

Legislative Council Note, 1969: Based on s. 119.235. [Bill 2-S]

119.46 History: 1969 c. 45; 1969 c. 154 ss. 295g, 295r; Stats. 1969 s. 119.46.

Legislative Council Note, 1969: Sub. (1) based on s. 119.16 (1) (a) (1st sentence). The specific reference in present law to "trade schools" is deleted because the general language of this subsection covers those schools.

Sub. (2) based on s. 119.16 (1) (b) (1st sentence, 1st part). The present law is considerably shortened by deleting the specific levy rate requirements and inserting a cross reference to s. 65.07 (1) (e), which states the specific requirements. [Bill 2-S]

119.47 History: 1969 c. 45; Stats. 1969 s. 119.47.

Legislative Council Note, 1969: New and is designed primarily to cross refer to board functions in s. 43.50. [Bill 2-S]

119.48 History: 1969 c. 45; Stats. 1969 s. 119.48.

Legislative Council Note, 1969: Sub. (1) based on s. 119.16 (1) (a) (2nd sentence) and (b) (part of last part of 1st sentence and last sentence).

Sub. (2) revises s. 119.16 (1) (b) (2nd sentence).

Sub. (3) (a) based on s. 119.16 (1) (b) (part of last part of 1st sentence). The present law is shortened by deleting the specific levy rate requirement and inserting a cross reference to s. 65.07 (1) (f), which states the specific requirement.

Sub. (3) (b) restates s. 119.16 (1) (b) (3rd sentence). [Bill 2-S]

119.49 History: 1969 c. 45; Stats. 1969 s. 119.49.

Legislative Council Note, 1969: Revises s. 119.17. [Bill 2-S]

119.50 History: 1969 c. 45; Stats. 1969 s. 119.50.

Legislative Council Note, 1969: Restates s. 119.16 (2). The reference to the "finance committee of the board" is deleted. This committee is not created by statute and does not in fact perform the function indicated. [Bill 2-S]

119.52 History: 1969 c. 45; Stats. 1969 s. 119.52.

Legislative Council Note, 1969: Revises and rearranges s. 119.07 (2) (last part) and (3). [Bill 2-S]

119.54 History: 1969 c. 45; Stats. 1969 s. 119.54.

Legislative Council Note, 1969: Based on s. 119.16 (1) (c). In sub. (2), the necessary additions are made to take into account the possibility that an insufficient petition may be filed. In sub. (3) (a), the "regular election" date is geared to "the date of such certificate". [Bill 2-S]

119.58 History: 1969 c. 45; Stats. 1969 s. 119.58.

Legislative Council Note, 1969: Based on s. 119.21 (2). [Bill 2-S]

119.60 History: 1969 c. 45; Stats. 1969 s. 119.60.

Legislative Council Note, 1969: Restates s. 119.21 (1). [Bill 2-S]

119.62 History: 1969 c. 45; Stats. 1969 s. 119.62.

Legislative Council Note, 1969: Restates s. 119.18. [Bill 2-S]

119.66 History: 1969 c. 45; Stats. 1969 s. 119.66.

Legislative Council Note, 1969: Revises s. 119.19. The word "janitor" was deleted in the enumeration in the 2nd sentence, since it is assumed this position is covered by the term "or other employe of the board". [Bill 2-S]

119.68 History: 1969 c. 45; Stats. 1969 s. 119.68.

Legislative Council Note, 1969: Sub. (1) restates s. 119.11 (1) (3rd, 4th and last sentences).

Sub. (2) restates s. 119.11 (2).

Present s. 119.11 (3) is deleted. The provision authorized a procedure for making payments for invalid contracts under certain circumstances. This provision was enacted as continuing law in the 1941 codification of the Milwaukee school laws, in the mistaken belief that it served as a counterpart to a provision in the general school laws. That general school law provision, however, was not continuing law but was limited to pre-1926 actions. In the 1953 recodification of the school laws, this provision was repealed as obsolete. [Bill 2-S]

In an action for negligence against a third party the school board cannot be impleaded as a defendant; such an action lies only against the city. *Helmin v. Student Transportation Co.* 29 W (2d) 302, 139 NW (2d) 103.

CHAPTER 120.

School District Government.

120.001 History: 1967 c. 92; Stats. 1967 s. 120.001.

Legislative Council Note, 1967: This section is new and specifies the types of school districts to which this subchapter applies. [Bill 353-S]

120.01 History: 1967 c. 92; Stats. 1967 s. 120.01.

Legislative Council Note, 1967: Restates and rearranges s. 40.26 (1) and adds a reference to the special method under present s. 40.26 (8) [s. 120.02 (2) (a)] for increasing school boards to 11 members. [Bill 353-S]

120.02 History: 1967 c. 92, 313; Stats. 1967 s. 120.02; 1969 c. 195 ss. 4, 10.

Legislative Council Note, 1967: Sub. (1) based on s. 40.26 (2).

Sub. (2) based on s. 40.26 (8).

Sub. (3) (a) to (c) revises s. 40.26 (3). Sub. (3) (d) restates s. 40.26 (7). The last sentence of par. (d) is based in part on s. 40.87 (1) (last sentence) and fills a void in existing law by giving the responsibility for the preparation

of an election plan to the state superintendent in those cases where he is required to approve the establishment of a union high school district under the special procedure of s. 117.05. Sub. (3) (e) like s. 40.26 (6).

Present s. 40.26 (5) deleted because s. 117.01 (2) (a) and (4) covers the same material. [Bill 353-S]

120.03 History: 1967 c. 92; Stats. 1967 s. 120.03; 1969 c. 195.

Legislative Council Note, 1967: The introductory paragraph makes it clear that the provisions of the section apply to both common and union high school districts. The provisions of s. 40.87 (1) are contained in the appropriate subsections. The last sentence of s. 40.87 (1) is deleted because it is covered in s. 120.02 (3) (d).

