

## ORGANIZATION

## CHAPTER 410

BY-LAWS, ORDINANCES, RESOLUTIONS, AND REGULATIONS  
DISTINGUISHED.

The term ordinance, as applied to enactments of the law-making power of a municipality, is analogous, if not entirely identical with by-law. Chief Justice Shaw, in the case of *Commonwealth v Turner*, 1 Cush. 493, denying to towns in the state of Massachusetts the authority, under the statute, to regulate the sale of intoxicating liquors within their limits, observed that the term by-law was one of peculiar and limited signification. It was employed to designate the orders and regulations which a corporation, as one of its legal incidents, has power to make, and which is usually exercised in the regulation of its internal concerns, and the reciprocal rights and duties of its members. No sensible distinction can be imagined between ordinances and by-laws. Their legal character is the same. The former may, perhaps, be usually employed with especial reference to the lawful enactments of municipal corporations, while the latter may comprehend such rules only as are adopted by corporations of a private character. No necessity seems ever to have arisen which made it desirable that any distinction affecting their legal signification should be made. An act of incorporation which in one section provided that by-laws, ordinances, resolutions, and regulations might be enacted by the council of a city, and in a following section required by-laws and ordinances to be submitted to the mayor for his approval, was held not to intend that by-laws and ordinances should receive such approval, and resolutions and regulations should not. There was nothing in the act indicating a design to make any distinction, and, save the slight distinction made in ordinary usage, none existed, either in principle or practice. The opinion of the court thus compared these terms: "Regulation is the most general of them all, meaning any rule for the ordering of affairs, public or private, and it thus becomes the generic term from which all the others are defined, specified, and differentiated. Ordinance is the next most general term, including all forms of regulation by civil authority, even acts of parliament. With us its meaning is usually confined to corporation regulations. Ordinances are all sorts of rules and by-laws of municipal corporations. Resolution is only a less solemn or less usual form of an ordinance. It is an ordinance still, if it is anything intended to regulate the affairs of the corporation. If the word ordinances does not include resolutions, the law that requires ordinances to be submitted to the mayor for his approval, is of no force at all, because it allows its substantial purpose to be defeated, by giving to ordinances the form of resolutions." *Kepner v Commonwealth*, 40 Pa. St. 130.

It has been sought to establish and maintain a distinction between ordinances and by-laws and resolutions. The signature of the presiding officer of the council is not necessary to authenticate a resolution, although required by the statute to be affixed to ordinances. If the act be one of a temporary character, such as levying a tax, and is not an order prescribing a permanent rule of government, a resolution regularly passed, though clothed with the forms of an ordinance, will be valid without the signature of the presiding officer: *Blanchard v Bissell*, 11 Ohio St. 103. A by-law may be in the form of a resolution, and yet a resolution is not necessarily a by-law, though the same forms and solemnities are required in order to enact it: *Drake v Hudson River R.R. Co.* 7 Barb. 539. The passage of a resolution as well as the enactment of an ordinance, is a legislative act, and the former, if adopted with all the solemnities required by the charter, will have, ordinarily, the same force and effect as the latter: *Sower v Philadelphia*, 35 Pa. St. 236; *Gas Company v San Francisco*, 6 Cal. 191. Where the charter invests the city council with a power of decision, but is silent upon the manner in which it shall be expressed, it may be accomplished by resolution as well as by ordinance. And if a general power

to enact ordinances be given, and no particular form of enactment is prescribed in the charter or by statute, it is no objection to the validity of an ordinance that it purports to be a resolution: *First Municipality v Cutting*, 4 La. Ann. 336; *State v Jersey City*, 3 Dutch. 498; *Green v Cape May*, 41 N.J.L. 46; *City of Quincy v C.B. & Q.R.R. Co.* 92 Ill. 23.

