

MINNESOTA STATUTES 1947 ANNOTATIONS

CHAPTER 412

VILLAGES INCORPORATED UNDER R. L. 1905, CHAPTER 9

NOTE: As of the date of this publication all villages are controlled by the provisions of R. L. 1905, c. 9, as amended and coded in Chapter 412. Chapter 412 is being revised by a committee sponsored by the League of Minnesota Municipalities and the proposed revision will be presented to the legislature at its next session.

412.02 WHAT TERRITORY MAY BE INCORPORATED.

Following the rule that public rights and public interests should be vindicated and protected by public authority to the exclusion of suits by private persons, the validity of the incorporation of a village organized under the provisions of Chapter 412 can be inquired into only at the instance of the state in appropriate quo warranto proceedings; and a private suit to restrain the election of officers after the proceedings have been completed, and the organization has on the face of the record become legally constituted cannot be maintained. *Hammer v Narverud*, 142 M 199, 171 NW 770.

Where the 396 inhabitants of a 40-acre platted townsite, in the expectation of the future return of the mining industry to that locality, have incorporated into a village 14 other forties containing deserted mineral lands unlikely to be developed for many years and it is a certainty that the unbenefited mineral lands will stand substantially all costs of municipal improvement, such village has not complied with the statutory requirement that the includable unplatted areas be "so conditioned as properly to be subjected to village government." *State ex rel v Village of Leetonia*, 210 M 404, 298 NW 717.

In quo warranto proceedings instituted by the attorney general there being no legislation or controlling considerations to the contrary, the proceedings are governed by common law rules and the burden of showing before a court of competent jurisdiction at a stated time and place designated in the writ "by what warrant" they exercised the power claimed by them, rests upon the respondent. *State ex rel v Village of Minnewashta*, 165 M 373, 206 NW 455; *State ex rel v Village of North Pole*, 213 M 297, 6 NW(2d) 458.

Where an incorporated village includes both platted and unplatted lands, the test whether the unplatted lands were properly included depends on whether they join those that are platted and whether they have such a natural connection and the people residing thereon have such a community of interest that the whole may be properly subject to village government. It is not necessary that there be a "business" nucleus. *State ex rel v Village of St. Anthony*, 223 M 149, 26 NW(2d) 193.

Village may purchase land for park purposes and even a larger tract than is needed. OAG Oct. 16, 1945 (469-A-12).

It is doubtful if the territory composing Minnetonka township is suitable for incorporation under this chapter. OAG Jan. 21, 1946 (484-E-4).

412.03 PETITION FOR ELECTION.

The rights and privileges of citizens to incorporate a village and the method of such incorporation rests exclusively with the legislature. *Hammer v Narverud*, 142 M 199, 171 NW 770.

412.06 INCORPORATION, WHEN EFFECTED.

See, *Hammer v Narverud*, 142 M 199, 171 NW 770.

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412.07 ELECTION OF OFFICERS; EXPENSES.

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

412.075 GENERAL POWERS AND DUTIES.

A contract under which the contractor obligates himself to perform work of a ministerial nature in a village health department is not an illegal delegation of the powers of the village council; and in this instance the position abolished by the council was done in good faith and the contract entered into by which the work incident to the position abolished was entered into in good faith. *State ex rel v Thomas*, 223 M 435, 27 NW(2d) 156.

In the matter of a contract for supplying a city or village with water the fact that the life of the contract runs for 30 years is not such an extensive time as will warrant the municipality to avoid the contract on that ground. *Little Falls Water Co. v City of Little Falls*, 102 F. 663.

Where a municipal corporation receives money or property of another under and pursuant to a contract upon a subject within its corporate powers, which contract was entered into in good faith and without purpose to violate or evade the law, but for the failure to comply with the requirements of statutes made essential to a valid contract was illegal and void, and the money or property so received is retained and subsequently devoted to legitimate municipal purposes, the municipality is liable therefor, and recovery may be had against it as upon an implied contract. *First Nat'l Bank of Goodhue v Village of Goodhue*, 120 M 362, 139 NW 599.

Personal property of a village may be sold without advertising for bids. OAG Jan. 21, 1944 (469-A-14).

A village cannot use public funds for the purpose of renting space to be used for holding Red Cross and patriotic meetings. OAG Sept. 14, 1944 (476-B-2).

Land having been dedicated for use as street or for park purposes, the village is without power to convey the fee title. OAG July 30, 1945 (469-a-15).