Sub. (1) based on part of ss. 40.25 (2nd sentence), 40.26 (4) (last sentence) and 40.27 (4) (a) and (g).

Sub. (2) restates part of ss. 40.25 (2nd sentence) and 40.26 (4) (1st sentence).

Sub. (3) (intro.) and (a) based on ss. 40.25 (4th sentence) and 40.27 (6) (intro.), (c) and (d). Sub. (3) (b) based on s. 40.27 (3) (j).

Sub. (4) based on s. 40.25 (5th and 6th sentences) and part of s. 40.35 (7).

Sub. (5) (a) based on ss. 40.25 (1st and 7th sentences) and 40.26 (4) (2nd and part of 3rd sentences). Present law uses the term "school district director." This act uses the term "president" uniformly, because in city and unified school districts the term "president" is specified by law and because, in fact if not by law, this term also is used in many common and union high school districts.

Sub. (5) (b) revises s. 40.25 (3rd sentence).

Sub. (6) revises s. 40.86 (1).

Sub. (7) based on s. 40.27 (4) (h).

Sub. (8) based on s. 40.27 (4) (f) and clarifies the method of election to fill unexpired terms.

Sub. (9) revises s. 40.28 (4).

Sub. (10) like s. 40.27 (4) (i).

Sub. (11) restates s. 40.27 (4) (j).

Sub. (12) restates s. 40.27 (4) (k). [Bill 353-S]

The offices of county judge and member of the school board are incompatible; acceptance of one vacates the other. 4 Atty. Gen. 771.

The offices of town treasurer and school director are compatible. 10 Atty. Gen. 740.

Membership upon a town board is incompatible with membership upon a school board of a common school district located within such town. 19 Atty. Gen. 353.

The offices of village trustee and treasurer of a joint school district which embraces the village are incompatible. 24 Atty. Gen. 567.

The clerk of a school district holds over when an annual school district meeting, because of a tie vote, fails to elect a successor. 25 Atty. Gen. 599.

A clerk of a school district, although irregularly elected, is a de facto clerk and proper holder of the office until removed by judicial proceedings instituted by one showing superior right to the office. 25 Atty. Gen. 672.

The offices of town clerk and school district clerk are compatible. The offices of village clerk and school district clerk are compatible. (5 Atty. Gen. 852, 23 Atty. Gen. 605 are fol-

lowed. 22 Atty. Gen. 43 is overruled.) 27 Atty. Gen. 549, 29 Atty. Gen. 384.

The offices of county board member and member of a school board are compatible. 35 Atty. Gen. 371.

The offices of city supervisor and director of a common school district are compatible. (35 Atty. Gen. 371 explained.) 37 Atty. Gen. 470.

120.04 History: 1967 c. 92; Stats. 1967 s. 120.04; 1969 c. 195.

Legislative Council Note, 1967: Sub. (1) based on s. 40.27 (1) (a) and states specifically the authority and options of common school districts regarding school board elections.

Sub. (2) based on s. 40.27 (1) (b).

Sub. (3) revises s. 40.27 (1) (d) (1st and 2nd sentences) and adds the first sentence which is a notice requirement presently applicable to elections on the day of the annual meeting.

Sub. (4) revises s. 40.27 (1) (c) (1st sentence).

Sub. (5) based on s. 40.27 (1) (d) (3rd and 4th sentences) and (e).

Sub. (6) based on s. 40.27 (1) (f) (1st and 3rd sentences) and (4) (c).

Sub. (7) based on s. 40.27 (1) (c) (2nd sentence), (f) (2nd sentence) and (g) and clarifies that all positions to be filled are voted upon at the same time. It also clarifies that the results of the election are announced at the annual meeting. [Bill 353-S]

120.05 History: 1967 c. 92; Stats. 1967 s. 120.05; 1969 c. 195.

Legislative Council Note, 1967: Sub. (1) restates part of s. 40.85 (3).

Sub. (2) (intro.) is new. Sub. (2) (a) based on s. 40.27 (2) (a) and (b). Sub. (2) (b) revises s. 40.27 (2) (c).

Sub. (3) is new and makes it clear that an election notice shall be included in the notice of the annual meeting in all cases.

Sub. (4) based on ss. 40.27 (2) (d) and 40.27 (4) (L) (intro.), 1 and 2 and specifies that a "separate petition" must meet the requirements of an original petition.

Sub. (5) based on s. 40.27 (2) (e) and adds that the notice of declaration of candidacy requirements shall be published 35 days prior to the meeting to insure that sufficient notice is given.

Sub. (6) revises s. 40.27 (2) (f).

Sub. (7) revises s. 40.27 (4) (c) and (e).

Sub. (8) restates s. 40.27 (2) (g).

Sub. (9) revises s. 40.27 (2) (h) and specifies that election results shall be reported to the school district clerk. [Bill 353-S]

120.06 History: 1967 c. 92; Stats. 1967 s. 120.06; 1969 c. 195.

Legislative Council Note, 1967: Sub. (1) (intro.) based on s. 40.27 (3) (a). Sub. (1) (a) based on s. 40.27 (3) (b). Sub. (1) (b) based on s. 40.27 (3) (c) and (d).

Sub. (2) revises s. 40.27 (3) (dm) and (e) and adds specific dates for the performance of certain steps in the election process.

Sub. (3) based on s. 40.27 (3) (f).

Sub. (4) based on s. 40.27 (3) (g).

Sub. (5) revises s. 40.27 (4) (b).

Sub. (6) revises s. 40.27 (4) (c) and (e).

Sub. (7) based on ss. 40.27 (3) (h) and (i), 40.27 (4) (d) 4 and 40.27 (4) (L) 3. [Bill 353-S]

120.08 History: 1967 c. 92; Stats. 1967 s. 120.08.

Legislative Council Note, 1967: Introductory paragraph is new.

Sub. (1) based on s. 40.20 (1), (2) and (3) and incorporates s. 40.85 (1) and (2).