#### CLASSIFICATION; CHARTERS

##### 410.01 HOW CLASSIFIED.

The provisions of L. 1919, c. 65, which permits each city of the fourth class having a home rule charter to determine for itself whether that law shall become operative therein violates Minnesota Constitution, art. 4, ss. 33, 34, 36, as the powers conferred by Chapter 65 are charter powers and the power to adopt them cannot be delegated by the legislature except in the manner provided by art. 4, s. 36 of the Constitution. *Lodoen v City of Warren*, 146 M 181, 178 NW 741.

The charter of Minneapolis requires that notice of an injury be given to the city within 90 days after its occurrence as a condition to the maintenance of a suit for negligence. The cause of action is given directly or impliedly by statute and the giving of the notice is an essential part of the cause of action. L. 1925, c. 376, curative in form, and applicable to cities of the first class, and so worded as to apply to the cause of action claimed by the plaintiff, and assuming to give a cause of action for past injury notwithstanding the failure to give notice, is in form and in substance, special and class legislation and unconstitutional. *Szroka v Northwestern Telephone*, 171 M 57, 213 NW 557.

Membership on the charter commission of city of International Falls is incompatible with holding the office of city attorney, city treasurer, or member of the police civil service commission. A clerk of the district court or a member of the county board may serve. OAG Feb. 14, 1947 (358-E-1).

Status of the municipal corporation in American law. 16 MLR 343.

##### 410.02 CENSUS GOVERNS.

The constitutional right of the legislature to pass a law fixing a test by which population is to be determined carries with it the right to change the test and that notwithstanding the exercise of that right may result in shifting some city from one class to another. It is within the constitutional power of the legislature to provide that, for the purpose of classification of cities, population shall be determined according to the state census alone. *State ex rel v County Board*, 124 M 126, 144 NW 756.

##### 410.03 EXISTING CHARTERS PRESERVED.

An indictment will lie under the general high license law for selling intoxicating liquors without a license in the village of Cannon Falls although the village was organized by special act which gave to the village exclusive jurisdiction of the liquor traffic and the voters have voted against granting licenses for the sale of intoxicating liquors within the village. *State v Swanson*, 85 M 112, 88 NW 416.

The Minnesota statutes providing a general system for the regulation of the business of selling intoxicating liquors and pertinent throughout the state imposed a standard of regulation below which no municipality could fall. Municipalities under their charters may by ordinance adopt supplementary and additional regulations as may be required by local conditions, but such additional regulations must not be inconsistent with the general state law. *Evans v City of Redwood Falls*, 103 M 314, 115 NW 209.

The charter of the village of Alexandria provided that when suit was commenced against the village the service should be made by leaving a copy of the summons with the village recorder, while the general laws of the state of Minnesota prescribe that service of summons on a municipal corporation should be made on "the mayor or general executive officer of such corporation." In the instant

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case service by leaving a copy with the president of the village council was defective. *Stabler v Village of Alexandria*, 42 F. 290.

The city of Rochester may, through its public utility board and if approved by the city council, install a lighting system in Mayo Park or make such changes in the lighting system as may be necessary in view of the erection of Mayo Memorial. OAG May 23, 1947 (59-a-22).

## 410.04 HOME RULE CHARTERS; PATROL LIMITS.

The adoption of a home rule charter by people of the city is legislation, and the authority which it furnishes to city officers is legislative authority. The city council of a city may impose a wheelage tax upon vehicles using the proceeds for maintenance and repair of the highways if it have legislative authority therefor. *Park v City of Duluth*, 134 M 296, 159 NW 627.

The city of Minneapolis has jurisdiction over lakes or parts of lakes within the city limits, the shores of such lakes not having been made the municipal boundary line, and Lake Nokomis being partly within and partly without the city limits, the city has authority to construct a bridge over and across the lake under authority conferred by L. 1919, c. 6. *Minneapolis Real Estate Bd. v City of Minneapolis*, 145 M 379, 177 NW 494.

Membership on a charter commission is incompatible with the office of city recorder and with the office of city assessor. OAG Aug. 22, 1946 (358-E-1).

Where there is sufficient money appropriated for teachers' salaries in the amount specified in the present salary ordinance, and the teachers are on strike and are insisting upon salary increases and the city schools are closed and cannot be reopened, such condition of affairs does not constitute an emergency under the St. Paul city charter, section 206. OAG Dec. 4, 1946 (59-a-22).

