 ELECTIVE OFFICERS.

HISTORY. 1870 c. 31 sc. 2 s. 4; G.S. 1878 c. 10 s. 129; G.S. 1894 s. 1050; 1895 c. 8 s. 41; 1921 c. 462 s. 8; M.S. 1927 s. 1828-24; 1933 c. 203 s. 1; M. Supp. s. 1828-24.

Where at the end of two-year term mayor reappoints chief of police and the council refuses to confirm it and refuses to pay such officer, such officer holds over until his successor is elected or appointed and is entitled to compensation therefor. OAG Jan. 31, 1938 (785d).

### 411.09 REMOVAL OF OFFICERS.

HISTORY. 1870 c. 31 sc. 2 s. 5; G.S. 1878 c. 10 s. 130; G.S. 1894 s. 1051; 1895 c. 8 s. 45; 1921 c. 462 s. 9; M.S. 1927 s. 1828-25.

### 411.10 VACANCIES.

HISTORY. 1870 c. 31 sc. 2 ss. 6, 12; G.S. 1878 c. 10 ss. 131, 137; G.S. 1894 ss. 1052, 1058; 1895 c. 8 s. 46; 1921 c. 462 s. 10; M.S. 1927 s. 1828-26; 1933 c. 203 s. 1; M. Supp. s. 1828-26; 1943 c. 87 s. 1.

### 411.11 ELECTIONS; BALLOTS; TIE VOTES.

HISTORY. 1870 c. 31 sc. 2 s. 7; G.S. 1878 c. 10 s. 132; G.S. 1894 s. 1053; 1895 c. 8 s. 47; 1921 c. 462 s. 11; M.S. 1927 s. 1828-27.

A special election on a bond issue for parks and playgrounds may be held on the same day as a primary election or a general election, but a special ballot box must be provided. OAG April 5, 1938 (64t).

### 411.12 QUALIFICATIONS OF ELECTORS AND CANDIDATES FOR OFFICE; ELECTION DISTRICTS; CONDUCT OF ELECTIONS.

HISTORY. 1870 c. 31 sc. 2 s. 8; G.S. 1878 c. 10 s. 133; G.S. 1894 s. 1054; 1921 c. 462 s. 12; M.S. 1927 s. 1828-28.

The provision with reference to the qualification of electors is invalid in so far as the same conflicts with the Constitution, Article 7, Section 1. OAG Nov. 7, 1933.

### 411.13 JUDGES OF ELECTIONS; GENERAL ELECTION LAWS TO GOVERN.

HISTORY. 1921 c. 462 s. 13; M.S. 1927 s. 1828-29.

### 411.14 RETURNS AND CANVASS OF ELECTIONS.

HISTORY. 1870 c. 31 sc. 2 s. 10; G.S. 1878 c. 10 s. 135; G.S. 1894 s. 1056; 1895 c. 8 s. 114; 1921 c. 462 s. 14; M.S. 1927 s. 1828-30.

### 411.15 OFFICES VACATED, WHEN.

HISTORY. 1895 c. 8 s. 48; 1921 c. 462 s. 16; M.S. 1927 s. 1828-32.

An officer appointed to fill a vacancy or one elected to a city office must qualify within ten days after receiving notice. OAG Jan. 6, 1932.

### 411.16 TERMS OF OFFICE OF ELECTIVE OFFICERS.

HISTORY. 1870 c. 31 sc. 2 ss. 4, 13; G.S. 1878 c. 10 ss. 129, 138; G.S. 1894 ss. 1050, 1059; 1895 c. 8 s. 43; 1921 c. 462 s. 17; M.S. 1927 s. 1828-33.

# MINNESOTA STATUTES 1945 ANNOTATIONS

2427

GENERAL INCORPORATION, CITIES FOURTH CLASS 411.25

## 411.17 NEW ELECTION ON FAILURE TO ELECT.

HISTORY. 1870 c. 31 sc. 2 s. 14; G.S. 1878 c. 10 s. 139; G.S. 1894 s. 1060; 1921 c. 462 s. 18; M.S. 1927 s. 1828-34.

## 411.18 OATHS; BONDS.

HISTORY. 1870 c. 31 sc. 3 s. 1; G.S. 1878 c. 10 s. 140; G.S. 1894 s. 1061; 1895 c. 8 s. 50; 1921 c. 462 s. 19; M.S. 1927 s. 1828-35.