Sub. (2) (a) revises s. 40.20 (4) and incorporates s. 40.85 (4). The number of electors required to request a special meeting in common and union high school districts is made uniform and the number of signatures needed to make such a request is increased and made identical to the number needed to request a change in the method of electing school board members. The increase in the number of signatures required recognizes the considerable increase in the size and population of common and union high school districts. The 5-voter requirement for a special meeting in a common school district appeared in the first Wisconsin statutes in 1849 (see ch. 19, s. 9, 1849 stats.) and has not been increased since that time. Sub. (2) (b) restates s. 40.20 (5) and incorporates s. 40.85 (1). Sub. (2) (c) revises s. 40.24 and incorporates s. 40.85 (1).

Sub. (3) based on s. 40.20 (6) and incorporates s. 40.85 (1) and clarifies that this subsection applies to special, as well as annual, meetings. [Bill 353-S]

Under sec. 427, Stats. 1915, which provided that a given subject should not be considered at more than one special meeting per year, where the first special meeting was illegal, another meeting could be legally called for the same purpose within the year. 6 Atty. Gen. 46.

A request for a special meeting to vote on the question of improving a school building and the conduct of such meeting is discussed in 23 Atty. Gen. 786.

The electors at an annual school district meeting may change the hour of the day but not the date specified in 40.03 (1) for holding the next annual meeting. A person otherwise regularly elected to a school district office at such meeting may be a de facto officer of the district. The fact that the money was borrowed by a school district pursuant to action taken at such meeting does not necessarily preclude recovery of the amount loaned. 42 Atty. Gen. 30.

120.09 History: 1967 c. 92; Stats. 1967 s. 120.09.

Legislative Council Note, 1967: Revises s. 40.21 and incorporates a portion of s. 40.85 (1). The present 30-day requirement is raised to 60 days. [Bill 353-S]

120.10 History: 1967 c. 92, 313; Stats. 1967 s. 120.10; 1969 c. 154.

Legislative Council Note, 1967: Introductory paragraph like s. 40.22 (intro.) and includes union high school districts. Under present s. 40.86 (7) the annual meeting of a union high school district is authorized to exercise the powers of the annual meeting of a common school district.

Sub. (1) restates s. 40.22 (1).

Sub. (2) like s. 40.22 (2).

Sub. (3) based on s. 40.22 (14) and s. 40.26 (4) (part of 3rd sentence). Since the word

"teacher" means the same thing it is used in place of the present word "departments."

Sub. (4) restates s. 40.22 (14a). The last sentence of s. 40.22 (14a) is deleted to permit prior authorization for payment of these expenses.

Sub. (5) like s. 40.22 (4) and incorporates s. 40.86 (2).

Sub. (6) restates s. 40.22 (5) and incorporates s. 40.86 (2).

Sub. (7) restates s. 40.22 (6).

Sub. (8) based on s. 40.22 (7).

Sub. (9) like s. 40.22 (9).

Sub. (10) revises s. 40.22 (17) (a). Present s. 40.22 (17) (b) and (c) deleted because the requirement that all territory be in a high school district made these provisions obsolete.

Sub. (11) identical to s. 40.22 (10).

Sub. (12) restates s. 40.22 (8).

Sub. (13) based on s. 40.22 (12) and incorporates s. 40.86 (5).

Sub. (14) like s. 40.22 (13).

Sub. (15) based on s. 40.22 (11) and s. 40.86 (4) which are merged. The "conditions" could mean free books, books supplied on a rental basis or otherwise.

Sub. (16) revises s. 40.22 (15).

Sub. (17) like s. 40.22 (16).

Sub. (18) identical to s. 40.22 (20).

Sub. (19) like s. 40.86 (3). [Bill 353-S]

On limitation on indebtedness and direct annual tax to pay debt see notes to sec. 3, art. XI.

It is competent for the electors at a regularly called special meeting to provide for the employment of an attorney to defend an action against the district. *McCaffrey v. School Dist.* 74 W 100, 42 NW 103.

Members of a committee appointed at a district meeting to defend the district in a pending suit are not officers of district so as to make a contract with one of their number improper. *McCaffrey v. School Dist.* 74 W 100, 42 NW 103.

The district meeting may assume liability for a claim which could not be enforced against it at law, as to levy a tax for and authorize payment of a claim of a subcontractor for work and materials furnished to the principal contractor who defaulted when the actual value of the building exceeded the contract cost. *Lafebre v. Board of Education*, 81 W 660, 51 NW 952.

On the effect of a failure to vote on items separately, see *Hixon v. Oneida County*, 82 W 515, 52 NW 445.

Laborers and materialmen have no lien upon the property of a school district for labor and materials furnished for a school building. *Electric A. Co. v. United States F. & G. Co.* 110 W 438, 85 NW 648.

Plaintiff made a contract with a school district to furnish all the mill work for a school for \$850. At the time of making this contract the school district was indebted up to within \$594.44 of the constitutional limit of indebtedness. A school district meeting with full notice of the facts authorized the board to borrow a further sum and voted the levy of a tax of \$1,600 therefor. Such action was a ratification of the action of the building committee in contracting for the building of a schoolhouse without the funds having been provided, notwithstanding that the vote by which the levy was attempted to be made was

illegal and void. The contract was binding upon the district up to the amount of the constitutional limit of indebtedness, and the plaintiff could recover the amount of \$594.44. *McGillivray v. Joint School Dist.*, 112 W 354, 88 NW 310.

The district meeting cannot authorize the school board to contract a debt on behalf of the district or to levy a tax beyond the limit it may itself go; nor can it ratify a contract or act of the board which it would have no power to authorize in the first instance. *Nevil v. Clifford*, 63 W 435, 24 NW 65; *Montpelier S. B. & T. Co. v. School Dist.* 115 W 622, 92 NW 439.