Conditions precedent having been complied with, the city of Virginia may lease a building owned by the city, and formerly used for recreation purposes, to Cluett, Peabody & Co., Inc., for commercial purposes. OAG Feb. 11, 1947 (59-a-40).

An alderman may be a candidate for mayor, and if elected, his office as alderman becomes vacant, to be filled as provided in the charter. OAG Feb. 21, 1947 (358-E-1) (63-a-11).

Where the home rule charter authorizes the city council to acquire by condemnation property for a public purpose, the right to condemn the necessary parking space for a public parking lot may be acquired by condemnation. OAG March 6, 1947 (59-a-14).

The power of the city of St. Paul in adopting charter amendments is to add such provisions as are not already contained in the law and not repugnant to it. The legislature by express legislation may supersede or change the provisions of home rule charters. The people of the city of St. Paul in adopting a charter amendment cannot repeal a general law of the state of Minnesota. OAG March 13, 1947 (58-c).

A municipality may sell or lease property not needed for municipal purposes, but may not give its property away. OAG March 26, 1947 (59-a-40).

There is no statutory authority permitting home rule charter cities to expend public funds to employ an electrician for the purpose of locating interference with privately owned radios. OAG April 24, 1947 (59-a-29).

Under the charter of the city of Rochester an ordinance may be introduced and passed at a special meeting of the council on the same day. OAG May 5, 1947 (63-B-14).

Under the charter of the city of Pipestone it is required that publication of claims allowed for payment by the city must show the name of the claimant, the general nature of the claim, and the amount at which it is allowed, but need not contain a detailed statement. OAG May 8, 1947 (59-A-12).

While a city may not enforce ordinances repugnant to state or federal laws there is a modern tendency to enlarge the police power, and the city council might declare an emergency and enact an ordinance of temporary relief on account of

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housing conditions, and such ordinance might be upheld by the courts. OAG Aug. 13, 1947 (431).

Power of the city of Minneapolis to amend its home rule charter to provide for the imposition of a graduated income tax discussed and dangers and difficulties of enforcement specified and appraised. OAG Aug. 15, 1947 (58-c).

Home rule charter provisions relative to advertising for bids, and competitive bidding applies to contracts for installation of parking meters where the cost thereof exceeds \$500. OAG Aug. 15, 1947 (59-a-15).

The power granted to the city council of South St. Paul by section 5 of its charter, to enact ordinance "for the benefit of trade and commerce," empowers the council to adopt an ordinance to license and regulate the business of dealing in second-hand automobiles. OAG Aug. 22, 1947 (477-B-17).

Municipal home rule. 7 MLR 306.

### 410.05 BOARD OF FREEHOLDERS.

Neither the courts nor the governing body of a city have supervisory powers over the form of amendments to a home rule charter prepared by a duly appointed board of freeholders; and it is the absolute duty of a city council to submit the proposed amendments unless they are inconsistent with the constitution of the state, or laws enacted by the legislature. State ex rel v Beach, 155 M 33, 191 NW 1012.

The motives of electors at a city charter election are not to be considered so long as their actions are within the law. A freeholder is one having title to real estate, the amount or value of his interest therein being immaterial. There is no constitutional provision or legislative enactment which requires as a condition precedent to the incorporation or reincorporation of a municipality, the insistence therein of a freehold population. State ex rel v City of Fraser, 191 M 427, 254 NW 776.

A duly appointed charter commission must end its duties within the four year period and members do not hold over until their successors are appointed. OAG April 4, 1943 (58).

To qualify as a member of a city charter commission the proposed member must have been a qualified voter in the city for five years last past. OAG May 1, 1945 (58-G).

Where a city lies within two judicial districts, a petition for a home rule charter may be addressed to judges in both districts. OAG Aug. 17, 1945 (58-G).

A member of a charter commission is an "officer"; and one holding the office of city recorder or city assessor may not be a member of the commission. OAG Aug. 22, 1946 (358-E-1).