A village may dispose of land no longer needed for village purposes and if purchased at a fair price may buy land necessary for public purposes. OAG June 13, 1945 (469-A-15).

A village council has no authority to convey village property to a private corporation. It may sell the property without advertising for bids but must realize the highest possible price. OAG Sept. 11, 1945 (469-a-15).

No statutory authority exists under which the villages of Hibbing or Buhl, or the city of Eveleth, may purchase land and dedicate it to the state for the construction of a hospital for the feeble-minded. OAG Jan. 15, 1946 (59-A-40).

A member of the village council, and especially the village treasurer, cannot serve as bookkeeper for the village liquor store, and be paid for such service. OAG Feb. 25, 1946 (218-R).

If the property of a village is in use for village purposes such property may not be given away without consideration even after a favorable vote by the electors. If the property is not needed for municipal purposes, it may be sold by the city council without a vote of the electors. OAG Nov. 20, 1946 (469-A-15).

There is no statutory authority authorizing villages to convey village property to the state gratuitously. OAG Jan. 4, 1947 (469-a-15).

A village has the powers of a municipal corporation at common law, and may "do all other acts as natural persons may." It may enter into a contract with a supplier of liquor whereby the vendor would furnish the liquor and look solely to the receipts of the liquor store for payment. OAG Feb. 17, 1947 (218-L).

There is no statute authorizing a village and county to jointly acquire and jointly own real estate for village use as a fire hall and county use for housing road patrol and equipment. OAG April 1, 1947 (125a-41).

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412.076 VILLAGES INCORPORATED UNDER R. L. 1905, CHAPTER 9 944

412.076 APPROPRIATION FROM MUNICIPAL LIQUOR STORE FUNDS; COMMUNITY HOSPITAL.

HISTORY. 1947 c. 151 s. 1.

412.09 PEACE OFFICERS.

Village officers who are ex officio possessed of the powers of a police officer do not come within the provisions of the civil service commission act. OAG June 1, 1942 (785-E-2).

412.10 ASSESSOR; TOWN TAXES.

A village assessor being an "officer" of the village, the council has authority to fix his compensation. *Vesely v Village of Hopkins*, 190 M 318, 251 NW 680.

The per diem of a village assessor is limited to the work done for the months of May and June. OAG June 4, 1928 (12).

A town assessor or a village assessor must be a resident of the election district within which he serves. OAG Dec. 23, 1946 (440-F).

412.11 CLERK; BOND; DEPUTY.

The office of village clerk and town supervisor of the town in which the village is located are incompatible. OAG Feb. 19, 1947 (358-E-7).

The president of the village council cannot serve as deputy village clerk. The offices are incompatible. OAG March 12, 1947 (358-E-7).

412.12 DUTIES; COMPENSATION.

Neither the village treasurer nor a village councilman may accept employment or keep the books of the municipal liquor store. OAG Feb. 25, 1946 (218-R).

It is the duty of the village council to fix the clerk's compensation at the beginning of his term but they have no authority to fix his office hours. OAG Dec. 19, 1946 (470).

The compensation of a village clerk must be fixed at the beginning of the term and cannot be increased during the term. An appointee to fill a vacancy must serve on the same terms as did the officer he succeeds. OAG April 8, 1947 (470-B).

412.13 CONSTABLES; DUTIES; COMPENSATION.

Where the constable who had levied upon a refrigerator released it to one Lounsbury, who demanded it as owner, the judgment creditor properly recovered damages from the constable because of this release of levy upon proving that the judgment debtor was insolvent and convincing the jury that the refrigerator was in fact the property of the judgment debtor and not the property of Lounsbury. *Crosson v Olson*, 37 M 27, 49 NW 406.

The use of a municipal building for private commercial purposes is unauthorized and when objected to by a taxpayer or person injuriously affected through the business transacted may be restrained by injunction; and where the village marshal is permitted by the municipality to spend a portion of his time in selling vendible articles of a merchant therein, and is to some extent paid out of public funds, the municipality may be restrained by injunction from continuing such diversion of the public funds. *Nerlien v Village of Brooten*, 94 M 361, 102 NW 867.

A village constable who, without a warrant, aids in making an arrest outside his village for an offense committed outside the village, may participate in a reward offered for the arrest and conviction of the offender. *Bystrom v Rohlen*, 134 M 67, 158 NW 796.

There is no statutory distinction between a village marshal and a village constable. The terms are used synonymously. They are both peace officers. Their powers are stated in section 412.13. OAG March 20, 1947 (847-a-6).