When an annual school district meeting votes a tax to raise a specified sum to build a schoolhouse, it thereby fixes the maximum cost and the school board has no authority in its conduct of building operations to bind the district in excess of the amount voted. But the action of the board in procuring a building at a greater cost can be validated by subsequent action of the district. *O'Laughlin v. Dorn*, 168 W 205, 169 NW 562.

A school district is not a municipal corporation. It is but the agent for administering the public education system of the state and has only express powers and those necessarily implied. The courts will not inquire into the motives of a legislative body. The legislative body of a school district, if any, is the school district meeting. The designation of a schoolhouse site, or providing for the building of a schoolhouse, is ministerial rather than legislative, in character, and the power relative thereto cannot be exercised to gratify whim, caprice or passion, but must be exercised in good faith and in the public interest, and for the purpose of accomplishing, rather than defeating, the purpose for which the power is conferred. Mandamus will lie to compel the operation of school the minimum period of time, and to levy the necessary taxes therefor. *Iverson v. Union Free High School Dist.* 186 W 342, 202 NW 788.

A bank delivered money to the school district treasurer on orders illegally issued. The funds were intended as a loan to the district. In an action for money had and received, the bank was bound to prove that the funds were actually used by the district for lawful purposes, as a condition of recovery. The failure of the bank to demand payment within 6 months after the loan was made was laches. *First Nat. Bank v. Joint School Dist.* 187 W 547, 203 NW 762.

A free high school district board is authorized to bring an action without authority of the electors only where management, control and conservation of property and affairs of the district require speedy application for process. *State ex rel. Hawkins Free High School Dist. v. Nelson*, 212 W 116, 249 NW 172.

The district meeting has power to determine which property is no longer needed, so that, where the electors voted to close a specified one of 2 schools located within the district, the school board may not continue to operate such school. *State ex rel. Wiedenhoft v. Anderson*, 248 W 566, 22 NW (2d) 516.

The fact that a district meeting does not make provision for transportation does not limit the power of the school board to provide

transportation. *Van Ness v. Rindle*, 252 W 181, 31 NW (2d) 168.

After a school district has obtained a loan from the state trust funds the electors may request a special meeting of the district to decide on a new site. A change of site does not affect the validity of the loan. 7 Atty. Gen. 208.

Under 40.56, Stats. 1923, electors of a high school district do not have the power to suspend high school. 13 Atty. Gen. 541.

A salary voted in excess of the statutory maximum is illegal, and, if paid, action for return thereof to the district treasury may be maintained against all members of the school board participating in such illegal payment. 19 Atty. Gen. 43.

A construction contract let by a building committee appointed by a school district meeting is void, since the school district and school board may not delegate powers vested in them. 27 Atty. Gen. 349.

A common school district does not have legal authority to establish a junior college. 29 Atty. Gen. 96.

Powers and duties of a school district and board are limited to property under control of the district. The district may rent a school building furnished by the U. S. government on federal lands where additional facilities are required to accommodate children of the district. The obligation of the district to furnish school facilities for children of families residing in a federal housing project on government-owned lands within the district is the same as its obligation to other children of the district. 31 Atty. Gen. 266.

Where land is located in a common school district which does not maintain a high school, and is also located in a high school district, each district meeting has power to vote a tax for the operation of the school or schools maintained by it in an amount not to exceed 20 mills of the last state equalized valuation of the taxable property in the district, so that taxes aggregating 40 mills could be voted for such purposes against the land mentioned in event the maximum tax were voted by both the common school and high school district meetings. 37 Atty. Gen. 229.

120.11 History: 1967 c. 92; Stats. 1967 s. 120.11.

Legislative Council Note, 1967: Sub. (1) revises s. 40.28 (1) (1st, 5th, 6th and 7th sentences) and incorporates a portion of s. 40.87 (2).

Sub. (2) based on s. 40.28 (1) (2nd, 3rd and 4th sentences).

Sub. (3) based on s. 40.28 (2).

Sub. (4) based on s. 40.28 (3). [Bill 353-S] See note to 118.21, citing *School Dist. v. Baier*, 98 W 22, 73 NW 448.

120.12 History: 1967 c. 92; Stats. 1967 s. 120.12; 1969 c. 310.

Legislative Council Note, 1967: Introductory paragraph is new and makes unnecessary the repetition of "the school board shall" in the various subsections. Under s. 40.87 (2) the school boards of union high school districts have the duties of school boards of common school districts.

Sub. (1) restates s. 40.29 (1).

Sub. (2) based on s. 40.29 (12).

Sub. (3) based on s. 40.29 (8) and incorporates s. 40.88 (4). The "3rd Monday in October" date is made uniformly applicable.

Sub. (4) based on s. 40.29 (8a).

Sub. (5) like s. 40.29 (2).

Sub. (6) like s. 40.29 (3).

Sub. (7) restates s. 40.29 (11).

Sub. (8) restates s. 40.29 (5).

Sub. (9) revises s. 40.29 (6).

Sub. (10) based on s. 40.29 (7).

Sub. (11) like s. 40.29 (13).

Sub. (12) like s. 40.29 (4).

Sub. (13) like s. 40.29 (10).

Sub. (14) based on s. 40.89 (1) and makes it clear that this subsection applies to the school board of a union high school district and a K-12 common school district. [Bill 353-S]

The school board has no power to build a school or to cause one to be built and make the cost of it a charge against the district. *Nevil v. Clifford*, 63 W 435, 24 NW 65.

If a contract to erect a school is void or voidable the school board cannot enjoin the contractor from proceeding with his work, because the district cannot be damaged if he does proceed. The district may decline to ratify or affirm the contract and may successfully defend against an action for the contract price. *Joint School Dist. v. Reid*, 82 W 96, 51 NW 1089.

Sec. 441, Stats. 1913, empowers the school board to discharge a teacher who has failed to perform his duties under his contract. *Curkeet v. Joint School Dist.*, 159 W 149, 149 NW 708.

Schoolhouses are to be built out of funds provided for that purpose. Funds for maintenance or operation cannot be diverted to that purpose. *Riesen v. School Dist.* 192 W 283, 212 NW 783.

