

CHAPTER 411

GENERAL INCORPORATION, CITIES FOURTH CLASS

411.01 INCORPORATION; PETITION; FIRST ELECTION.

There is no such commodity or unity of interest between the people in section 28 to the northeast, the people in the village limits, and the people in the territory to the southwest, nor such natural connections between the lands sought to be brought into one municipality as justifies incorporating the 11½ sections as a city, and the territory taken as a whole is not so conditioned as properly to be subjected to municipal government. State ex rel v City of Nashwauk, 151 M 550, 189 NW 592.

411.02 CORPORATE POWERS.

The city of Luverne may purchase property for an airport, under L. 1943, c. 653, s. 9, without submission to voters, no bond issue being required. Money may be transferred from municipal liquor control fund and other funds to the general revenue fund, and used for the purchase. 1944 OAG 7, Aug. 3, 1944 (234-B).

No statutory authority exists authorizing the city of Shakopee to borrow money directly from a bank. OAG June 8, 1946 (688-C-1).

Unless forbidden by its charter, a city of the fourth class may sell, without advertising, land bid in at a tax-forfeited land sale. OAG Nov. 19, 1946 (59-A-40).

A city may lease land no longer needed for municipal purposes. OAG Nov. 25, 1946 (59-A-40).

No statutory authority exists permitting the city of Detroit Lakes to issue bonds for a baseball grandstand. OAG Jan. 9, 1947 (36-C-9).

411.06 WARDS.

The subdivision of the wards of the city is a legislative act, and while this is generally done by an ordinance, in the instant case the resolution approved by the mayor and published in the official paper was sufficient to subdivide a ward as of the date of its passage. State ex rel v Darrow, 65 M 419, 67 NW 1012.

411.08 ELECTIVE OFFICERS.

Acceptance of a second incompatible office works a vacation of the first. OAG April 21, 1947 (358-E-1).

411.09 REMOVAL OF OFFICERS.

Section 411.09 controls within its limited field but justices of the peace are state officers and their courts are state courts, and by constitutional authority the legislature has placed the power to remove justices of the peace in the governor, and that power is exclusive as against the attempt by home rule charter to give a similar power to the city council. State ex rel v Hutchinson, 206 M 446, 288 NW 845.

Removal from public office. 20 MLR 721.

411.10 VACANCIES.

Where the city council was made up of 26 aldermen and there was a vacancy, the affirmative vote of 13 of the remaining 25 aldermen would be sufficient to appoint to fill the vacancy. State ex rel v Hoppe, 194 M 186, 200 NW 215.

A retiring city alderman may not cast the deciding vote to fill a vacancy caused by his own retirement. OAG July 23, 1945 (63-A-11).

MINNESOTA STATUTES 1947 ANNOTATIONS

939

GENERAL INCORPORATION, CITIES FOURTH CLASS 411.37

411.18 OATHS; BONDS.

Where a policeman while off duty and driving along the city streets attempted to direct the movements of a team upon a public highway at which time the occupant of the wagon drawn by the team was injured and the injured person brought suit against the policeman and his sureties, it was error in the trial court to dismiss the case as to the sureties. If the officer was acting in his official capacity, the sureties on his official bond are liable, and it is a question for the jury whether the officer at the time of the incident was acting as a private person or in the capacity of a police officer and whether more force was used than was necessary. *Seitner v Ramson*, 82 M 404, 85 NW 158.

411.20 MAYOR TO SIGN ORDINANCES.

The disapproval of the mayor not having been made within the time prescribed was ineffectual and the ordinance became a valid enactment; and the fact that the clerk after presenting the ordinance to the mayor at his request agreed to present it to him again before the time limit expired but overlooked doing so is immaterial. *State ex rel v Roderick*, 129 M 94, 151 NW 904.

411.22 RECORDER; DUTIES.

The city clerk absconded from the state and abandoned his office whereupon the council appointed a resident of the city "assistant city clerk," who qualified by taking the required oath, took possession of the office, and performed with the cooperation of the council and acquiescence of the public all the duties pertaining to the office. While the appointment was unauthorized and irregular, the person so appointed is deemed a *de facto* city clerk and his acts are legal. *State ex rel v McIlraith*, 113 M 237, 129 NW 377.

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

A city incorporated under the provisions of chapter 411 is authorized to issue and register warrants and pay interest thereon. OAG Nov. 15, 1944 (59-A-49).

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

If budget restrictions are not violated, the council of the city of Wabasha may increase salaries of the chief of police and street superintendent during the official year. OAG April 20, 1945 (59-A-41).

411.29 CITY ASSESSOR.

When a village is reorganized into a city of the fourth class, the village assessor continues until a city assessor has been appointed and has qualified. OAG May 5, 1947 (59-A-24).

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

R.L. 1905, s. 131, as amended by L. 1913, c. 104, s. 1 (s. 488.09), and G.S. 1894, s. 5093, as amended by L. 1907, c. 234 (s. 633.01), relate to the jurisdiction of justice courts and are construed as "in pari materia." The provisions of the 1913 amendment are not so inconsistent with those of the 1907 amendment as to indicate a purpose to repeal it with reference to jurisdiction of justice courts established by home rule charters. *State ex rel v Weed*, 208 M 342, 294 NW 370.

411.37 OFFICERS TO ENFORCE PEACE.

Where a police officer was prosecuted for malfeasance as an officer, it was not prejudicial that those parts of the telephone conversations which did not relate

to the subject matter of the accusation against the defendant were not recorded by the pamphlet, or that the defendant was not permitted to show that his actions in assisting and advising the gamblers were under instruction from a superior officer. *State v Raasch*, 201 M 158, 275 NW 620.