412.14 JUSTICES OF THE PEACE; POWERS; DUTIES; FEES.

Section 530.01 provides that the jurisdiction of the justices of the peace is coextensive with the limits of the county in which they reside but the jurisdiction of a justice of the peace under the charter of any city or village situated in two or more counties is coextensive with the limits of the city. These provisions are not inconsistent, nor inconsistent with the provisions of section 412.14, and while a city justice under the charter has jurisdiction within the limit of the municipality, he does not have jurisdiction outside of the city limits except as to the county in which he resides. *State v Wee*, 208 M 342, 294 NW 370.

If an offense against the state law was committed by placing buoys on the waters of Lake Minnetonka outside the boundaries of the village of Deephaven, the village justice would have no jurisdiction to receive a complaint for such violation or issue a warrant for the arrest of the alleged offender. OAG Aug. 20, 1946 (273-A-14).

412.16 PLEADING; EVIDENCE; JUDGMENT.

Under the provisions of section 412.16 the courts may take judicial notice of village ordinance. *Village of Minneota v Martin*, 124 M 498, 145 NW 383; *State v Kusick*, 148 M 1, 180 NW 1021.

412.19 COUNCIL.

Subd. 1. The governmental powers and duties of municipal corporations as defined by the statutes under which they were granted may be altered by a subsequent general law clearly intended to prescribe the only rule which should govern in the case provided for. *First Nat'l Bank v Village of Buhl*, 151 M 206, 186 NW 306.

The village council by motion, resolution or ordinance may revoke or repeal a village ordinance before it takes effect. *Union Public Service Co. v Minneota*, 212 M 92, 2 NW(2d) 555.

Village council may rent space for authorized purposes. OAG Nov. 10, 1944 (469a-7).

Five members being present, two voted in the affirmative and one in the negative. The motion carried. If action had not been taken on the proposal, the motion may be reconsidered at the next meeting. OAG Jan. 19, 1945 (471e).

The president of the village council being a member of the council has the same right to vote as have other members of the council. OAG April 16, 1946 (471-H).

Subd. 2. The school for assessors at the university is under the auspices of the League of Minnesota Municipalities and under L. 1923, c. 211, the village may reimburse the expenses of its assessor in attending the school. 1942 OAG 187, Nov. 13, 1941 (12-B-1).

Limitation on the powers of towns having a population of 1,200 living in platted areas. 1942 OAG 261, April 16, 1942 (434-A-6).

Council may make mileage allowance to policeman using his own car, limited to five cents per mile. OAG March 29, 1945 (785-C).

A village may purchase its opening stock for its municipal liquor store by contract by which the liquor is to be paid for out of proceeds of sale. OAG Feb. 2, 1946 (218-R).

A village may prepay an account payable without demanding or receiving a discount. OAG March 6, 1946 (476-C-3).

The village of Richfield may adopt ordinances licensing taxicabs and make same applicable to a taxicab company, holding a permit from the railroad and warehouse commission to operate between Minneapolis and the Wold-Chamberlain airport. OAG Feb. 4, 1947 (477-B-4).

Subd. 4. A village lacks power to limit the number of beauty shop licenses. OAG Nov. 13, 1945 (33-B-1).

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Cities of the fourth class operating under home rule charter may furnish uniforms to the members of the police department, the title thereto to remain in the city. OAG June 13, 1947 (785-D).

Subd. 5. The president of a village board cannot be employed as village attorney. OAG March 6, 1946 (358-E-3).

Subd. 6. The state may delegate to a village as a governmental agency its powers to regulate navigable waters within the corporate area thereof, such as establishing a dock, require water craft to use it, charge a fee for dock space, and set aside specific space for bathing. *Nelson v DeLong*, 213 M 426, 7 NW(2d) 342.

The question as to the ultimate need of property for village use is a fact question and subject to that construction. A village has no power to acquire land for speculative purposes or land which it does not need. OAG June 7, 1946 (469-A-12).

Unless the village hall when presented to the village was dedicated to a particular purpose the village council may sell it without vote of the electorate and without advertising for bids. OAG July 22, 1946 (469-a-15).

Unless the property when donated to the village was dedicated to a specific purpose or service, the village council has the right to sell and dispose of village property no longer needed for municipal purposes. OAG July 25, 1946 (469-a-15).