A contract of employment will not be implied against the school district. *School Dist. v. Industrial Comm.* 194 W 342, 216 NW 844.

40.16 (2), Stats. 1937, is not an amplification of the safe-place statute as applied to school districts, does not make the school district liable to third persons for the failure of the board to perform the enumerated duties, and does not abrogate the common-law rule of nonliability of a municipality for negligence in the performance of a governmental function. *Lawver v. Joint District*, 232 W 608, 288 NW 192.

See note to 120.10, citing *State ex rel. Wiedenhoft v. Anderson*, 248 W 566, 22 NW (2d) 516.

The duty to keep the school buildings and grounds in good repair and in a "safe" condition is imposed by 40.29 (2), Stats. 1951, on the school board and not on the individual members of the board; the liability, if any, to third parties for injuries sustained as the result of a failure to perform such duty is not a personal liability of the individual members of the board. *Meyer v. Carman*, 271 W 329, 73 NW (2d) 514.

When a sufficient tax has not been voted by the electors, failure of school district officers to levy a maintenance tax is willful neglect of duty imposed by law. 12 Atty. Gen. 290.

A school board may engage a teacher at a higher salary than that fixed by electors at the annual meeting if the salary so fixed is

so low that the board cannot obtain a teacher; it may levy a tax or use surplus funds not specifically appropriated for other purposes. 13 Atty. Gen. 380.

A determination by a high school board of the necessity for additional tax under the provisions of 40.52 (4), Stats. 1923, is final in the absence of abuse of discretion. 14 Atty. Gen. 148.

A school board has no power to remodel a school building unless an appropriation therefor is made at the annual meeting. Members of the board who fail to file an inventory of district property annually are guilty of malfeasance in office. 20 Atty. Gen. 850.

A school board has power to raise sufficient funds for operation of a school regardless of a referendum limiting the amount to be raised by taxes. 25 Atty. Gen. 411.

Neither a school board nor a city is liable for injuries to pupils or others arising out of negligence in operation of schools or conduct of athletic activities in connection therewith, except that neither may maintain a public nuisance. 26 Atty. Gen. 59.

A common school district board may not employ an attorney at a stipulated fee per month to handle actions or proceedings in which the district is not at the time interested. 27 Atty. Gen. 747.

The board of a common school district may employ an attorney at a stipulated fee per month to handle legal work of the district other than actions or proceedings. 27 Atty. Gen. 826.

Under 40.16 (2), Stats. 1941, school districts may obtain insurance against liability for accidental injuries to members of the public caused by defective construction or maintenance of school buildings under 101.06. But school districts have no authority to obtain insurance against injuries for which they are not liable, such as injuries caused by negligence of employes or by any other cause not covered by the safe-place statute. (18 Atty. Gen. 559 reviewed and modified.) 31 Atty. Gen. 176.

See note to 120.10, citing 31 Atty. Gen. 266.

A school district board has power and authority to permit private school students to attend the district school on a part-time basis. 53 Atty. Gen. 187.

120.13 History: 1967 c. 92; Stats. 1967 s. 120.13; 1969 c. 276 s. 589 (1) (a); 1969 c. 301.

Legislative Council Note, 1967: Introductory paragraph is new and makes unnecessary the repetition of "the school board may" in the various subsections. Under s. 40.87 (2) the school boards of union high school districts have the powers of school boards of common school districts.

Sub. (1) revises s. 40.30 (17).

Sub. (2) based on s. 40.30 (19).

Sub. (3) based on s. 40.30 (14).

Sub. (4) based on s. 40.30 (11) and (12).

Sub. (5) based on s. 40.30 (15).

Sub. (6) revises s. 40.30 (8).

Sub. (7) restates s. 40.30 (16).

Sub. (8) restates s. 40.30 (17m).

Sub. (9) like s. 40.30 (21).

Sub. (10) restates s. 40.30 (9).

Sub. (11) revises s. 40.30 (10) and (10c).

Sub. (12) based on s. 40.30 (13).

Sub. (13) based on s. 40.30 (7). Last sentence deleted because it is repetitious.

Sub. (14) based on s. 40.30 (18).

Sub. (15) based on s. 40.89 (2) (1st sentence). See note to s. 120.12 (14).

Sub. (16) restates s. 40.30 (20).

Sub. (17) restates s. 40.30 (2).

Sub. (18) restates s. 40.30 (3).

Sub. (19) based on s. 40.30 (5).

Sub. (20) revises s. 40.30 (4).

Sub. (21) restates s. 40.30 (6). [Bill 353-S]

A school board has the power to make rules and regulations for the organization, graduation and government of the school, and to suspend any pupil for noncompliance with the reasonable rules established by it or by the teacher with its consent. *Morrow v. Wood*, 35 W 59; *State ex rel. Burpee v. Burton*, 45 W 150.

A pupil cannot be suspended for refusing to comply with a regulation that each pupil, on returning to school after recess, shall bring into the room a stick of wood. Mandamus lies to compel officers to reinstate a pupil wrongfully suspended. *State ex rel. Bowe v. Board of Education*, 63 W 234, 23 NW 102.

A school board alone has the power of expulsion and therefore the wrongful exaction of tuition by a teacher and principal of a school as a condition of allowing the pupil to remain in school, and the payment of such fee under protest, are not equivalent to expulsion. *State ex rel. Smith v. Board of Education*, 96 W 95, 71 NW 123.

School authorities are vested with a broad discretion in the government and discipline of pupils, and courts will not interfere with the exercise of such authority unless it has been unreasonably or illegally exercised. They may suspend a pupil for an offense committed outside of school hours, and not in the presence of the teacher, where such offense has a direct and immediate tendency to influence the conduct of the pupils while in the schoolroom. *State ex rel. Dresser v. District Board*, 135 W 619, 116 NW 232.