A city treasurer is guilty of malfeasance by depositing city funds in an un-designated bank of which he is a stockholder, director, and assistant cashier, and a surety on his bond is liable for money lost through failure of the bank, notwithstanding a stipulation in the bond relieving the surety from liability for loss caused by failure of any bank or other depository, and there is liability under bond for funds wrongfully deposited during its term, though the bank did not fail until afterwards. *City of Marshall v Gregoire*, 193 M 188, 259 NW 377.

## 411.19 DUTIES OF MAYOR.

HISTORY. 1870 c. 31 sc. 3 s. 2; G.S. 1878 c. 10 s. 141; G.S. 1894 s. 1062; 1895 c. 8 ss. 58, 64, 158, 159, 165; 1921 c. 462 s. 20; M.S. 1927 s. 1828-36; 1933 c. 203 s. 1; M. Supp. s. 1828-36.

## 411.20 MAYOR TO SIGN ORDINANCES.

HISTORY. 1870 c. 31 sc. 3 s. 3; G.S. 1878 c. 10 s. 142; G.S. 1894 s. 1063; 1895 c. 8 ss. 59 to 61, 66, 117; 1921 c. 462 s. 21; M.S. 1927 s. 1828-37; M. Supp. s. 1828-37.

## 411.21 MEETINGS OF COUNCIL; ORGANIZATION.

HISTORY. 1870 c. 31 sc. 3 s. 4; G.S. 1878 c. 10 s. 143; G.S. 1894 s. 1064; 1895 c. 8 ss. 63, 111; 1921 c. 462 s. 22; M.S. 1927 s. 1828-38; 1933 c. 203 s. 1; M. Supp. s. 1828-38.

## 411.22 RECORDER; DUTIES.

HISTORY. 1870 c. 31 sc. 3 s. 5; G.S. 1878 c. 10 s. 144; G.S. 1894 s. 1065; 1895 c. 8; ss. 193 to 195; 1921 c. 462 s. 23; M.S. 1927 s. 1828-39.

## 411.23 FINANCIAL REPORTS; ESTIMATES; ACCOUNTS; SPECIAL TAX LEVIES.

HISTORY. 1870 c. 31 sc. 3 ss. 6, 7; G.S. 1878 c. 10 ss. 145, 146; G.S. 1894 ss. 1066, 1067; 1895 c. 8 ss. 62, 75 to 78; 1921 c. 462 s. 24; M.S. 1927 s. 1828-40.

## 411.24 CITY ATTORNEY.

HISTORY. 1870 c. 31 sc. 3 s. 8; G.S. 1878 c. 10 s. 147; G.S. 1894 s. 1068; 1895 c. 8 ss. 198 to 202; 1921 c. 462 s. 25; M.S. 1927 s. 1828-41.

In case of failure to appoint a city attorney, the common council of Shakopee could employ an attorney for the special purpose of giving legal advice or services and prosecuting any particular persons violating city ordinances. OAG May 26, 1931.

## 411.25 TREASURER.

HISTORY. 1870 c. 31 sc. 3 s. 9; G.S. 1878 c. 10 s. 148; G.S. 1894 s. 1069; 1895 c. 8 ss. 82 to 85; 1921 c. 462 s. 26; M.S. 1927 s. 1828-42.

A city treasurer is guilty of malfeasance by depositing city funds in an un-designated bank of which he is stockholder, director, and assistant cashier, and a surety on his bond is liable for money lost through failure of the bank, notwithstanding a stipulation in bond relieving surety from liability for loss caused by failure of any bank or other depository, and there is liability under a bond for

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 411.26 GENERAL INCORPORATION, CITIES FOURTH CLASS

2428

funds wrongfully deposited during its term, though bank does not fail until afterwards. *City of Marshall v Gregoire*, 193 M.188, 259 NW 377.

A city of the fourth class operating under the general statutes must publish its financial statement. OAG Sept. 30, 1931.

This section has no application to cities of the fourth class operating under a home rule charter. OAG Jan. 6, 1937 (277b-2).

Cities of the fourth class operating under special laws or home rule charters need not publish financial statements. OAG May 15, 1939 (277b-2).

## 411.26 CHIEF OF POLICE; POLICE OFFICERS AND WATCHMEN; EXECUTION OF PROCESS.

HISTORY. 1870 c. 31 sc. 3 ss. 10, 21; G.S. 1878 c. 10 ss. 149, 161; G.S. 1894 ss. 1070, 1082; 1895 c. 8 ss. 156, 161, 165; 1921 c. 462 s. 27; M.S. 1927 s. 1828-43.

