

CHAPTER 375

COUNTY BOARDS

375.01 MEMBERS, NUMBER OF.

When public officers or agents in good faith contract with parties having equal means of knowledge with themselves, they do not become personally liable, although they may have exceeded their authority. *First National v Board*, 81 M 95, 83 NW 468.

Ex. L. 1883, cc. 51 and 54, in so far as they require the judges of the district court, or a majority of them, to appoint the members of the board of control of the county of Ramsey, are unconstitutional, because they assume to impose upon members of the judicial department powers and functions which are by the constitution of the state assigned to another department of the government. *State ex rel v Brill*, 100 M 499, 111 NW 294, 639.

The board of county commissioners of Hennepin county is a continuing body, and its existence is not affected by the election of new members, and the election of a chairman and vice-chairman at the first session in each year; and the board may, on the last day of the year, employ a morgue keeper for a period of one year therefrom, regardless of the fact that two new members of the board, elected at the November election preceding, will qualify and enter on their duties soon after the first of the year. *Manley v Scott*, 108 M 142, 121 NW 628.

The official year commences at 12.01 o'clock on the first Monday of January; but the constitution contemplates that new officers shall have reasonable opportunity to qualify and assume the duties of office, and may qualify at any time during the day. Outgoing officers do not pass out of office until the close of the first day of the official year, unless their successors qualify during the day. Holding over officers, pending the qualification of the new officials, are limited on that day to the closing up of old business and to matters of necessity. *State ex rel v McIntosh*, 109 M 19, 122 NW 462.

375.02 COMMISSIONER DISTRICTS.

In redistricting the county board may not split a voting precinct. The commissioner districts must follow precinct or ward lines. OAG Feb. 9, 1944 (185-A-2).

Where by a change in county commissioners' districts a part of district 4 was added to district 5, if the commissioner in district 4 resides in the district as changed the commissioner will continue to hold his office, but it will be necessary to elect a new commissioner in district 5. OAG March 19, 1947 (798-e).

375.05 SALARIES OF COUNTY COMMISSIONERS.

County board may at any time increase the salary of employees hired by the board directly or whose wages are fixed by the board. OAG Jan. 12, 1945 (104-A-3).

County board members are entitled to such compensation and expense as is authorized by sections 375.05, 375.055, 375.06, and L. 1947, c. 143. They may be paid only such expense money as is authorized by statute. OAG April 15, 1947 (124-J).

375.055 SALARIES IN CERTAIN COUNTIES.

Subd. 2, amended by L. 1947 c. 259 s. 1.

375.06 COMPENSATION AND MILEAGE IN COUNTIES HAVING LESS THAN 75,000 INHABITANTS.

A county commissioner in attending board meetings is entitled to compute mileage for the distance "necessarily traveled" by the usual traveled route from the

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place of residence to the county seat. County of Marshall v Rokke, 134 M 346, 159 NW 791.

Signing of warrants is not deemed committee work for the purpose of authorizing the chairman of the board to receive a per diem for a trip to the county seat to sign warrants. OAG Jan. 20, 1944 (124).

Board members traveling in performance of their duties under the laws relating to tax forfeited lands are allowed ten cents per mile mileage. OAG April 25, 1944 (104-A-8).

No authority exists for paying expenses of board members to their state convention. OAG Nov. 18, 1944 (104-A-6).

Mileage accruing to a board member is computed as the distance between the meeting place of the board, and the home of the member. OAG Feb. 26, 1946 (124-J).

Section 375.06 allows mileage to the commissioner for committee work as an emolument of office, not as compensation or reimbursement for use of his own automobile in performance of duty. Section 350.11 does not apply. OAG July 29, 1947 (124-J).

375.08 BOARD TO FILL VACANCIES IN COUNTY OFFICES.

Although the notice was not given as required by this section, all members of the board were present and all voted without protest, so the appointment of a county auditor to fill a vacancy was legal. OAG Jan. 29, 1946 (18-F).

Where a county surveyor is acting as ditch engineer, he may resign as engineer without resigning as surveyor. Where a vacancy occurs in both offices, a man may accept the office of surveyor without at the same time becoming engineer. OAG Feb. 26, 1946 (148-A-10).