Member of police commission, school board, planning board, common council, or one holding the office of mayor, cannot be a member of the charter commission. OAG Feb. 4, 1947 (358-E-1).

### 410.06 COMPENSATION; EXPENSES.

Amended by L. 1947 c. 406 s. 1.

### 410.07 FRAMING CHARTER.

In acquiring property for an airport, the method provided in the charter is mandatory. See, as to practice, State ex rel v City of Montevideo, 142 M 157, 171 NW 314; 1934 OAG 77, Aug. 3, 1934; 1944 OAG 12, April 14, 1943 (59-A-14); 1944 OAG 4, Oct. 8, 1943 (234-B); L. 1945, c. 303, s. 11, subd. 2; R.S. 1945, s. 360.032.

The maintenance of public schools is not a matter of purely local but is of state concern. The portions of home rule charters having to do with school matters must be in harmony with and not contrary to the constitution of the state and must not be inconsistent with statutory provisions. Board v Houghton, 181 M 576, 233 NW 834.

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The home rule charter of Minneapolis preserves to the city council the powers which it had under the laws existing at the time the charter was adopted; and among the powers so preserved was the right to reapportion the city by changing the boundaries of its wards. *Granger v City of Mpls.* 182 M 147, 233 NW 821.

The total cost of government, including schools as limited by section 201 of the St. Paul city charter, covers the entire cost of operating and maintaining the public schools including that part of such cost paid by the city from school aid money received from state or federal government; and in making and fixing the amount of the city budget and the appropriations therein in August and September, 1930, the actuary must use the 1930 federal census announced in July 1930 without any additions thereto even though the money is to be expended during the year 1931. *Sommers v City of St. Paul*, 183 M 545, 237 NW 427.

The legislature by express legislation may supersede or change the provisions of home rule charters. *Guaranteed Concrete Co. v Garrick*, 185 M 454, 241 NW 588; *State v Brown*, 189 M 257, 248 NW 822, 249 NW 569.

While conflicting provisions of the city charter must be harmonized so far as possible in conformity with the announced legislative policy of the state, the Minneapolis home rule charter conferring certain powers on the board of estimate and taxation did not deprive the board of education of Minneapolis of its power to levy taxes to carry out its duty to maintain a thorough and efficient system of education. *State ex rel v Erickson*, 190 M 216, 251 NW 519.

Where under a home rule charter a city has 26 aldermen and a vacancy occurs, the council may fill the vacancy by appointing a qualified voter on the affirmative vote of a majority of all the members of the city council, and as at the time of the vote there were 25 aldermen in existence the affirmative vote of 13 aldermen was sufficient to fill the vacancy. *State ex rel v Hoppe*, 194 M 186, 260 NW 215.

Under the circumstances and charter provisions the comptroller of the city of St. Paul has the power to limit by his budget estimate the expenditures of the fire department for the fiscal year in question. *State ex rel v Goodrich*, 195 M 644, 264 NW 234.

Providing electricity for its inhabitants is a proprietary function of a municipality, and its contracts relating thereto are governed by the same rules of contract law regarding laches and estoppel as those of private corporations or individuals. *City of Staples v Minnesota Light Co.* 196 M 303, 265 NW 58.

An ordinance giving to the city council power to issue or withhold permits for erection and maintenance of lumber yards and buildings thereon is constitutional as against attack that it was an unlawful delegation of power to the city council without restriction or limitation; and in proceedings for mandamus the court is bound to consider the situation as it exists as of the time of the hearing, and where a city ordinance has been passed since the issuance of the alternative writ its effect and validity are necessary and proper issues for determination at the time of the hearing on the preemptory writ. *State ex rel v Clousing*, 198 M 35, 268 NW 844.

The construction of a statute or ordinance must be reasonable, such as the language used will reasonably bear. It must be practical. Questions involving government must not be determined along technical lines. The court rightly determined that the city council in reducing "time" with reference to compensation used that word as the equivalent of "pay." *Levant v Burns*, 200 M 191, 273 NW 691.