A policeman appointed by the board of police commissioners of Minneapolis "with police powers to preserve the peace and protect property within the limits known as 'justice court', serving writs", had all the powers of a constable. *Oswald v O'Brien*, 48 M 333, 51 NW 220.

International Falls' home rule charter, chapter 8, section 1, permits the city council to either reduce or increase the number of officers under the chief of police. OAG April 27, 1931.

Where council refuses to confirm appointment and mayor refuses to appoint any officer, the council may bring mandamus proceedings to compel the mayor to submit name of some other person. OAG Jan. 31, 1938 (785d).

## 411.27 ARRESTS.

HISTORY. 1872 c. 69 ss. 1, 2; G.S. 1878 c. 10 s. 150; G.S. 1894 s. 1071; 1921 c. 462 s. 28; M.S. 1927 s. 1828-44.

## 411.28 STREET COMMISSIONER.

HISTORY. 1870 c. 31 sc. 3 s. 11; G.S. 1878 c. 10 s. 151; G.S. 1894 s. 1072; 1921 c. 462 s. 29; M.S. 1927 s. 1828-45.

## 411.29 CITY ASSESSOR.

HISTORY. 1870 c. 31 sc. 3 s. 12; G.S. 1878 c. 10 s. 152; G.S. 1894 s. 1073; 1895 c. 8 ss. 203 to 205; 1921 c. 462 s. 30; M.S. 1927 s. 1828-46.

Laws 1870, Chapter 31, and General Statutes 1894, Sections 1045 to 1195, under which the city of Marshall was established, were not repealed by the 1905 revision and are still applicable to cities incorporated thereunder, except as modified by later enactment, and a city assessor may be appointed only for a term of one year. OAG April 23, 1935 (12a-3).

## 411.30 JUSTICES OF THE PEACE; JURISDICTION; PROCEDURE; CONTEMPTS; FINES AND PENALTIES.

HISTORY. 1870 c. 31 sc. 3 ss. 13, 16; G.S. 1878 c. 10 ss. 153, 156; G.S. 1894 ss. 1074, 1077; 1921 c. 462 s. 31; M.S. 1927 s. 1828-47.

## 411.303 CERTAIN WARRANTS ISSUED BY CITY JUSTICES.

HISTORY. 1872 c. 69 ss. 1, 2.

## 411.31 CITY JUSTICES TO MAKE REPORTS TO COUNCIL.

HISTORY. 1870 c. 31 sc. 3 s. 14; G.S. 1878 c. 10 s. 154; G.S. 1894 s. 1075; 1921 c. 462 s. 32; M.S. 1927 s. 1828-48.

## 411.32 OFFICE HOURS OF CITY JUSTICES; COMPLAINTS TO; WRITS AND PROCESS.

HISTORY. 1870 c. 31 sc. 3 s. 15; G.S. 1878 c. 10 s. 155; G.S. 1894 s. 1076; 1921 c. 462 s. 33; M.S. 1927 s. 1828-49.

# MINNESOTA STATUTES 1945 ANNOTATIONS

2429

## GENERAL INCORPORATION, CITIES FOURTH CLASS 411.40

### 411.33 CITY SURVEYOR.

HISTORY. 1870 c. 31 sc. 3 s. 17; G.S. 1878 c. 10 s. 157; G.S. 1894 s. 1078; 1895 c. 8 ss. 210, 212, 213; 1921 c. 462 s. 34; M.S. 1927 s. 1828-50.

### 411.34 CITY PRINTING.

HISTORY. 1870 c. 31 cs. 3 ss. 18, 20; G.S. 1878 c. 10 ss. 158, 160; G.S. 1894 ss. 1079; 1895 c. 8 ss. 196, 351; 1921 c. 462 s. 35; M.S. 1927 s. 1828-51.

### 411.35 OFFICERS TO DELIVER PROPERTY AND EFFECTS TO SUCCESSOR; PENALTY FOR FAILURE.

HISTORY. 1870 c. 31 sc. 3 s. 19; G.S. 1878 c. 10 s. 159; G.S. 1894 s. 1080; 1921 c. 462 s. 36; M.S. 1927 s. 1828-52.

### 411.36 OFFICERS; OTHER DUTIES; COMPENSATION.

HISTORY. 1895 c. 8 s. 53; 1921 c. 462 s. 37; M.S. 1927 s. 1828-53.

Mayor may not be interested as an officer and director in a municipal depository, but a director of a regularly designated depository of city funds may be appointed as city attorney, the matter of what should be done by the appointee to place himself outside of the pale of the statutory provisions not being considered. OAG April 14, 1936 (90e-20).