Should the successful candidate for sheriff be ousted under the provisions of the corrupt practices act, a vacancy is created which must be filled by the county board, the incumbent retaining office until the appointee has qualified. OAG Dec. 21, 1946 (390-a-2).

375.10 FILLING VACANCY IN OFFICE OF COMMISSIONER.

There is no appointment until a majority of the board has voted for the appointee. The board selects its officers and certifies the selection to the county auditor. The auditor has no vote on matters of appointment. OAG May 1, 1945 (277c-1).

Section 351.06 controls as to the duration of the term and 375.10 as to when and by whom the appointment shall be made; and appointment of a successor to a deceased member is not for the unexpired term but for the balance of the official year during which the death occurred, or until the successor is elected and qualified. OAG June 11, 1946 (126-G).

Unorganized townships within a commissioner's district may not vote in case of a vacancy. OAG Nov. 25, 1946 (126-a).

Vacancies to be filled pursuant to section 375.10 where the county commissioner district is wholly within the limits of a city, and the vacancy is one to be filled by the council of such municipality, council members are disqualified from appointment to fill such vacancy. OAG Feb. 11, 1947 (216-H).

375.12 PUBLICATION OF PROCEEDINGS.

Amended by L. 1947 c. 161 s. 1.

A newspaper offered to publish at a stated price. The offer was rejected. It then made such paper official for certain publications, and another paper for other publications, in each case at prices greatly in excess of the offer. The situation justified the trial court in the exercise of its discretion in granting a temporary injunction against carrying out the contract. Bloomquist v County of Isanti, 152 M 126, 188 NW 64.

Validity of an appropriation of public funds for payment of a moral obligation arising through reliance on an unconstitutional statute. 20 MLR 550.

375.14 OFFICES AND SUPPLIES FURNISHED FOR COUNTY OFFICERS.

If in the opinion of the county board handcuffs, guns, straitjackets, and similar are necessary to the discharge of the sheriff's official duties, such items may be purchased by the county for use in the sheriff's office. 1944 OAG 221, March 1, 1943 (390-A-17).

The county board may provide the county engineer with an office at the county seat, but there is no statutory authority for providing him with an office at any other location. OAG May 10, 1947 (122-B).

375.15 DAMAGED RECORDS TRANSCRIBED.

If the birth register or other similar volume or document is hardly readable by reason of age or use, the instruments or records should be transcribed into new books. OAG July 14, 1945 (144-b-22).

375.16 APPROPRIATION FOR EXPENSES.

Amended by L. 1947 c. 149 s. 1.

Membership dues in the county auditor's association cannot be paid out of county funds. OAG March 27, 1945 (18).

Bona fide purchaser of county warrants endorsed in blank. Reliance on indicia of ownership. 8 MLR 526.

375.17 PUBLICATION OF FINANCIAL STATEMENTS.

Amended by L. 1947 c. 235 s. 1.

Having accepted a bid, the board may not at a subsequent meeting rescind it. If two bids are for identical amounts, the board may use its discretion as to which to accept. OAG Jan. 26, 1945 (277c-1).

Section 375.17 relates to the annual publication of the financial statement of counties for which the county board calls for bids. The statute does not require letting the contract to the lowest bidder. Putting county purchases on a business basis seems to be the intent. Both economy and effectiveness of the publicity may be considered. OAG Feb. 6, 1947 (707-a7).

375.18 GENERAL POWERS OF BOARD.

Amended by L. 1947 c. 637 s. 1.

It is competent for a county board, in entering into a contract, to insert stipulations not required by statute, in order to secure the object for which the contract is made, if such stipulations are not contrary to public policy and are made without fraud and impose no impediment to competitive bidding. *Kief v Mills*, 147 M 138, 179 NW 724.

A promise to pay one additional compensation to do what he is already under contract to do is without consideration and is not binding. *Zimmerman v County of Rice*, 202 M 54, 277 NW 360.

Counties are involuntary corporate subdivisions of the state for governmental purposes and are not liable for the neglect of their officers or agents unless expressly made so by statute. *Nostdal v County of Watonwan*, 221 M 376, 22 NW(2d) 461.