In the absence of fraud the judgment of municipal officers in the execution of powers conferred upon them by law or charter is not subject to control by the courts, and a lease of real property by a city is not comprehended within a provision of a city charter requiring advertisement for bids for all contracts involving the expenditure of more than \$250 for commodities or services including all labor, materials, property, lighting, services, and local and public improvements. *Ambrozich v City of Eveleth*, 200 M 473, 274 NW 635.

While an amendatory ordinance must be within the title and germane to the subject matter, and through a less burdensome method might have been chosen to accomplish the objective than the one chosen in the instant case, an ordinance

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requiring fuel dealers to carry liability insurance as a condition precedent to procuring a license to carry on their business is valid and within the power conferred by the general welfare clause of the city charter. *Sverkerson v City of Mpls.* 204 M 388, 283 NW 555.

An ordinance requiring a license as a condition precedent to the issuance of a permit by the inspector of buildings to carry on the business of plastering is not unconstitutional on the ground that it delegates undue discretion to the building inspector. *State ex rel v Clousing*, 205 M 296, 285 NW 711.

Cutting off and cleaning out roots clogging tile connecting the house sewage system with the city sewer by use of an electrically powered cutting device involving no change or disturbance of the tile or change or addition to the structure thereof are not repairs within the meaning of the plumbing ordinance under which the conviction in the instant case was had. *State v Gottstein*, 206 M 246, 288 NW 221.

Justices of the peace are state officers. Their courts are state courts. The legislature having placed the power to remove justices of the peace in the governor, a provision in a home rule charter to give a similar power to the city council is invalid. *State ex rel v Hutchinson*, 206 M 446, 288 NW 845.

An ordinance under which city officers employ city employees in trimming trees along telephone and electric power lines and charge the expense thereof to the utilities involved is within the powers conferred by the welfare clause of the city charter. *Erny v City of St. Paul*, 207 M 150, 290 NW 427.

A city ordinance regulating the speed of trains within the city limits is valid unless its unreasonableness or want of necessity is clear, manifest, and undoubted. *Lang v Chgo. & Northwestern*, 208 M 487, 295 NW 57.

A charter limitation upon the taxing power of a board of education is effective to restrict efforts to exceed it; and in the instant case no emergency power resides in the board of education of the city of Minneapolis whereby the levy limit imposed by charter may be exceeded. *Board of Education v Erickson*, 209 M 39, 295 NW 302.

A Minneapolis ordinance, approved November 24, 1924, requiring a permit from the city council for maintenance of structures or premises for storage of oil and other named purposes, is not so inconsistent with the building and safety code adopted April 3, 1934, or with the ordinance for the prevention of fires approved December 16, 1936, as to be impliedly repealed by either. *State v Northwest Linseed Co.* 209 M 422, 297 NW 635.

The construction and maintenance by a citizen of a rock garden upon a small triangular tract purchased by a city immediately adjoining one of its streets, the garden being accessible to the public at all times except at night when the gates of an ornamental fence around the tract are locked, is a public use and does not constitute an abandonment of the tract for public purposes. *Kendrick v City of St. Paul*, 213 M 283, 6 NW(2d) 449.

Within their scope city ordinances have the force and effect of law; and the requirements of section 21 of an ordinance requiring that stairs be of "safe and substantial construction" refers not merely to the erection of the structure but to its continued and present condition: *Mayes v Byers*, 214 M 54, 7 NW(2d) 403.

Acts punishable under the general laws of the state may also be punishable by municipal ordinances, but the penalty imposed by the city must not exceed the authority granted to the city council by the legislature. *State v Weeks*; 216 M 279, 12 NW(2d) 493.

The president of the Minneapolis city council is an "officer" within the language of the charter, and an affirmative vote of a majority of the members of the council is required to elect him. A president of such council who has been reelected as alderman continues in office until his successor is elected. *VanCleve v Wallace*, 216 M 500, 13 NW(2d) 467.