A village has no power to give away its property. If the property is no longer used or needed, it may be sold upon order of the village council. A vote is not necessary. OAG Nov. 20, 1946 (469-a-15).

There is no statute authorizing a village and county to jointly acquire and jointly own real estate for village use as a fire hall and county use for housing road patrol and equipment. OAG April 1, 1947 (125a-41).

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).

Subd. 7. If the village council deem it advantageous and beneficial to the village to cause village property to be platted, and if there is any proper reason for doing so, the council may cause the property to be platted. OAG May 9, 1946 (469-A-15).

Subd. 8. A village ordinance declaring it to be unlawful to "build, erect or construct, or cause to be built, erected or constructed, any wooden or combustible building" within certain designated fire limits, and further requiring anyone "desiring to build, erect or construct any building or desiring to repair any building already built" to obtain a permit therefor from the village council but not making it unlawful to repair such buildings; where the court found that the work constituted repairs and not rebuilding the part of the ordinance requiring a permit to repair is ineffective and unenforceable. *Julius v Lenz*, 215 M 106. 9 NW(2d) 255.

A village planning a new well and appurtenances cannot contract to pay the expense in instalments in the future except as based upon a favorable vote of the electorate. OAG Nov. 14, 1945 (476-A-4).

Where fire department equipment is allowed to deteriorate and snow to accumulate and such negligence causes loss, members of the village council cannot be made to respond in damages. OAG Feb. 13, 1946 (844-B).

The village council may by ordinance prohibit the erection of gasoline filling stations and garage within 200 feet of schools, theaters, and other places of public assembly, but may not prohibit repairs to existing gasoline stations and garages. OAG March 6, 1946 (477-B-10).

In granting permission to private individuals to lay water main in the street, the village may require the licensee to charge certain designated connection charges. OAG June 18, 1946 (624-D-10).

The village is without authority to issue bonds to purchase fire equipment. OAG Oct. 17, 1946 (688-K).

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Village may enter into a contract for the construction of a well for the purpose of furnishing water for the water supply system, and pay for same with such cash as is legally available, and for the balance may issue obligations payable out of the net earnings from the village water system. OAG Dec. 10, 1946 (624-D-19).

Village council may fix the compensation for members of volunteer fire department. OAG Dec. 18, 1946 (688-J).

There is no statutory authority authorizing villages to convey village property to the state gratuitously. OAG Jan. 4, 1947 (469-a-15).

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).

If a member of a volunteer fire department is injured while fighting a fire, he may be compensated. Members of the volunteer fire department are within the provisions of the workmen's compensation act. OAG Feb. 11, 1947 (688-p).

Subd. 9. The necessity for taking street easement across railroad right of way was a legislative question committed to the sound discretion of the village council and not subject to judicial review. *Village of Lamberton v Chicago & Northwestern*, 196 M 597, 265 NW 801.

The village being responsible for the proper care of its streets and for obtaining favorable rates from public service utilities, franchises granted to such utilities should be formal, definite, and complete. *Union Public Service Co. v Village of Minneota*, 212 M 92, 2 NW(2d) 555.

The general rule is that a municipality has the same rights and is subject to the same liabilities as an individual similarly situated. Therefore, if a municipality closes the natural outlet of a lake and substitutes one of its own creation which causes the overflow from the lake to back upon and injure the land of riparian owners, it is liable in an action in tort to the same extent as any individual would be liable for doing the same act. *Greenwood v Evergreen Mines*, 220 M 296, 19 NW(2d) 728.

Streets beyond the limits of sidewalks are primarily for vehicular traffic, but the municipality must use reasonable care to keep such streets in safe condition for pedestrians who because of impassable sidewalks must use a portion of the street for travel. *Squillace v Village of Mountain Iron*, 223 M 8, 26 NW(2d) 197.

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.

If the council wishes to pave streets and is willing to meet the cost out of general village funds, it may act on its own motion without any petition; but if it wishes to assess the cost against abutting owners, it may only proceed after a petition. 1942 OAG 182, May 23, 1942 (369-G-10).

Public funds may not be used to construct a sewage treatment plant for a private enterprise in a case where the plant is not to be the property of the city. OAG Oct. 26, 1944 (387d).

Land necessary for the establishment of a new street may be acquired through condemnation proceedings. OAG May 7, 1945 (396-G).

Animal kennels may be licensed. The charge must be reasonable and based upon facts. OAG Oct. 15, 1945 (477-B-7).