In counties having less than 75,000 inhabitants, the county board may transfer from any fund having a usable surplus to create a library fund as provided under section 375.33, subdivision 2. 1944 OAG 180, Feb. 11, 1943 (285-B).

Where the general fund is depleted and there is an unused surplus in the county welfare fund, the county board by unanimous vote may transfer funds for the purpose of employing a veterans service officer. OAG June 14, 1945 (125-b).

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The county board may fix the business hours of its employees, but not of the personnel employed in the offices of elective officers of the county. OAG July 26, 1945 (104-a-10).

Where repair of a county property has not been authorized by the board, a member of the board, or a county officer has no power to approve the bill. OAG Aug. 10, 1945 (125-a-20).

The statute must be rigidly followed in acquiring title to real estate. OAG May 1, 1945 (125-a-42).

Within the limits of the provisions of section 38.27 a county may levy a tax to provide funds to improve county agricultural land, but no levy may be made for subsequent years. OAG Feb. 25, 1946 (519-A).

County boards may grant vacation with pay to county highway employees. OAG June 3, 1946 (125-A-33).

An appropriation by a county to a county agricultural society which is a member of the state agricultural society, though limited to a specific purpose, may be used by the society for other purposes. OAG Oct. 18, 1946 (772-E).

Emergency price increase in a commodity under OPA order or otherwise does not warrant a change in a contract between the county and a supply contractor. OAG Oct. 9, 1946 (707-a-7).

In the absence of a governing statute, county boards or any municipal body may establish its own rules of procedure. OAG Jan. 7, 1947 (124).

The board is authorized to purchase or condemn land for agricultural fairs and exhibitions; but if the amount is in excess of \$5,000, authority must be by vote of the electorate; probably by special election conducted as provided by section 375.20, and the ballots should conform to the provisions of section 205.65. Section 38.23 only applies when land is to be purchased to add to land already owned in fee simple by the county. OAG Jan. 16, 1947, Jan. 24, 1947 (722-a-1).

The county board may, upon proper showing, and no fraud or favoritism being shown, modify or extend the time for the performance of a contract between the county and a contractor. OAG Feb. 14, 1947 (125-a-16).

Authority of the county board to appropriate money to county agricultural society is not limited by the fact that no fair was held in 1946. OAG Feb. 24, 1947 (772-a-1).

County tuberculosis sanatorium charges for person committed as a public health menace should be paid by the municipality whose board of health caused the commitment. After such commitment is released, the county of residence of the patient may be liable if the patient or his relatives cannot pay. OAG Feb. 27, 1947 (556-a-2).

Before the county may acquire property for future use, the county board must declare a necessity for the acquisition of such property. If the county is not prepared to build on the property, it may temporarily lease the property. OAG March 7, 1947 (120-a-20).

Within the conditions prescribed in sections 375.18 and 416.01 et seq, as modified by L. 1947, c. 256, the county commissioners or the governing body of a municipality may appropriate funds for the erecting of a war memorial. OAG April 23, 1947 (310-F).

The statute of limitations may be waived and the county board may pay the just claim, although the statute of limitations has run against the claim. OAG April 29, 1947 (107-a-9).

Where the county board is authorized to appropriate \$1,000, and there are two agricultural societies in the county, the board may appropriate not to exceed \$500 to each. OAG June 2, 1947 (772-a-1).

While public funds may not be used for private purposes, circumstances may be such that the county board may enter into a contract with landowners to provide for culvert or bridge where the same will serve a dual purpose of road drainage and drainage of private lands. OAG July 8, 1947 (377-a-3).

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Utility legislation by the 1892 amendment and the Revised Laws of 1905. 16 MLR 492.

Premises open to the public; invitees. 26 MLR 588.

375.19 ADDITIONAL POWERS.

Amended by L. 1947 c. 255 s. 1.

375.191 AMBULANCE SERVICE.

HISTORY. 1947 c. 205 s. 1.

375.195 SALE OF PUBLIC PROPERTY IN CERTAIN COUNTIES.

Subd. 1, amended by L. 1947 c. 181 s. 1.

Subd. 2, amended by L. 1947 c. 181 s. 2.

Subd. 3, amended by L. 1947 c. 181 s. 3.