411.40 POWERS AND DUTIES OF COUNCIL ENUMERATED.

The trial court rightly determined that the city council in reducing "time" with reference to compensation used that word as the equivalent of "pay." Questions involving government must not be determined along technical lines. Practical considerations should control. *Levant v Burns*, 200 M 191, 273 NW 691.

The purpose of the enactment of the teachers' continuing contract law was to do away with the then existing chaotic conditions in respect to the determination of teachers' contracts; and if a school board attempts to discharge a teacher or if a teacher attempts to resign contrary to the provisions of section 130.18, such action is in either case ineffective unless and until consent of the other party is obtained. *Downing v Independent School District*, 207 M 292, 291 NW 613.

In the sale to the city of Mankato of the right or license to install a patented process for the purification of the city's water supply, the court found, upon sufficient evidence, that when respondent, on July 9, 1938, caused a garnishee summons to be served on the city, all things to be done by the licensor under its contract with the city had been substantially performed or waived, and there was then a balance unpaid on the license contract of \$1,181.75, awaiting only the acceptance by the city and was not contingent. *Northern Engineering Co. v Neukom*, 210 M 329, 298 NW 47.

Municipalities have drastic police powers with respect to control of streets, and the city council cannot delegate that power. If an unauthorized person usurps such power or duty of the council, the act of such person is a nullity. *Alexander v City of Owatonna*, 222 M 312, 24 NW (2d) 244.

The duty rests upon a municipality to employ competent engineers to plan and construct its system of streets and sewers, and ordinarily, if it thus acts, it is not liable because of errors of judgment therein. *Roche v City of Mpls.* 223 M 359, 27 NW(2d) 295.

While the county auditor under the provisions of section 272.19 may cause irregular tracts of land to be platted, a city council has no power to prevent conveyance of property within the city by metes and bounds nor require property to be platted. OAG May 31, 1946 (59-A-40).

In the absence of statutory authority or charter provision neither a city nor any of its public agencies are authorized to make a gift of public funds to a chamber of commerce located in the city. OAG July 10, 1946 (59-A-3).

A city of the fourth class owning land in fee simple may sell the land at a price the council considers fair and need not call for bids. OAG Nov. 19, 1946 (59-a-40).

Unneeded real estate may be leased for such time as not needed by the city. A lease for 66 years might be attached because during that time the city might need the premises. The legion might find it difficult to finance their building if a provision for taking by the city was incorporated in the leases. OAG Nov. 25, 1946 (59-a-40).

There is no statutory authority for using public funds or issuing bonds to build a baseball grandstand. OAG Jan. 9, 1947 (36-c-9).

A provision in a municipal ordinance that a licensee must be a resident of the municipality and a resident voter for the period of a year is unlawful discrimination and therefore void. OAG Jan. 27, 1947 (477-B-4).

Authority to enter into long-time lease of municipally owned property depends upon facts. Before making such lease the council should determine, presumably by resolution, that the property in question is not needed for municipal purposes during the life of the proposed lease. OAG March 24, 1947 (59-a-40).

MINNESOTA STATUTES 1947 ANNOTATIONS

941

GENERAL INCORPORATION, CITIES FOURTH CLASS 411.81

An ordinance licensing transient photographers which imposes a burden upon interstate commerce is void. OAG April 11, 1947 (62-C).

A city may grant use of its park for carnival purposes on certain conditions. The council must find such action will serve the best interest and welfare of the community, and must not surrender control and supervision. Care should be taken to procure a bond of indemnity against the possibility of liability for tort action. OAG April 16, 1947 (59-A-40).

Neither counties nor municipalities may spend public funds for lobbying to induce favors for their area. OAG April 17, 1947 (476-B-2).

Municipal corporations have power to license in the exercise of its police power and for the protection of public health, safety, and the promotion of the public welfare. Generally under that power an ordinance requiring a building contractor to obtain a license is authorized. OAG May 22, 1947 (62-C).

Municipalities generally are not liable for injuries to persons resulting from municipally owned and operated bathing beaches. There is an exception in case the municipality is negligent in any furnishing of utilities from which injury or disease occurs. OAG July 11, 1947.

There being no general statute regulating storage or placing of drums containing oil or gasoline, a city may under section 411.140, clause 37, regulate by ordinance. OAG Aug. 13, 1947 (325-A-15).

Liability of gas company for injury caused by escaping gas. 17 MLR 518.

Summary abatement of public nuisance; liability for creation of nuisance. 25 MLR 115.

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

No authority exists authorizing the city council of a city of the fourth class to issue bonds for a city well without a vote of the people. OAG Nov. 5, 1944 (59-A-40).

411.48 TAX LEVY FOR GENERAL PURPOSES.

Where a town has duly levied its tax for local purposes and listed and assessed the personal property therein taxable on the first day of May in any year, a city thereafter organized so as to include part of such town may not levy a tax for city purposes on any of the personal property so assessed and taxed by the town for the same year. *State v Republic Steel*, 199 M 107, 271 NW 119.

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

The duty of maintaining the streets and sidewalks of a city in safe and passable condition for public use is placed upon the municipality. *Abar v Ramsey Motor*, 195 M 597, 263 NW 917; *Heidemann v City of Sleepy Eye*, 195 M 611, 264 NW 212; *Kooreny v Dampier*, 207 M 367, 291 NW 611.

411.70 DELINQUENT ASSESSMENTS; COLLECTION.

The language of sections 411.67 and 411.70 does not permit the spreading of an assessment over a series of years or more than one year. The constitutionality of sections 411.69 and 411.70 is questioned. 1944 OAG 210, March 13, 1944 (480-A).

411.81 POWERS, AUTHORITY AND LIMITATIONS.

Realty owned by the city and no longer needed for governmental purposes may be sold without advertising for bids. OAG March 5, 1946 (59-A-40).