The village has no authority to expend public funds in conjunction with the establishment of drain sewers for surplus waters through contract with property owners outside of the village limits. OAG Oct. 25, 1946 (387-G-6).

A village may finance a sewer from the profits of its liquor store. OAG Feb. 25, 1946 (476-A-13).

The village council may make street improvements without a petition to pay for the improvements out of the general revenue fund. OAG June 7, 1946 (396-b-7).

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Not lawful to donate village public funds to Red Cross or Boy Scouts. OAG Oct. 11, 1946 (476-B-2).

The right of way for a new street may be acquired by condemnation. When the right of way or easement for a public street has been acquired, the council may improve it on petition under section 412.27. If no assessment is to be laid the council may proceed under section 412.19. OAG Jan. 23, 1947 (396-G).

A village may sell a portion of the village park not needed for municipal purposes and may lease all or part of the park for a baseball field but must not surrender the power of control and supervision of the use of the park. OAG April 9, 1947 (469-C-8).

The village council may in making a proposed sewer improvement proceed under sections 421.19, 412.27, and 429.21 or generally under the provisions of Minnesota Statutes 1945, Chapter 429. OAG May 5, 1947 (387-G-4).

Village council may expend money from general revenue fund for purpose of trimming trees situated within dedicated village streets. OAG July 15, 1947.

A village owing a contractor who under contract has paved the main street may not borrow money from the local bank, nor issue bonds in any other way than as prescribed by statute, nor issue warrants in excess of funds on hand or in anticipation of taxes to be levied. OAG Aug. 21, 1947 (476-a-10) (476-c-1).

Under the provisions of subdivision 9, a village council may construct a retaining wall and street if there is a public need or necessity for same. Village may not reimburse a private company for cost of such retaining wall if a member of the council is an officer of the company to be reimbursed. OAG Aug. 22, 1947 (396-G-7) (90-a-1).

Subd. 11. Towns who qualify under section 368.01 have the powers enumerated in section 412.19. 1942 OAG 261, April 16, 1942 (434-A-6).

A village may acquire and operate an existing cemetery, or may acquire land on which to establish a village-operated cemetery. OAG July 23, 1945 (870-j).

Subd. 13. Public money cannot be appropriated to the support of a cemetery association. OAG June 6, 1944 (476-B-2).

A village may acquire or lease a cemetery but may not appropriate money in support of one. OAG Oct. 17, 1944 (870-j).

A village desiring part of a tract of land for park purposes may purchase a tract larger than is needed and sell the surplus. OAG Oct. 16, 1945 (469-A-12).

If a cemetery has power to transfer land, a village may accept the transfer even though such land lies outside the village. OAG Jan. 3, 1946 (870-J).

Subd. 14. The village council in its discretion may regulate and license exhibitions of moving pictures and may prohibit the showing of the pictures on Sundays. *Power v Nordstrom*, 150 M 228, 184 NW 967.

A village may not abandon a public tourist court or convert it into a veterans' housing project. If the property is no longer needed for municipal purposes, the council may lease the court to a private party for use as such project. OAG Sept. 23, 1946 (469-A-9).

Subd. 15. Where the village is a separate election district from that of the town, and the town holds its elections in a building outside of the corporate limits of the village, there is no prohibition against selling beer or liquor in the village as usual. OAG March 28, 1945 (218-J-4).

Bids are not required in purchase of real estate upon which a municipal liquor store is to be located. OAG Feb. 21, 1946 (218-R).

Subd. 16. With the approval of the village council, the village library board may use any surplus in the village library fund to construct a library building and the question need not be submitted to the voters. OAG March 14, 1946 (285-A).

A village has no power to donate money to a private library association. OAG March 6, 1947 (285-a).

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Subd. 17. The validity of an ordinance prohibiting operation of a slaughter-house is a fact question. OAG Aug. 3, 1945 (477-B-20).

Subd. 18. A village may purchase water from an adjoining municipality, establish rates, and distribute the water to village customers. OAG Aug. 30, 1945 (624-D-4).

Subd. 19. The validity of an ordinance prohibiting a concrete block factory is determined by the facts in the particular case. OAG Jan. 30, 1945 (477-b-34).

Whether a village ordinance prohibiting slaughter-house in the platted portion of the city is a reasonable regulation depends upon the facts in each particular case. OAG Aug. 3, 1945 (477-D-20).

A village has no authority to license a gravel pit. If the gravel pit is in any way a nuisance or a danger it may be regulated or eliminated. A nuisance cannot be licensed. OAG Aug. 19, 1947 (477-B-17).

