

TOWNS AND TOWN OFFICERS

CHAPTER 365

GENERAL PROVISIONS RELATING TO TOWNS

365.02 CORPORATE POWERS.

Evidence supports the finding that, in draining a public highway, the town maintaining the highway did not exceed the rights of a landowner disposing of surface water as defined in *Sheehan v Flynn*, 59 M 436, 61 NW 462. In disposing of surface waters, a town has the same rights and is subject to the same liabilities as an individual. *Sandmeier v Town of St. James*, 165 M 34, 205 NW 634.

Procedure for purchase of real estate for town roads and other public uses. OAG Oct. 2, 5, 1944 (377b-10-j).

In acquiring right of way for a town road section 163.13, subdivision 5, rather than section 365.02 controls. OAG Oct. 5, 1944 (831-F).

Town road machinery cannot be used, or leased to others for use upon and for the benefit of private property owners. OAG Oct. 24, 1946 (382-B).

365.03 LIMITATION OF POWERS.

A town board has no power to license a riding academy or forbid the academy's operation as such. OAG Aug. 8, 1946 (437-B-4).

365.07 TOWN CHARGES.

Section 365.37, which forbids public officials from being interested in contracts which they make, prevents a town supervisor from using his automobile in looking after town business and collecting from the town the upkeep, maintenance and expenses thereof while so used. *State v Sandberg*, 168 M 363, 209 NW 943.

365.10 POWERS OF TOWN MEETINGS.

In 1857 the owner of a certain tract caused it to be platted into lots and blocks. In the center of the plat was one block marked "Public Square." The fee title of the land included in this block is in the heirs of the original proprietor, subject to an easement for use as a public park or public common, which easement is vested in the town in which the tract lies. If timber is cut, it must be done with the idea of beautifying the park and not to enrich the town coffers. Proceeds of the sale of the timber must be devoted to purposes of the park. 1944 OAG 207, June 22, 1944 (18-D).

Procedure by which a town may acquire a school building from a school board for use as a town hall. OAG June 26, 1945 (434-e-5).

In view of the general authority vested in the town supervisors by section 366.01 as affecting clause (3) of section 365.10, under "cost and expenses" as listed in section 163.15, subdivision 1, when needed an attorney may be employed to draw notices and conduct proceedings in establishing a cartway and awarding damages. OAG Oct. 16, 1945 (434-A-1).

Until authorized by a vote at the town meeting, the board has no power to sell or dispose of real estate owned by the town. OAG Dec. 7, 1945 (437-B-8).

Town board may acquire a gravel pit if money is made available by the electorate. OAG May 8, 1946 (442-A-6).

Where a village attempts to annex an acre of land for the purpose of establishing a municipal liquor store thereon, the town from which the land is to be taken may employ an attorney to resist the annexation. OAG May 24, 1946 (434-A-1).

The town board is without authority to sell personal property of the town without a vote of the electors. OAG June 3, 1946 (382-B).

Clause (4) of this section has no application to horses used by a riding academy except as they may run at large. OAG Aug. 8, 1946 (437-B-4).

A town may not lawfully use its road machinery for hire or as a contractor by or with private owners. OAG Oct. 24, 1946 (382-B).

Property owned by town, upon village separation from the town may be sold under provisions of sections 413.071, 413.072, and 365.10, subd. 6. OAG Feb. 13, 1947 (440).

The town electors, having voted to raise money for the purpose of constructing a town fire hall, may proceed to build the structure in 1947 although the money to pay for same will not be available until 1948. The town may issue town orders or warrants upon the town building fund up to the amount that will come into the hands of the treasurer in 1948 on account of the 1947 levy. OAG March 25, 1947 (442-B-6).

365.14 TOWN BUILDINGS.

A veterans' club may lease space in the town hall from the town board, but liquor cannot be legally sold therein until a license for sale be obtained from the village wherein the town hall is located. OAG Nov. 29, 1945 (218-G-9).

365.15 MAY PROVIDE FIRE PROTECTION AND APPARATUS.

The matter of providing fire protection and the amount to be expended therefor may be considered at the annual town meeting and at no other time, and notice must be given and the amount of the proposed expenditure stated. The vote is by ballot. OAG July 11, 1945 (688K); OAG Oct. 4, 1945 (688K).

Where the fire protection is by contract, the matter must be considered at each annual meeting and upon due notice. OAG July 11, 1945 (688K).

The town electors at an annual meeting may by ballot authorize the town board to provide fire protection; but section 385.19 limits the amount of a tax levy to the provisions of section 88.04 limiting the amount for fire protection to five mills and a maximum of \$3,000 a year. Possibly the town of New Canada may hold a special election under section 365.30 and levy a tax under section 365.23. OAG June 11, 1947 (688-K).

365.17 ADJACENT TOWNS.

The electors having made available the needed funds, the town board with others may determine the share each town must pay. Claims against the fund must be presented and approved for payment, in the usual way. OAG May 17, 1945 (688-C-1).

Where two or more towns pool the expense of providing apparatus, the utmost freedom of contract between the towns is permitted. OAG July 11, 1945 (688K).