A school board has power, acting in good faith, to determine that by reason of physical ailments the presence of a boy in school was harmful to the school and to other pupils, and that therefore he should be excluded. Such a determination by a school board should not be interfered with by the courts unless it is shown to have been illegal or unreasonable. *State ex rel. Beattie v. Board of Education*, 169 W 231, 172 NW 153.

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing *Breen v. Kahl*, 296 F Supp. 702.

A resolution of a school board duly recorded in the minutes is a rule of the board and is enforceable by expulsion. 8 Atty. Gen. 110.

A school board may grant permission to hold Chautauquas, the proceeds of which are turned over to the school fund of the city, if such lectures are held under the "auspices" of the school. 9 Atty. Gen. 484.

A resolution by a school district to raise \$300 for band purposes is legal if the school board determined to give instruction in band music and the fund is to be used for that purpose. 17 Atty. Gen. 354; 18 Atty. Gen. 49.

A high school board of education has the power to abrogate, with consent of a teacher, an executory contract of employment and to

enter into a new contract with the teacher calling for a salary in excess of that in the first contract. 35 Atty. Gen. 156.

See note to 118.14, citing 38 Atty. Gen. 424. Under 40.30 (12), Stats. 1957, after 2 years of operation on a tuition basis, a district is not entitled to aids without the approval of the state superintendent. 47 Atty. Gen. 162.

On released time for religious instruction see 38 Atty. Gen. 281, and 48 Atty. Gen. 121.

40.30 (14), Stats. 1965, which authorizes construction contracts between school districts and other municipalities, is a valid enactment. 56 Atty. Gen. 1.

Basis for validity of released time program for religious education. 35 MLR 385.

High school authorities' power to expel students for wearing long hair. 1969 WLR 303.

120.14 History: 1967 c. 92; Stats. 1967 s. 120.14.

Legislative Council Note, 1967: Consolidates in one section the various references to an audit of school district accounts.

Sub. (1) based on and rearranges s. 40.29 (14). It makes general a requirement that now applies to almost all school districts and thus makes obsolete s. 40.23 (1) and (1m) which are deleted.

Sub. (2) based on s. 40.30 (1). Sub. (3) based on s. 40.22 (18). [Bill 353-S]

120.15 History: 1967 c. 92; Stats. 1967 s. 120.15.

Legislative Council Note, 1967: Introductory paragraph is from s. 40.33 (intro.) and incorporates a portion of s. 40.87 (2).

Sub. (1) based on ss. 40.33 (1) and 40.88 (1).

Sub. (2) restates first part of s. 40.33 (2).

Sub. (3) revises last part of s. 40.33 (2).

Sub. (4) revises s. 40.33 (3).

Sub. (5) restates s. 40.33 (4). [Bill 353-S]

A school director can recover from the district the amount of necessary expenses which he may have been put to by attending suits by or against it; but before he can recover he must present his claim to the district board or district meeting. *Fobes v. School Dist.* 10 W 117.

A school director may bring suit for an injury to the schoolhouse without direction from the electors. *School Dist. v. Arnold*, 21 W 657.

Where the electors of a school district appointed a committee of 3, of which the plaintiff (an attorney at law) was a member, to conduct the defense in an action against the district, and at a subsequent meeting of the electors a proposition to rescind the appointment of such committee was voted down, there was a valid employment of the plaintiff as an attorney by the district, and he was entitled to compensation for his services. *McCaffrey v. School Dist.* 74 W 100, 42 NW 103.

Under sec. 442, Stats. 1898, it is the duty of a director to begin an action on the treasurer's bond but this power is subordinate to that of the district meeting, which may dismiss the action against the protest of the director. *School Dist. v. Clifcorn*, 133 W 465, 112 NW 1099.

120.16 History: 1967 c. 92; Stats. 1967 s. 120.16.

Legislative Council Note, 1967: Introduc-

tory paragraph is from s. 40.34 (2) (intro.) and incorporates a portion of s. 40.87 (2).

Sub. (1) based on s. 40.34 (1).

Sub. (2) revises s. 40.34 (2) (a) and part of s. 40.88 (1) and restates s. 40.34 (3).

Sub. (3) revises s. 40.34 (2) (b).

Sub. (4) based on s. 40.34 (2) (c) and permits the presentation of a summarized statement of disbursements by the treasurer and eliminates the requirement that he exhibit each voucher.

Sub. (5) revises s. 40.34 (2) (d). [Bill 353-S]

A school district treasurer is personally liable to a teacher after presentation of a proper order drawn on him in favor of the teacher, and payment demanded and refused, if he has sufficient moneys belonging to the district to pay the same. *Edson v. Hayden*, 18 W 628.

A school district treasurer duly elected and qualified, who failed upon reelection to give a new bond but continued acting as treasurer until his death, was a de facto and a de jure officer. But the sureties on his bond for the first term were held not liable beyond the first term. *Board of School Directors v. Kuhnke*, 155 W 343, 144 NW 987.

A school district treasurer's bond was duly executed by himself and sureties, except that the penal sum was left blank. They all intended to give and believed that they had given the statutory bond. They authorized the director and clerk to ascertain the proper amount required by law and insert it in the blank space. The bond was not invalid and did not prevent the treasurer from qualifying. *State ex rel. Dorwin v. White*, 161 W 170, 152 NW 825.

A school district treasurer is the custodian of funds of the district, which include proceeds of insurance collected on a fire loss, and if he accepts such funds through an agent he has the same responsibility as though he had the funds in hand. *School Dist. v. Larson*, 196 W 211, 218 NW 847.

The official bond required by 40.10, Stats. 1929, to be filed by the treasurer obligates such officer to safely keep and account for moneys which come to his hands. Such public officer is an insurer of public funds lawfully in his possession and is therefore liable for losses which occur even without his fault. The treasurer and his sureties may escape financial liability in event the funds are deposited in a bank designated by school officers. 18 Atty. Gen. 698.

It is the duty of a school district treasurer to pay an order in proper form, if he has in his hands funds of the district of sufficient amount. Refusal to do so creates personal liability to the holder of the order and constitutes malfeasance. 21 Atty. Gen. 787.