Council cannot increase salary of chief of police or superintendent of sewer and water system during term of appointment, or even during time he is holding over without reappointment. OAG April 13, 1937 (59a-41).

\* Salaries of members of city council should be fixed as provided in section 1728 (415.05) rather than this section. OAG June 8, 1937 (63a-2).

### 411.37 OFFICERS TO ENFORCE PEACE.

HISTORY. 1921 c. 462 s. 38; M.S. 1927 s. 1828-54.

### 411.38 COMMON COUNCIL.

HISTORY. 1870 c. 31 sc. 4 s. 1; G.S. 1878 c. 10 s. 162; G.S. 1894 s. 1083; 1895 c. 8 ss. 109, 113, 115; 1921 c. 462 s. 39; M.S. 1927 s. 1828-55; 1933 c. 203 s. 1; M. Supp. s. 1828-55.

### 411.39 MEETINGS OF COUNCIL; ELECTION AND QUALIFICATIONS OF MEMBERS.

HISTORY. 1870 c. 31 sc. 4 s. 2; G.S. 1878 c. 10 s. 163; G.S. 1894 s. 1084; 1895 c. 8 s. 110; 1921 c. 462 s. 40; M.S. 1927 s. 1828-56.

A meeting held at any other time than that fixed for a regular meeting under a resolution of the council, or for a special meeting under the call of the mayor, is a legal meeting, if all its members actually attend and participate in its proceedings, and is otherwise regular. State v Smith, 22 M 218.

### 411.40 POWERS AND DUTIES OF COUNCIL ENUMERATED.

HISTORY. 1870 c. 31 sc. 4 s. 3; G.S. 1878 c. 10 s. 164; G.S. 1894 s. 1085; 1895 c. 8 ss. 112, 119, 126, 135, 277; 1899 c. 319 s. 1; 1921 c. 462 s. 41; M.S. 1927 s. 1828-57.

Council of city of fourth class could vacate parts of two streets and a railroad crossing where it was necessary for the reception of materials for use in the paving of a nearby trunk highway. OAG July 14, 1931.

City council of Eveleth has not authority to authorize an allowance to members of the council or the mayor for taxi hire or gasoline and oil used in their own automobiles. OAG March 22, 1932.

City may use surplus proceeds derived from water, light, and heating utilities for general municipal purposes. OAG Feb. 5, 1934.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 411.41 GENERAL INCORPORATION, CITIES FOURTH CLASS

2430

City may pay salary of band director out of entertainment fund, but a city may not transfer money from the general fund or any other fund to the band fund. OAG July 28, 1936 (59b-3).

City of North Mankato had power to establish and maintain a playground and park, and could grant a ball club a concession, in consideration of the construction of a grandstand, and charge for admission to ball park, the general public to have full use of the playing field during six days of the week, and the ball club only on Sundays. OAG March 18, 1937 (59b-11).

Whether gasoline curb pump constitutes an unlawful obstruction or nuisance is a matter for the governing body of the municipality to determine. OAG March 4, 1938 (396a-1).

City cannot enter into joint contract with a private creamery corporation in connection with the construction of sewage disposal plants. OAG Sept. 18, 1933.

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

City of fourth class may pay money to a hockey club maintaining a skating rink and warming house in consideration of the place being thrown open to the public certain days in the week without charge. OAG Nov. 13, 1933.

Whether a reasonable appropriation by city council for the purpose of decorating a Christmas tree and furnishing an entertainment for children at Christmas time is for a public purpose, is a question of fact to be passed upon by the local governing body. OAG Nov. 13, 1933.

City may operate a skating rink and is not liable for injuries received thereon where no charge is made, being a governmental function. OAG Feb. 11, 1935 (844b-1).

City may accept a deed from abutting property owners on a narrow avenue conditioned that no assessments be levied against grantor's property by reason of widening and grading of the avenue and that city carry cost of sewer and water improvements, but city may not waive its right to compel abutting property owners to connect with sewer and water main. OAG June 12, 1935 (296c-6).

License fee of \$100.00 for three years for commercial photography is unreasonable. OAG July 27, 1932.

This paragraph controls section 1828-61 (411.44), the words "appropriating money" having reference to original incurring of obligation, while section 1828-61 (411.44) is to be limited to authorization of the expenditure of the appropriation thus made. OAG April 4, 1930.