The corporation council of the city of St. Paul though elected by the council was not "elected by the people" within charter limitation on council's power of removal of officers thus elected but was subject to removal upon an affirmative vote of five-sevenths of all members elected to the council. *State ex rel v Oehler*, 218 M 290, 16 NW(2d) 765.

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A charter provision authorizing the city council "to revoke for misconduct of a licensee any license granted under this charter" is self-executing. *Moskovitz v City of St. Paul*, 218 M 543, 16 NW(2d) 745.

The duty of a city to exercise reasonable care to keep its bridge or street reasonably safe for travelers is not limited to acts of commission or omission within the limits of the bridge or street but extends to those outside the bridge or street that render it unsafe for travelers. The duty to so use its own property as to do no unnecessary injury to others extends to effects produced by the use beyond the limits of its property. Municipalities have a power in the exercise of which they govern their people and act as delegates of the state and another power in the exercise of which they act for the advantage of themselves and their inhabitants. *City of Winona v Botzet*, 169 F. 321.

An ordinance directing a street railway company to construct and equip tracts on designated streets and put the same in operation does not deny the equal protection of the law to the company which accepted a franchise giving the city the right to designate other lines or the extension of existing lines as demanded by public necessity; and where the state commits to a city the care of its streets the city has the exclusive right to regulate the streets not only for the people who live there but for all who come there. *Mpls. Street Ry. v City of Mpls.* 189 F. 445.

The home rule charter of Duluth giving the city "all municipal power" of every name and nature whatsoever confers a power tantamount to that granted under a general welfare clause. *Northern Pacific v Weinberg*, 53 F. Supp. 133.

Due process in valuation of local utilities. 13 MLR 409.

Power of municipality to fix minimum rates. 13 MLR 627.

Power to expend public funds in a political campaign. 13 MLR 739.

Authority of municipalities to regulate public utilities. 16 MLR 541.

### 410.08 BONDED INDEBTEDNESS.

A city cannot issue certificates of indebtedness in negotiable form even in payment of property which it urgently needs and has authority to buy unless it has special statutory authority to issue such certificate. *Bangor v City of Stillwater*, 46 F 899.

Municipal bond procedure in Minnesota. 20 MLR 583.

### 410.09 REGULATION OF FRANCHISES.

Plaintiff city may impose regulations upon a common carrier operating motor buses upon its streets for the transportation of passengers for hire; and may compel its acceptance of a franchise as a condition to its use of such streets; and a charter providing for the payment of "a license fee in a sum equal to at least 5 per cent of the gross earnings" is construed as vesting in the city council the power and duty of fixing the license fee which must not be less than the named minimum, the charter not being self-executing. *City of St. Paul v Twin City Motor Bus Co.* 187 M 212, 245 NW 33.

The payment of an annual license fee by the holder of the franchise here involved is dependent upon an ambiguous proviso in the ordinance granting the franchise. In such a case the practical construction placed by the parties upon the contract or ordinance for upward of 20 years was rightly adopted by the trial court as its true meaning. *City of South St. Paul v Northern States Power*, 189 M 26, 248 NW 288.

The city of St. Paul under its charter has power and authority to require that persons and corporations operating motor buses upon its streets for the carrying of passengers for hire as common carriers shall obtain a license or franchise from the city council for carrying on such business. Defendant having for a number of years operated its motor buses over the two routes here in question, over the streets of the city and into the adjoining city of Minneapolis, having obtained the certificate from the Railroad and Warehouse Commission for such operation between the cities, and acting in good faith in contesting the right of

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the city of St. Paul to require a license or franchise for such operation should not now peremptorily be enjoined from so operating without being first granted a reasonable time wherein to apply for and obtain a license or franchise from the city council. *City of St. Paul v Twin City Motor Bus. Co.* 189 M 612, 250 NW 572.

The St. Paul ordinance fixing minimum taxi fares is within the implied, if not the express, powers of the city under its charter when conditions are such as to justify such ordinance as an exercise of the police power. *City of St. Paul v Clar*, 194 M 183, 259 NW 824.