A school treasurer may refuse to turn over money to his successor, who was elected but did not file a bond sufficient to cover funds in the treasury. 24 Atty. Gen. 640.

The state superintendent may refuse to certify state aid to a school district whose treasurer fails to furnish the bond required by 40.10 (1), Stats. 1937. 27 Atty. Gen. 82.

See note to 76.28, citing 27 Atty. Gen. 537.

120.17 History: 1967 c. 92; Stats. 1967 s. 120.17; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Introduc-

tory paragraph is from s. 40.35 (intro.) and incorporates a portion of s. 40.87 (2).

Sub. (1) revises s. 40.35 (1).

Sub. (2) based on s. 40.35 (2) and clarifies that the school district clerk shall record proceedings of special, as well as annual, meetings.

Sub. (3) like s. 40.35 (3).

Sub. (4) like s. 40.35 (4).

Sub. (5) based on s. 40.35 (5) and clarifies that a special, as well as annual, meeting may direct that orders be drawn on the school district treasurer.

Sub. (6) revises s. 40.35 (6).

Sub. (7) restates last part of s. 40.35 (7).

Sub. (8) based on s. 40.35 (8) and (8a) and incorporates part of s. 40.88 (1), (2) and (3).

Sub. (8) (a) based on s. 40.35 (8) (1st and 2nd sentences). The provisions presently stated separately for towns within the school district and municipalities within a joint school district are combined and clarified. Sub. (8) (b) based on s. 40.35 (8) (last sentence). Sub. (8) (c) revises s. 40.35 (8a).

Sub. (9) like s. 40.35 (9).

Sub. (10) is new and gives the school district clerk the authority to give the oath of office to school board members. [Bill 353-S]

Under sec. 1, ch. 81, Laws 1869, a certificate of a clerk which merely stated "that, at the annual school meeting, voted to raise \$300 for teachers' salaries, in building a wood shed, and all incidental expenses during the year," was not sufficient to confer authority to levy the tax. *Arnold v. Juneau County*, 43 W 627.

The failure of the clerk to file the statement required goes to the groundwork of the tax. *Powell v. St. Croix County*, 46 W 210, 50 NW 1013.

No order can be drawn except where the money is due and immediately payable to the person to whom it is issued, and where the funds for the payment of such debt have been apportioned to the district or voted by it to the payment thereof; orders chargeable on taxes to be thereafter voted by the district, in the nature of contracts payable in the future, are void. *Kane v. School Dist.* 52 W 502, 9 NW 459.

The offices of town clerk and school district clerk may be held by the same person. 5 Atty. Gen. 852.

The offices of school district clerk and village treasurer are compatible. 17 Atty. Gen. 493.

120.18 History: 1967 c. 92; Stats. 1967 s. 120.18; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Introductory paragraph based on and combines s. 40.74 (1) (intro.), (2) and (3) and incorporates a portion of s. 40.87 (2). Consistent with present departmental practice, the (intro.) provides that the state superintendent can request portions of the annual report at such times as he determines, but all parts of the annual report must be filed by August 15. Since the annual report is of substantial bulk, it is a more realistic procedure than under present law to require that a copy of the report be sent to the school district administrator with notification to the person in charge of the separate schools that the report is on file in the central office.

Sub. (2) (1st sentence) restates s. 119.13 (2).
Sub. (2) (2nd sentence) revises s. 119.13 (3) (first phrase). [Bill 2-S]

119.26 History: 1969 c. 45; Stats. 1969 s. 119.26.

Legislative Council Note, 1969: Restates s. 119.135. [Bill 2-S]

119.28 History: 1969 c. 45; Stats. 1969 s. 119.28.

Legislative Council Note, 1969: Sub. (1) restates s. 119.09 (4) (1st phrase). Instead of enumerating the various types of handicapped children, the cross reference to the general definition of "handicapped children" is used.

Sub. (2) like s. 119.09 (4) (2nd phrase).

Sub. (3) like s. 119.09 (4) (1st part of 3rd phrase).

Sub. (4) revises s. 119.09 (4) (2nd part of 3rd phrase).

Sub. (5) based on s. 119.09 (4) (last part of 3rd phrase).

Present s. 119.09 (4) (last phrase) is deleted because it is covered by cross reference under s. 119.04.

Present s. 119.13 (3) (2nd phrase) is deleted because it is covered in s. 115.82 (1) (b) (last sentence) which applies to Milwaukee by cross reference in s. 119.04.

Present ss. 119.13 (3) (last 4 phrases) and 119.08 (4) (j) are deleted because the same material is covered in the basic law relating to handicapped children (see s. 115.82) which applies to Milwaukee by cross reference in s. 119.04. Also, the deletions are warranted because in some instances the provisions of ss. 119.13 (3) and 119.08 (4) (j) conflict with the provisions of s. 115.82. [Bill 2-S]

119.30 History: 1969 c. 45; Stats. 1969 s. 119.30.

Legislative Council Note, 1969: Sub. (1) restates s. 119.28 (1) and (2) (1st sentence) and (1st phrase of 2nd sentence). Obsolete material in s. 119.28 (1) is deleted.

Sub. (2) restates s. 119.28 (2) (last phrase of 2nd sentence) and (last sentence).

Sub. (3) revises s. 119.28 (5). In the present law, there is a reference to "trade school fund". Ch. 213, laws of 1941, in effect included the old "trade school fund" in the "school operations fund" and the appropriate change is made here.

Present s. 119.28 (3) is deleted. It is a transitional provision relating to trade school budgets which will not be needed again.

Present s. 119.28 (4) is deleted because it is covered generally. [Bill 2-S]

119.32 History: 1969 c. 45; Stats. 1969 s. 119.32.

Legislative Council Note, 1969: Sub. (1) restates s. 119.09 (1) (1st sentence) and (1st part of 2nd sentence). An obsolete provision is deleted which is applicable only to the superintendent of schools who was in office on April 6, 1957.