A city of the fourth class may issue and register city warrants, but may not issue bonds for a new well without reference to the electorate. OAG June 7, 1944 (59-a).

### 411.41 REVOCATION OF LICENSES.

HISTORY. 1895 c. 8 s. 137; 1921 c. 462 s. 42; M.S. 1927 s. 1828-58.

### 411.42 EXCLUSIVE OR PERPETUAL FRANCHISES NOT GRANTED.

HISTORY. 1895 c. 8 s. 138; 1921 c. 462 s. 43; M.S. 1927 s. 1828-59.

### 411.43 PROTECTION OF STREETS AND CITY PROPERTY.

HISTORY. 1895 c. 8 s. 139; 1921 c. 462 s. 44; M.S. 1927 s. 1828-60.

### 411.44 ORDINANCES, REGULATIONS, RESOLUTIONS, BY-LAWS, AND APPROPRIATIONS; ENACTMENT AND EFFECT.

HISTORY. 1870 c. 31 sc. 4 s. 4; G.S. 1878 c. 10 s. 165; G.S. 1894 s. 1087; 1921 c. 462 s. 45; M.S. 1927 s. 1828-61.

This section is controlled by section 1828-57 (411.40) par. 73, and the provision as to majority vote has reference to the expenditure of an appropriation made by a three-fourths vote under such paragraph 73. OAG April 4, 1930.

# MINNESOTA STATUTES 1945 ANNOTATIONS

2431

GENERAL INCORPORATION, CITIES FOURTH CLASS 411.49

A resolution abandoning and closing hospital in city of Hastings and referring to admission of patients and termination of employment of various employees, contained only one subject within the meaning of Hastings' charter, Chapter 4, Section 5, which subject was included in a title simply stating that it was a resolution to abandon and cease to operate the hospital. OAG April 20, 1931.

An affirmative vote of a majority of members of the city council of Hastings was sufficient for the closing of a hospital, and a two-thirds vote was unnecessary. OAG April 20, 1931.

Where city charter of Columbia Heights provided procedure to be followed in case of recall, it was not within the power of the council in an ordinance to attach burdensome conditions to the filing of a recall petition. OAG Aug. 20, 1931.

Under Jackson city charter, section 66, an ordinance cannot be regularly adopted unless it has been read at three successive regular meetings of the council occurring at least one week apart, and it may not be read at a regular meeting and two adjournments of that meeting. OAG Oct. 12, 1931.

## 411.45 ABATEMENT OF NUISANCES.

HISTORY. 1870 c. 31 sc. 4 s. 5; G.S. 1878 c. 10 s. 166; G.S. 1894 s. 1088; 1921 c. 462 s. 46; M.S. 1927 s. 1828-62.

## 411.46 AUDIT OF ACCOUNTS.

HISTORY. 1870 c. 31 sc. 4 s. 6; G.S. 1878 c. 10 s. 167; G.S. 1894 s. 1089; 1921 c. 462 s. 47; M.S. 1927 s. 1828-63.

Council may employ certified accountants to audit city affairs. OAG March 24, 1933.

## 411.47 BORROWING MONEY AND ISSUING BONDS; TAX LEVIES; PASSAGE OF ORDINANCES.

HISTORY. 1870 c. 31 sc. 4 s. 7; G.S. 1878 c. 10 s. 168; 1893 c. 204 s. 3; G.S. 1894 ss. 1090, 1092, 1096; 1895 c. 8 ss. 117, 120; 1903 c. 208 s. 2; 1921 c. 462 s. 48; M.S. 1927 s. 1828-64.

Method of determining whether or not warrants may be issued for a special purpose for which money may be borrowed is that money on hand and taxes due and likely to be paid should be added together and from this amount deduct amount it will take to pay up outstanding indebtedness and amount which it will take before any new money is to be received from amounts levied this year, and if there is a balance, it may be used to draw new warrants, but city council has no authority to place a due date on such warrants. OAG Jan. 19, 1934.

City of North Mankato may not issue warrants or certificates in excess of limitation for white way system payable out of general funds without vote of electors. OAG Nov. 7, 1936 (59a-49).

City charter may provide for payment of hospital bonds in hospital services rather than in money. OAG April 21, 1938 (59b-5).

Issuance of refunding bonds by city of North Mankato involving more than \$15,000 must be authorized by two-thirds vote of electors, sections 1941 (475.13) and 1942 (475.14) not applying to cities of the fourth class. OAG July 22, 1939 (36i).