Subd. 4, amended by L. 1947 c. 181 s. 4.

375.20 QUESTIONS SUBMITTED TO VOTE; BALLOT.

Matter of building a county hospital may be submitted to the electorate at a special election. OAG Sept. 7, 1943 (125-B-17).

Section 375.20 is so far controlling that the question of erecting a county hospital may be submitted at a special election notwithstanding the provisions of section 376.04. A vote may be taken on the issuance of bonds at the same special election. OAG Jan. 23, 1947 (1001-B).

375.21 CONTRACTS OF COUNTY BOARDS IN CERTAIN COUNTIES.

Subd. 1, amended by L. 1947 c. 138 s. 1.

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 bridges are destroyed, and the situation creates an emergency within the meaning of the exception stated in this section, contracts may be entered into without advertising for bids. 1944 OAG 167, May 25, 1943 (707-A-8).

"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 substantial and material, one beneficial to the successful bidder. OAG Oct. 15, 1946 (707-a-4).

A county board may rent equipment to grade tax-forfeited land under section 282.04 without advertising for bids though the rental exceeds \$500. OAG Oct. 16, 1946 (707-a-7).

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).

This section applies to purchases from another county. If the amount is in excess of \$500, the county must first advertise for bids. OAG Jan. 30, 1947 (707-a-7).

Where the county board awarded a contract for two motor graders in accordance with a bid of the contractor and the board has no authority to

cancel the contract because the manufacturer of the particular type of machine so purchased has been discontinued, the certified checks deposited as security by the bidder must be held until the board has purchased like graders. If there is a loss because of the inability to perform under the contract, the board may recoup that loss out of the certified checks or otherwise. OAG April 4, 1947 (707-A-3).

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).

Under the provisions of L. 1947, c. 138, in counties of less than 75,000 inhabitants, there is no limitation on the power of the county board to enter into a contract for work or labor, or for the purchase of furniture and fixtures, or repair of roads, bridges, and buildings, the estimated cost of which does not exceed \$1,000; but as to counties having a population of more than 75,000 inhabitants, or as to other municipalities, the old law is still in force. There is no implication of repeal except as L. 1947, c. 138, applies to certain counties. OAG June 18, 1947 (707-a-7).

A bid containing an escalator clause is not sufficiently definite to be considered a valid bid. OAG June 27, 1947 (707-B-7).

If escalator clauses are to be permitted, they should be incorporated in the specifications. If not permitted and if all bids contain escalator clauses, all bids should be rejected, and readvertised. OAG July 22, 1947 (707-B-7).

375.28 REWARDS FOR CAPTURE OF PERSONS ACCUSED OF CRIME OR ESCAPING FROM JAIL.

Sheriff has no power to bind his county by the offer of a reward for the recapture of a person charged with crime who has escaped from the county jail. Bemis v Board, 23 M 73.

A resolution of the county commissioners offering a reward for the finding and identification of a missing man is in excess of legal power and does not bind the county. Schieber v Von Arx, 87 M 298, 92 NW 3.

Compliance with terms. 9 MLR 475.

375.31 COUNTIES MAY INDEMNIFY OFFICERS AND EMPLOYEES.

Criminal apprehension; insurance against negligence of agents; liability of head of department; right to pay premiums; see discussion. 1944 OAG 259, Feb. 4, 1944 (985-A).

Statutes providing for the indirect assumption of liability. 26 MLR 856.

375.33 FREE COUNTY LIBRARIES.

Subd. 1, amended by L. 1947 c. 64 s. 1.

See as to expense to be incurred and transfer of funds from one fund to another. 1944 OAG 180, Feb. 11, 1943 (285-B); OAG Feb. 5, 1946 (285-B).

A county board has no authority to contribute from the county revenue fund to a city in conjunction with the cost of a library building. OAG Oct. 7, 1946 (125-B-18).

375.40 COUNTY BOARD MAY LICENSE EXHIBITIONS AND SHOWS.

Though a lawful business, the exhibition of motion pictures may be licensed and regulated by the state or the political subdivisions thereof, under the exercise of the police power. Power v Nordstrom, 150 M 228, 184 NW 967.