The power of the city of Minneapolis extends to the care and control of its streets and it may regulate and even exclude the carrying on of a transportation business thereon for private gain or grant the privilege to some and exclude others, in harmony with its judgment of public convenience and necessity. The Minneapolis ordinance regulating motor bus transportation for passengers for hire from points without the city to points within the city and vice versa and requiring a license therefore was not nullified by L. 1923, c. 418, s. 3(f). *State v Palmer*, 212 M 388, 3 NW(2d) 666.

A statute providing that telegraph and telephone companies might erect poles for their wires in any road or highway in the state, providing that they should not use streets or alleys in any city or village without obtaining a franchise from such city or village was within the power of the legislature over public highways. The fact that a telegraph or telephone line when completed will be used as an instrument of interstate commerce, gives a company projecting the same no greater rights respecting right of way than are possessed by a purely local company, and it can use the public streets or highways for its line only subject to the state statutes. *Northwestern Telephone Exchange v City of St. Charles*, 154 F. 386.

Where a city without authority granted a telephone franchise for the maintenance and operation of a telephone system along its streets without advertising for proposals, or competition, as required by its charter, and the grantee of the franchise immediately carried the same into operation by expending money in equipping a plant, the city was not by that fact estopped from later questioning the validity of the franchise. *Tri-State Telephone Co. v City of Thief River Falls*, 183 F 854.

Under the rules that legislative grants of power to municipal corporations must be strictly construed and limited to such powers as are expressly delegated, or are indispensably necessary to the exercise of some other power expressly delegated, the city of Minneapolis has no power to regulate rates to be charged by an electric company, and an ordinance which attempts directly or indirectly, to fix such rates, is ultra vires and void. *Minneapolis General Electric Co. v City of Minneapolis*, 194 F 215.

A power company and the city of Winona may mutually agree to amend the existing franchise so as to provide for a payment of five per cent of the gross income of the company to the city. OAG June 1, 1946 (624-C-6).

### 410.10 CHARTER; HOW SUBMITTED.

The requirements of the constitutional amendment, allowing certain cities and villages to frame and amend their own charters under specified conditions, are satisfied as to publication by the publication of a proposed charter amendment begun in three newspapers conforming to the statutory standard and continued in every issue of such newspapers from the date of first publication until the time of holding the election by which is determined whether or not the amendment shall be adopted, provided that the charter amendment be published for a period of at least thirty days. *Wolfe v City of Moorhead*, 98 M 113, 107 NW 728.

When a common council refuses to call an election for the submission of a charter duly returned by the charter commission, upon the ground that it should have been submitted at a state election occurring after its return to the mayor, at which election the council did not submit it, it will be compelled by mandamus, there being no laches, to call an election within the time fixed by G. S. 1913, section 1348 (section 410.10), regardless of whether the intervening election



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was one at which the charter might properly be submitted. *State ex rel v Barlow*, 129 M 181, 151 NW 970.

The submission of charter amendment No. 8 to the voters of Minneapolis on Nov. 8, 1932, was a special election notwithstanding it was not so designated by the city council. *Godward v City of Mpls.* 190 M 51, 250 NW 719.

That qualified voters of the municipality were each presented with a conveyance of a small tract of land, no consideration passing from the grantee to the grantor, for the sole purpose of qualifying them to serve on a charter commission called by constitution and statute "a board of freeholders" does not prevent the grantees from being considered freeholders, the good faith of all being established. *State ex rel v City of Fraser*, 191 M 427, 254 NW 776.

It is within the discretion of the city council to publish prior to election a proposed revision of a city charter, but it is not mandatory for the council to do so. OAG Jan. 11, 1946 (58-B).

### 410.11 HOW ADOPTED; JUDICIAL NOTICE.

The courts take judicial notice of home rule charters when duly certified and deposited. *State v Kusick*, 148 M 1, 180 NW 1021.

A new charter is voted on under the provisions of section 410.23 and may be adopted by the approval of four-sevenths of the voters. OAG March 19, 1943 (58-B).