## 411.48 TAX LEVY FOR GENERAL PURPOSES.

HISTORY. 1870 c. 31 sc. 5 s. 1; G.S. 1878 c. 10 s. 169; G.S. 1894 s. 1098; 1895 c. 8 s. 127; 1921 c. 462 s. 49; M.S. 1927 s. 1828-65.

## 411.49 SPECIAL TAXES.

HISTORY. 1870 c. 31 sc. 5 s. 2; G.S. 1878 c. 10 s. 170; G.S. 1894 s. 1099; 1921 c. 462 s. 50; M.S. 1927 s. 1828-66.

City may accept a deed from abutting property owners on a narrow avenue conditioned that no assessments be levied against grantor's property by reason

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 411.50 GENERAL INCORPORATION, CITIES FOURTH CLASS

2432

of the widening and grading of the avenue and that the city carry the cost of sewer and water improvements, but the city may not waive its right to compel abutting property owners to connect with sewer and water main OAG June 12, 1935 (396c-6).

### 411.50 TAX LEVIES TO PAY BONDS AND INTERESTS.

HISTORY. 1870 c. 31 sc. 5 s. 3; G.S. 1878 c. 10 s. 171; G.S. 1894 s. 1100; 1921 c. 462 s. 51; M.S. 1927 s. 1828-67.

### 411.51 TAX LEVIES; HOW MADE; VALIDITY; DISPOSAL OF.

HISTORY. 1870 c. 31 sc. 5 s. 4; G.S. 1878 c. 10 s. 172; G.S. 1894 s. 1101; 1921 c. 462 s. 52; M.S. 1927 s. 1828-68.

City has no power to pay expenses of delegates from fire department to state firemen's association convention. OAG June 2, 1930.

### 411.52 CERTIFICATION AND COLLECTION OF TAXES.

HISTORY. 1870 c. 31 sc. 5 s. 5; G.S. 1878 c. 10 s. 173; G.S. 1894 s. 1102; 1921 c. 462 s. 53; M.S. 1927 s. 1828-69.

### 411.53 DISBURSEMENTS AUTHORIZED BY COUNCIL; ORDERS FOR.

HISTORY. 1870 c. 31 sc. 5 s. 6; G.S. 1878 c. 10 s. 174; G.S. 1894 s. 1103; 1921 c. 462 s. 54; M.S. 1927 s. 1828-70.

Alderman of city of Marshall are not entitled to extra compensation for a tour of inspection to other localities to determine the proper kind of engine to purchase for municipal plant, and are not entitled to reimbursement for expenses, in the absence of previous authorization by the council. OAG May 16, 1932.

### 411.54 ORDERS TO BE CANCELED.

HISTORY. 1870 c. 31 sc. 5 s. 7; G.S. 1878 c. 10 s. 175; G.S. 1894 s. 1104; 1921 c. 462 s. 55; M.S. 1927 s. 1828-71.

### 411.55 POLL TAX.

HISTORY. 1870 c. 31 sc. 5 s. 8; G.S. 1878 c. 10 s. 176; G.S. 1894 s. 1105; 1921 c. 462 s. 56; M.S. 1927 s. 1828-72.

### 411.56 POWERS OF COUNCIL; OPENING AND VACATING STREETS AND ALLEYS.

HISTORY. 1870 c. 31 sc. 6 s. 1; G.S. 1878 c. 10 s. 177; G.S. 1894 s. 1106; 1895 c. 8 ss. 128, 150; 1921 c. 462 s. 57; M.S. 1927 s. 1828-73.

This duty extends to sidewalks. *Furnell v City of St. Paul*, 20 M 117 (101); *Erd v City of St. Paul*, 22 M 443.

A city is liable for neglect to keep streets in safe condition if the means for doing so are provided or placed at its disposal, as where it has power to levy taxes for the purpose. It will be presumed, until proven to be otherwise, that the city has sufficient means for this purpose. *Shartle v City of Minneapolis*, 17 M 308 (284).

As to liability of city for excavations or obstructions in streets, notice to city, etc., see *Cleveland v City of St. Paul*, 18 M 279 (255); *Lindholm v City of St. Paul*, 19 M 245 (204); *Moore v City of Minneapolis*, 19 M 300 (258); *O'Leary v City of Mankato*, 21 M 65.

### 411.57 LAYING OUT, OPENING, ALTERING, AND VACATING STREETS; PROCEDURE.

HISTORY. 1870 c. 31 sc. 6 s. 2; G.S. 1878 c. 10 s. 178; G.S. 1894 s. 1107; 1895 c. 8 ss. 129, 151, 152, 243 to 249, 251; 1921 c. 462 s. 58; M.S. 1927 s. 1828-74.