Subd. 20. The village council has authority to extend the water mains to a municipal airport without the necessity of a petition or the making of assessments. OAG May 8, 1945 (624-D-11).

A village may buy water from Minneapolis mains and redistribute it at a rate fixed by the village. OAG Aug. 30, 1945 (624-D-4).

A contract between the village and a private concern for supplying water for village purposes from the private concern's well need not be approved by the voters. OAG May 8, 1946 (469-C-11).

A village which was authorized to operate and maintain a municipal water plant could change the water rates from time to time providing such changes were reasonable and were not discriminatory between various customers, and the council is not required to hold public hearings before changing such rates or to publish notice of intention to do so. OAG July 23, 1946 (624-D).

Subd. 21. Where the village franchise of a public utility distributing electric current was non-exclusive and the village granted a cooperative association the privilege of serving a cooperative creamery located in the village with electricity the public utility could not successfully charge the cooperative association with an invasion of any prior exclusive right possessed by the utility, and whatever curtailment of income might result would not constitute a legal impairment of its property rights. *General Utilities Co. v Carlton Co. Cooperative Ass'n*, 221 M 510, 22 NW(2d) 673.

A village cannot become a member of a rural electrification cooperative, nor may a franchise be granted by the village to a company whose charter limits its sale to members. OAG Jan. 2, 1945 (624c-10).

A favorable vote of the electorate is required before a village may install an electric distribution system. OAG Nov. 8, 1945 (624-C-8).

Subd. 22. The state may delegate to a village as a governmental agency its powers to regulate navigable waters within the corporate area thereof and to establish or license the necessary agencies of control. *Nelson v DeLong*, 213 M 426, 7 NW(2d) 342.

While the village had authority under section 412.19 to change the natural outlet within its corporate limits of a meandered and navigable lake, such power was subject to the requirements of sections 616.01, 616.02, and limitations that the new outlet should not become a nuisance by obstructing free and proper use of one's own property; and where a municipality constructs a culvert for the passage of waters of a watercourse it will be liable in damages for negligent construction which is the proximate cause of the flooding of lands appurtenant to the watercourse. *Greenwood v Evergreen Mines*, 220 M 296, 19 NW(2d) 726.

Power of the village does not extend beyond the village limits to prevent placing of buoys in the harbor for the anchoring of boats. OAG Aug. 20, 1946 (273-a-14).

Subd. 23. It is mandatory upon the president of the village council to sign the bonds of the village when properly issued. *State v Trask*, 155 M 213, 193 NW 121.

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There is no discrepancy between L. 1941, c. 70, s. 1, subd. 23, and L. 1941, c. 244. The law now changes the date for preparation and publication of the annual financial statement in villages from November to January. 1942 OAG 138, June 4, 1941 (277-B-2).

Village council may sell real estate no longer needed for village purposes and a vote of the people is not required. 1942 OAG 254, April 21, 1941 (469-A-15).

A municipality has no authority to lease private property for use of a veteran organization. OAG Dec. 7, 1945 (469-C-7).

The position of a chief of police terminated when he abruptly left the employment of the village and he is not entitled to vacation compensation which he might have taken had his employment continued. OAG June 27, 1946 (785-S).

Village funds cannot be donated to Red Cross, Boy Scouts, or similar organizations. OAG Oct. 11, 1946 (476-B-2).

Proceeds of a bond issue cannot be diverted by a municipality from the purpose for which they were issued. In the instant case funds borrowed for the purpose of a certain project must, on failure of the project, be held in the sinking fund to apply on the retirement of the bonds and interest. OAG July 30, 1947 (44-a).

Subd. 24. A village cannot enforce an ordinance providing that only one dealer in milk may be licensed. OAG April 6, 1945 (292-E).

A village may provide for the removal of garbage and assess the cost thereof to those served. OAG April 25, 1945 (477-B-14).

A village may license and regulate the business of hairdressing and beauty culture but has no power to prevent a person from engaging in that occupation if otherwise qualified. OAG Nov. 13, 1945 (33-B-1).

A village may adopt an ordinance licensing and maintaining of a dog kennel where dogs are kept but it must be a regulatory measure and not one for revenue purposes. The license fees therefor must be proportionate to the expense of the village. OAG Oct. 15, 1945 (477-D-7).

All questions relating to the employment of policemen are within the discretion of the village council. OAG April 8, 1946 (218-G-11).