When an entire new charter is proposed it takes effect 30 days after election thereof, and a decision postponing the effective date until January 1, 1949, would not be valid. OAG May 16, 1947 (58-H).

### 410.12 AMENDMENTS.

Amendments to a city charter may be proposed by the charter commission on its own initiative. OAG May 12, 1944 (58-C).

### 410.13 AMENDMENTS IN CITIES OF FOURTH CLASS; POSTPONING ELECTIONS.

Where a city charter contains no provision authorizing a bond issue to pay cost of garbage disposal plant and acquisition of grounds for a site, such authority can only be obtained by the proper charter amendment. OAG Dec. 31, 1946 (59-B-4).

### 410.17 OFFICERS, HOW NOMINATED AND ELECTED.

A special municipal judge of a municipal court is a state officer and cannot be legislated out of office nor his term of office shortened by the adoption of a home rule charter. *State ex rel v Fleming*, 112 M 136, 127 NW 473.

The provisions of the home rule charter adopted Oct. 11, 1921, to take effect 30 days thereafter, that the officers of the village continue to govern the municipality until the first Tuesday in April, and make provisions for the election of the first mayor, city council and other officers on the first Tuesday after the first Monday in March, authorized the council to call a special election for the election of the first mayor. *State ex rel v Bloom*, 153 M 73, 189 NW 582.

The president of the Minneapolis city council is an officer within the language of the charter and an affirmative vote of a majority of the members of the council is required to elect him; and where there were 26 aldermen originally but only 25 at the time of the election, the affirmative vote of 13 members is sufficient to elect. *Van Cleve v Wallace*, 216 M 500, 13 NW(2d) 467.

### 410.19 POWERS OF MAYOR AND COUNCIL.

There is no statutory authority and no grant in the charter authorizing the city of Two Harbors to dispose of real estate by gift. If land is no longer needed for municipal purposes it may be sold in a manner provided by law. OAG Jan. 17, 1947 (59-a-40).

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CLASSIFICATION OF CITIES; CITY CHARTERS 410.23

Where the city charter provides that "the city council shall have the management and control of the finances and all the property of the city," the council may permit the use of a driveway, extending through a municipally owned parking lot, for bus travel. OAG Jan. 22, 1947 (59-a-40).

## 410.20 RECALL AND REMOVAL OF OFFICERS; ORDINANCES.

Section 351.03 empowers the governor to remove from office "any collector, receiver, or custodian of public moneys" for malfeasance or nonfeasance in the performance of his official duties. The language quoted embraces officers who collect, receive, or have the custody of money belonging to the state, or to a county, but not those who have custody only of money belonging to a city. *State ex rel v Essling*, 157 M 15, 195 NW 539.

Under the provisions of the home rule charter of the city of Eveleth the initiative power of the electors is limited to ordinances of general legislation and does not include administrative matters; and the proposed ordinance authorizing the city to settle claims involved in litigation against former officials is not legislative in character but involves a quasi judicial duty. *Oakman v City of Eveleth*, 163 M 100, 203 NW 514.

Where, as in the instant case, a municipality is by its charter authorized to contract for commodities and services in its proprietary capacity, the rules and principles of law applicable to contracts and transactions between individuals apply. *McNaught v City of St. James*, 198 M 379, 269 NW 897.

Removal from public office. 20 MLR 721.

## 410.21 APPLICATION OF GENERAL ELECTION LAWS.

Notwithstanding the failure to vote for the required number of commissioners as required by the Duluth charter when establishing a commission form of government, it was proper to canvass the votes for mayor, the ballot not being entirely vitiated. *Silbertstein v Prince*, 127 M 411, 149 NW 653.

Four-sevenths of those voting on the question of the adoption of a charter is not sufficient. It requires four-sevenths of all votes cast at the election. OAG Jan. 8, 1943 (58-B).

## 410.23 NEW CHARTER AUTHORIZED.

When an entire new charter is proposed, it takes effect 30 days after election thereof, and a decision postponing the effective date until Jan. 1, 1949, would not be valid. OAG May 16, 1947 (58-H).