# MINNESOTA STATUTES 1945 ANNOTATIONS

2433

## GENERAL INCORPORATION, CITIES FOURTH CLASS 411.66

Under a general power to lay out and open streets, the city council has no authority to lay out and open a street through the depot grounds of a railroad company, in such manner as to destroy, or essentially impair, the value of the company's easement therein, theretofore acquired under and in pursuance of an express legislative grant for that purpose. *Milw. & St. P. Ry. Co. v City of Faribault*, 23 M 167.

No appeal to supreme court from the judgment of the district court upon an appeal to it under the charter of Minneapolis from an assessment of damages for taking land for streets. *Jones v City of Minneapolis*, 20 M 491 (444).

Cities operating under this act may acquire land for street purposes. OAG Oct. 24, 1935 (817p).

### 411.58 SURVEYS AND PROFILES TO BE MADE AND FILED.

HISTORY. 1870 c. 31 sc. 6 s. 3; G.S. 1878 c. 10 s. 179; G.S. 1894 s. 1108; 1921 c. 462 s. 59; M.S. 1927 s. 1828-75.

### 411.59 VACATION OF STREETS; PROCEDURE.

HISTORY. 1870 c. 31 sc. 6 s. 4; G.S. 1878 c. 10-s. 180; G.S. 1894 s. 1109; 1921 c. 462 s. 60; M.S. 1927 s. 1828-76.

Charter provisions prevail under this section, with reference to vacating streets. OAG June 2, 1934 (396c-18).

### 411.60 APPEALS.

HISTORY. 1870 c. 31 sc. 6 s. 5; G.S. 1878 c. 10 s. 181; G.S. 1894 s. 1110; 1921 c. 462 s. 61; M.S. 1927 s. 1828-77.

### 411.61 RECORDS KEPT BY CLERK.

HISTORY. 1870 c. 31 sc. 6 s. 6; G.S. 1878 c. 10 s. 182; G.S. 1894 s. 1115; 1921 c. 462 s. 62; M.S. 1927 s. 1828-78.

### 411.62 FIRE LIMITS.

HISTORY. 1870 c. 31 sc. 7 s. 1; G.S. 1878 c. 10 s. 183; G.S. 1894 s. 1173; 1921 c. 462 s. 63; M.S. 1927 s. 1828-79.

### 411.63 REGULATION OF CONSTRUCTION AND USE OF BUILDINGS.

HISTORY. 1870 c. 31 sc. 7 s. 2; G.S. 1878 c. 10 s. 184; G.S. 1894 s. 1174; 1921 c. 462 s. 64; M.S. 1927 s. 1828-80.

### 411.64 PURCHASE OF FIRE APPARATUS.

HISTORY. 1870 c. 31 sc. 7 s. 3; G.S. 1878 c. 10 s. 185; G.S. 1894 s. 1175; 1895 c. 8 s. 182; 1921 c. 462 s. 65; M.S. 1927 s. 1828-81.

### 411.65 ENGINEERS AND FIRE-WARDENS.

HISTORY. 1870 c. 31 sc. 7 s. 4; G.S. 1878 c. 10 s. 186; G.S. 1894 s. 1176; 1895 c. 8 ss. 173 to 175; 1921 c. 462 s. 66; M.S. 1927 s. 1828-82.

Where mayor of International Falls submits the appointment of a person as chief of the fire department and the council refuses to confirm the appointment, there is no vacancy in the office and the incumbent continues as such chief unless he has resigned, or a vacancy has otherwise been created. OAG May 29, 1931; OAG Feb. 5, 1934.

### 411.66 ASSISTING FIREMEN; PENALTY FOR REFUSAL.

HISTORY. 1870 c. 31 sc. 7 s. 5; G.S. 1878 c. 10 s. 187; G.S. 1894 s. 1177; 1921 c. 462 s. 67; M.S. 1927 s. 1828-83.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 411.67 GENERAL INCORPORATION, CITIES FOURTH CLASS

2434

### 411.67 STREET GRADES.

HISTORY. 1870 c. 31 sc. 8 s. 1; G.S. 1878 c. 10 s. 188; G.S. 1894 s. 1178; 1921 c. 462 s. 68; M.S. 1927 s. 1828-84.