Granting of a vacation is a gratuity. It is doubtful if a village may grant vacations except by legislative authority. In the instant case when the police officer turned in his keys and suit, his employment ceased and he is not entitled to vacation pay. OAG June 27, 1946 (785-S).

Village council has no power to create a commission or authorize any existing commission to manage a municipal liquor store. OAG Dec. 5, 1946 (218-R).

A village has no power to appropriate public moneys to a league formed for the purpose of promoting the organization of a new county. OAG Dec. 12, 1946 (476-B-2).

Village council may furnish siren and other equipment for village constables. OAG Feb. 6, 1947 (847).

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).

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

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

Subd. 25. Village may not abandon public tourist court and convert for veterans housing; but, if the tract is no longer needed for municipal purpose, the village may lease the public tourist court to a private party for use as veterans housing. OAG Sept. 23, 1946 (469-a-9).

Subd. 27. Bonds issued under this section may be purchased by the state board of investment. OAG Nov. 20, 1945 (928-A-8).

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412.20 MEETINGS OF COUNCIL.

A village council should meet in the village hall or other place designated by the by-laws but if all members of the council are present and participate in a meeting, the place of meeting is immaterial. OAG April 8, 1946 (218-G-11).

412.21 CONTRACTS; MEMBERS EXCLUDED; BIDS.

The owner of a platted area who has installed improvements such as water or sewer systems at his own expense and who, to induce purchase of lots, represents to buyers that no assessments therefor will be imposed because the purchase price of the lot includes payment of the improvements, cannot thereafter claim full ownership of the improvements. *Country Club Service v Village of Edina*, 214 M 26, 8 NW(2d) 321.

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.

A councilman holding a liquor license is ineligible to vote on the establishment of a municipal liquor store. 1942 OAG 162, March 6, 1942 (218-G-13).

On the question of purchase of a liquor store equipment where \$2,500 is available, there must be advertisement for bids. OAG Jan. 12, 1945 (218r).

Unless there is a bond issue, a liquor store may be purchased or established without an election being required. OAG Feb. 6, 1945 (218r).

When all bids are rejected, the council may reconsider and accept bids when there is only one bidder on each specific job. OAG Aug. 21, 1945 (707-a-10).

There can be no contract of leasing between the village and a member of the city council. OAG Jan. 11, 1946 (90-A-1).

A justice of the peace may write insurance for the village. OAG Jan. 31, 1946 (266-B-16).

The title to real estate purchased for a municipal liquor store should be taken in the name of the village and the purchase may be made without calling for bids. OAG Feb. 21, 1946 (218-R).

There is no requirement to advertise for bids when the village council or the village water, light, power, and building commission purchase an engine. OAG March 4, 1946 (707-A-15).

The approval by the voters is not required in a contract between the village and a private concern for the supplying of water for village purposes from the private concern's well. OAG May 8, 1946 (469-c-11).

Rule of *Mares v Janutka*, 196 M 87, 264 NW 222, applied. Village council cannot pay a member for labor, but may pay reasonable price for materials not to exceed \$50 in any one year. OAG June 20, 1946 (90-a-1).

Escalator clause may be included in contracts if provided in the specifications. Day labor may not be used for construction of a fire house costing in excess of \$100. OAG Aug. 9, 1946 (707-B-7) (707-A*6).

"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).

Bids must be called for in purchasing second-hand fire truck at a price of \$1,800. OAG Nov. 15, 1946 (707-a-15).

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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).

A husband may act as a salaried village marshal notwithstanding his wife is a member of the council which makes the appointment. OAG Dec. 10, 1946 (347-c-1).

Where the cost of improvements and repairs to municipal buildings in a village exceeds \$100, the furnishing must be awarded by contract upon competitive bidding. OAG May 2, 1947 (707-A-15).

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).

412.22 ORDINANCES, HOW ENACTED.

A franchise does not "vest" by the adoption of a motion granting a five-year franchise to an electric company at proposed reduced rates, and the acceptance of the proposition by the company who mailed out a notice of the reduction of the rates; and mandamus will not lie to compel the president of the village council to sign the ordinance or to compel the recorder to attest it or to compel the publication of the ordinance; and until the president signs the ordinance and the recorder attests it and it is published, the ordinance does not become operative and may be repealed. *Union Public Service v Village of Minneota*, 212 M 92, 2 NW(2d) 555.

If the village ordinance has a map attached a cut of the map must be published with the ordinance. OAG July 17, 1946 (477-B-34).