Town officers and members of the board are paid out of funds made available for that purpose, and when serving as warden or a member of the fire board cannot be paid out of fire funds. OAG May 15, 1946 (688-G); OAG May 27, 1946 (916-B).

365.18 TAX LEVY; CONTRACTS WITH ADJACENT CITY OR VILLAGE.

Amended by L. 1947 c. 435 s. 1.

The electors at the annual meeting (1) authorize the town board to provide fire protection for the town, and (2) determine the amount of money to be raised; the manner of providing protection is vested solely in the board. 1942 OAG 140, Feb. 10, 1941 (688-K); 1942 OAG 141, Nov. 28, 1941 (916-B).

At the annual meeting the question of obtaining fire protection may be determined orally, but the providing of funds for a particular purpose must be by ballot.

MINNESOTA STATUTES 1947 ANNOTATIONS

877

GENERAL PROVISIONS RELATING TO TOWNS 365.37

The town board is charged with the duty of the expenditure of the funds to the purpose intended. OAG Dec. 8, 1944 (688K).

Township contracts should be executed pursuant to the provisions of L. 1943, c. 389, and L. 1947, c. 435, s. 1, incorporated into section 365.18, or under L. 1943, c. 557, incorporated into section 471.59, according to the purpose. OAG May 21, 1945 (688-K).

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

Any town coming within the classification of this section may operate a water system. OAG Sept. 1, 1944 (434-A-6).

Governmental responsibility for torts. 26 MLR 293, 328.

365.26 CEMETERIES.

Upon separation of a village from a township, the town may sell to the village, being authorized by vote of the electors, its gravel pit, flowage rights in millpond, and cemetery, retaining burial rights in the cemetery. OAG Feb. 13, 1947 (440).

A town may not expend funds for the maintenance of a cemetery situated outside the town, nor may a town acquire by purchase a cemetery situated outside the town. OAG June 25, 1947 (870-i).

365.27 SALE OF LOTS; PROCEEDS.

In selling lots in a town-owned cemetery, the deed may contain a provision that the transfer is subject to the provisions of sections 365.26 and 365.27, and there should be no other specific limitations. OAG Sept. 12, 1945 (870-1).

365.31 GIFTS.

A will providing that under certain contingencies a trust fund should be transferred to the town board for the purpose of taking care of a cemetery lot "according" to statutes permitting the town board to accept gifts for the purpose of perpetual care of lots, does not create a gift in trust to the town board. *Town v Henle*, 174 M 568, 219 NW 919.

365.37 OFFICERS; CONTRACTS.

Where a city invites bids for the furnishing and installation of parking meters according to the city's specifications and a bidder makes a bid offering to install the meters according to the bidder's specifications, and where installation according to the bidder's method would give him a substantial benefit or advantage which he would not enjoy if installation were made according to the city's method, there is a material variance between the bid and the city's specifications which requires rejection of the bid. After bids have been received and opened, no material change may be made in any bid. *Coller v City of St. Paul*, 223 M 376, 26 NW(2d) 835.

Where the chairman of the town board is driver on the bulk gasoline truck of dealer, even though on a salary only, sale of gasoline and merchandise to the town by the employing company is illegal. OAG Aug. 9, 1946 (90-D).

"Lowest responsible bidder" does not necessarily mean lowest bidder whose pecuniary ability to perform contract is deemed best. Commission may reject lowest bid if, in exercise of honest discretion, another seems better for object to be accomplished. Before variation from specifications will be deemed to destroy competitive character of bid for public contract variation must be a substantial and material one, beneficial to the successful bidder. OAG Oct. 15, 1946 (707a-4).

The bid containing an escalator clause is not in accordance with the specifications and not a valid bid, and no valid or enforceable contract can be predicated thereon. OAG Nov. 26, 1946 (707-B-7).

MINNESOTA STATUTES 1947 ANNOTATIONS

365.41 GENERAL PROVISIONS RELATING TO TOWNS

878

The contract must follow the advertisement for bids, and all bids should conform to the proposal set forth in the advertisement; so that, where the advertisement asks for bids on four separate parts of the whole, the bids must conform to the separation of the proposal. OAG June 4, 1947 (707-a-4).

365.41 JUDGMENTS AGAINST TOWNS.

A judgment creditor of a town may invoke the remedy of mandamus if the town board fails to increase the tax levy to provide for payment of the judgment. OAG April 10, 1942 (427-C-10).

365.44 SEPARATION FROM VILLAGE.

An incorporated village which has not been separated from the town for assessment and election purposes under the provisions of sections 365.44 or 413.05, is not a separate election or assessment district, and may not elect a village assessor. OAG May 13, 1946 (484-E-4).

When a part of a town incorporates as a village, it cannot recover from the town any portion of the year's taxes collected by the town from residents of the newly created village. OAG Aug. 14, 1946 (484-E-4).

365.45 DISSOLUTION OF TOWNS.

Where certified copy of resolution of dissolution of town is presented to the county board, the town officers continue to function, and may even dispose of unused park land, until the county board adopts a resolution dissolving the town. OAG June 17, 1946 (441-B).