Unless expressly so declared by charter or statute, a municipal corporation, clothed with full power to grade and improve its streets, is not liable to property owners for consequential damages necessarily resulting from the action of its governing body in establishing the grade of a street, and causing it to be improved in conformity therewith. *Lee v City of Mpls.*, 22 M 13.

### 411.68 SIDEWALKS; CONSTRUCTION OR REPAIR; NOTICE TO PROPERTY OWNERS.

HISTORY. 1870 c. 31 sc. 8 s. 2; G.S. 1878 c. 10 s. 189; G.S. 1894 s. 1179; 1895 c. 8 ss. 280, 281; 1921 c. 462 s. 69; M.S. 1927 s. 1828-85.

### 411.69 CONSTRUCTION OR REPAIR BY CITY; ASSESSMENTS.

HISTORY. 1870 c. 31 sc. 8 s. 3; G.S. 1878 c. 10 s. 190; G.S. 1894 s. 1180; 1895 c. 8 s. 282; 1921 c. 462 s. 70; M.S. 1927 s. 1828-86.

Section 411.69, possibly unconstitutional for lack of clarity, and no plan set up for spreading the assessment. OAG March 13, 1944 (480a).

### 411.70 DELINQUENT ASSESSMENTS; COLLECTION.

HISTORY. 1870 c. 31 sc. 8 s. 4; G.S. 1878 c. 10 s. 191; G.S. 1894 s. 1182; 1921 c. 462 s. 71; M.S. 1927 s. 1828-87.

### 411.71 WIDTH OF SIDEWALKS AND MATERIAL FOR.

HISTORY. 1870 c. 31 sc. 8 s. 5; G.S. 1878 c. 10 s. 192; G.S. 1894 s. 1183; 1921 c. 462 s. 72; M.S. 1927 s. 1828-88.

### 411.72 CONTRACTS FOR STREET LIGHTING.

HISTORY. 1870 c. 31 sc. 9 s. 1; G.S. 1878 c. 10 s. 193; G.S. 1894 s. 1184; 1921 c. 462 s. 73; M.S. 1927 s. 1828-89.

### 411.73 GAS PIPES; LAYING.

HISTORY. 1870 c. 31 sc. 9 s. 2; G.S. 1878 c. 10 s. 194; G.S. 1894 s. 1185; 1921 c. 462 s. 74; M.S. 1927 s. 1828-90.

### 411.74 WATER MAINS; LAYING.

HISTORY. 1870 c. 31 sc. 9 s. 3; G.S. 1878 c. 10 s. 195; G.S. 1894 s. 1186; 1921 c. 462 s. 75; M.S. 1927 s. 1828-91.

### 411.75 ACTION OF COUNCIL RESCINDED, HOW.

HISTORY. 1921 c. 462 s. 76; M.S. 1927 s. 1828-92.

### 411.76 REMISSION OF JUDGMENTS OR PENALTIES IN FAVOR OF CITY.

HISTORY. 1921 c. 462 s. 77; M.S. 1927 s. 1828-93.

### 411.77 PROSECUTIONS; WARRANTS; PROCEDURE.

HISTORY. 1870 c. 31 sc. 10 s. 1; G.S. 1878 c. 10 s. 196; G.S. 1894 s. 1187; 1921 c. 462 s. 78; M.S. 1927 s. 1828-94.

# MINNESOTA STATUTES 1945 ANNOTATIONS

2435

GENERAL INCORPORATION, CITIES FOURTH CLASS 411.81

## 411.78 FINES AND IMPRISONMENTS.

HISTORY. 1870 c. 31 sc. 10 s. 2; G.S. 1878 c. 10 s. 197; G.S. 1894 s. 1188; 1921 c. 462 s. 79; M.S. 1927 s. 1828-95.

## 411.79 RESIDENTS NOT DISQUALIFIED AS JUDGE, JUSTICE, WITNESS, OR JUROR.

HISTORY. 1870 c. 31 sc. 10 s. 5; G.S. 1878 c. 10 s. 200; 1891 c. 146 sc. 12 s. 9; G.S. 1894 ss. 1197, 1417; 1921 c. 462 s. 80; M.S. 1927 s. 1828-96.

Taxpayers are competent jurors. McClure v City of Red Wing, 28 M 186, 196, 9 NW 767.

## 411.80 OWNERSHIP OF REAL AND PERSONAL ESTATE.

HISTORY. 1921 c. 462 s. 81; M.S. 1927 s. 1828-97.

## 411.81 POWERS, AUTHORITY AND LIMITATIONS.

HISTORY. 1921 c. 462 s. 82; M.S. 1927 s. 1828-98.