412.23 EXECUTION OF INSTRUMENTS.

The village council may sell real estate when no longer needed for village purposes. It may sell unused portion of a park area. 1942 OAG 254, April 21, 1941 (469-A-15); OAG Jan. 18, 1945 (469-A-15).

Where a village purchased land and established thereon a municipal liquor store and decided to dispose of vacant lots not needed, the council must make the best possible bargain and may advertise for bids if it believes a better offer may be obtained, and having found a buyer, the council should pass a resolution accepting the offer and directing the village president and clerk to execute a deed in the name of the village and deliver the deed on payment of the agreed price. OAG Sept. 5, 1945 (469-A-15).

412.24 CONTROL OF STREETS.

The fact that the extension of a street across the railroad right of way will necessitate the removal of a small coal shed belonging to the railroad company the change of a switch and rearrangement of some tracks is not conclusive that the right of way is destroyed or essentially impaired. It is a fact question for the jury. *Fohl v Village of Sleepy Eye*, 80 M 67, 82 NW 1097.

412.25 VACATING STREETS.

The village of Excelsior had power to vacate a portion of Lake Street which bordered on the lake front and a portion of which vacated street was a public landing. *Empenger v Fairley*, 119 M 186, 137 NW 1110.

In authorizing the district court to vacate plats and adjudge the title to streets, alleys, and public grounds to be in the persons entitled thereto, the legislature did not contravene Article 3 of the State Constitution or delegate legislative powers to the judicial branch of the government. *Vacation of Part of Town of Hibbing*, 163 M 439, 204 NW 534, 205 NW 613.

When a street is vacated, the fee being in the abutting owner, the easement reverts and the abutting owner owns the title in fee. The same street may again be established by virtue of section 412.19, subd. 9. OAG April 10, 1947 (396-G-16).

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Where a petition for vacation of an alley requires signature of the majority of owners of land abutting upon the proposed vacation, if the village owns in fee a portion of such land, it may join in the petition. OAG Aug. 19, 1947 (396-G-1).

412.26 ASSESSMENTS FOR BENEFITS.

Pursuant to L. 1943, c. 117, villages organized under special laws may adopt proceedings applicable to villages organized under R. L. 1905, c. 9, and thus may lay out, open, and establish streets and alleys within the corporate village limits. OAG June 19, 1947 (396-G-7).

412.27 STREET IMPROVEMENTS; ASSESSMENTS.

In a village a sewer may be constructed before the benefits have been assessed against the abutting owners. OAG May 11, 1943 (387-G-1).

The right of way for a new street may be acquired by condemnation. When the right of way or easement for a public street has been acquired, the council may improve it on petition under section 412.27. If no assessment is to be laid, the council may proceed under section 412.19. OAG Jan. 23, 1947 (396-G).

An owner may construct his own sidewalk if within the provisions of the village ordinances and to the satisfaction of the village council. The council has the power to remove dangerous conditions in streets, and the village is liable for allowing dangerous conditions to remain. OAG May 21, 1947 (480-B).

412.281 BONDS IN CERTAIN VILLAGES.

HISTORY. 1947 c. 25 ss. 1-5.

412.30 TAXPAYER'S APPEAL.

Where by one resolution a village council allows three claims of the same claimant which might have been combined in one claim or joined in one action, a single notice of appeal by the requisite number of taxpayers is sufficient. Re Appeal of Maki re Claim of Lommen, 188 M 78, 246.NW 531.

412.32 TAX LEVY.

In levying a tax for library purposes those fixing the tax must keep within the per capita tax limitation fixed by section 275.45 and within the twenty-mill limitation fixed by section 412.32. OAG Sept. 24, 1946 (285-A).

A village has no authority to levy a special tax for the maintenance of a tourist camp, there being no implied power to levy a special tax where the expenditure is optional as under section 450.19 and the village being governed by the twenty-mill limitation under section 412.32. International Harvester v State, 200 M 242, 274 NW 217.

No statutory authority exists permitting the village council to levy a gross sales tax on the sale of intoxicating liquors sold in the village. OAG April 23, 1946 (519-Q).

412.34 SETTLEMENT OF AFFAIRS.

Upon the dissolution of an incorporated village and in the absence of a statute the town within which the village was located does not become the owner of the village property or of any surplus funds remaining in the village treasury. Town of Highland Grove v Village of Winnipeg Junction, 125 M 280, 146 NW 974.