Sub. (2) restates and rearranges s. 119.09 (2) (1st sentence).

Sub. (3) based on s. 119.09 (2) (2nd sentence).

Sub. (4) like s. 119.09 (2) (last sentence).

Sub. (5) restates s. 119.09 (3) (2nd sentence). [Bill 2-S]

119.34 History: 1969 c. 45; Stats. 1969 s. 119.34.

Legislative Council Note, 1969: Sub. (1) revises s. 119.10 (1st sentence).

Sub. (2) restates s. 119.10 (2nd sentence).

Sub. (3) revises s. 119.10 (1st part of 3rd sentence).

Sub. (4) based on s. 119.10 (last sentence) and deletes unnecessary detail relating to census expenses. [Bill 2-S]

119.36 History: 1969 c. 45; Stats. 1969 s. 119.36.

Legislative Council Note, 1969: Based on s. 119.12. [Bill 2-S]

119.38 History: 1969 c. 45; Stats. 1969 s. 119.38.

Legislative Council Note, 1969: Restates s. 119.11 (1) (1st and 2nd sentences). [Bill 2-S]

119.40 History: 1969 c. 45; Stats. 1969 s. 119.40.

Legislative Council Note, 1969: Sub. (1) (a) revises s. 119.16 (3). An archaic reference to "common or graded" schools is deleted as is an outdated minimum salary schedule. A reference to a 200-day teaching limitation is deleted here, because it is covered in s. 119.18 (6) (a).

Sub. (1) (b) restates s. 119.16 (4) (a).

Sub. (2) identical to s. 119.16 (4) (b).

Present s. 119.16 (4) (c) is deleted. It is an obsolete provision relating to teacher classification which was enacted for a specific purpose and is no longer necessary. [Bill 2-S]

Editor's Note: Sec. 3, ch. 29, Spl. S. 1920, providing that the Milwaukee school board "shall annually determine and fix a schedule of salaries for all 'teachers' in the common or graded schools of such city" was discussed and applied in *Peterson v. Milwaukee*, 226 W 540, 277 NW 128.

119.42 History: 1969 c. 45; Stats. 1969 s. 119.42.

Legislative Council Note, 1969: Sub. (1) based on s. 119.24 (18). The 3rd sentence modifies existing law so that it is clear that this is an initial provision.

Sub. (2) restates s. 119.16 (1) (d). [Bill 2-S]

Editor's Note: The following cases (among others) dealt with the application of prior statutory provisions to questions concerning discharge, probation and acquisition of tenure in the Milwaukee school system: *State ex rel. Thompson v. Board of School Directors*, 179 W 284, 191 NW 746; *State ex rel. Mellen v. Trustees*, 185 W 653, 201 NW 383; *State ex rel. Nyberg v. School Directors*, 190 W 570, 209 NW 683; *State ex rel. Schroeder v. Board of School Directors*, 225 W 444, 274 NW 301; *Blau v. Milwaukee*, 232 W 197, 285 NW 347, 286 NW 874, 287 NW 594; *Morgan v. Potter*, 238 W 246, 298 NW 763; and *State ex rel. Wasilewski v. Board of School Directors*, 14 W (2d) 243, 111 NW (2d) 198.

119.44 History: 1969 c. 45; Stats. 1969 s. 119.44.

Legislative Council Note, 1969: Based on s. 119.235. [Bill 2-S]

119.46 History: 1969 c. 45; 1969 c. 154 ss. 295g, 295r; Stats. 1969 s. 119.46.

Legislative Council Note, 1969: Sub. (1) based on s. 119.16 (1) (a) (1st sentence). The specific reference in present law to "trade schools" is deleted because the general language of this subsection covers those schools.

Sub. (2) based on s. 119.16 (1) (b) (1st sentence, 1st part). The present law is considerably shortened by deleting the specific levy rate requirements and inserting a cross reference to s. 65.07 (1) (e), which states the specific requirements. [Bill 2-S]

119.47 History: 1969 c. 45; Stats. 1969 s. 119.47.

Legislative Council Note, 1969: New and is designed primarily to cross refer to board functions in s. 43.50. [Bill 2-S]

119.48 History: 1969 c. 45; Stats. 1969 s. 119.48.

Legislative Council Note, 1969: Sub. (1) based on s. 119.16 (1) (a) (2nd sentence) and (b) (part of last part of 1st sentence and last sentence).

Sub. (2) revises s. 119.16 (1) (b) (2nd sentence).

Sub. (3) (a) based on s. 119.16 (1) (b) (part of last part of 1st sentence). The present law is shortened by deleting the specific levy rate requirement and inserting a cross reference to s. 65.07 (1) (f), which states the specific requirement.

Sub. (3) (b) restates s. 119.16 (1) (b) (3rd sentence). [Bill 2-S]

119.49 History: 1969 c. 45; Stats. 1969 s. 119.49.

Legislative Council Note, 1969: Revises s. 119.17. [Bill 2-S]

119.50 History: 1969 c. 45; Stats. 1969 s. 119.50.

Legislative Council Note, 1969: Restates s. 119.16 (2). The reference to the "finance committee of the board" is deleted. This committee is not created by statute and does not in fact perform the function indicated. [Bill 2-S]

119.52 History: 1969 c. 45; Stats. 1969 s. 119.52.

Legislative Council Note, 1969: Revises and rearranges s. 119.07 (2) (last part) and (3). [Bill 2-S]

119.54 History: 1969 c. 45; Stats. 1969 s. 119.54.

Legislative Council Note, 1969: Based on s. 119.16 (1) (c). In sub. (2), the necessary additions are made to take into account the possibility that an insufficient petition may be filed. In sub. (3) (a), the "regular election" date is geared to "the date of such certificate". [Bill 2-S]

119.58 History: 1969 c. 45; Stats. 1969 s. 119.58.

Legislative Council Note, 1969: Based on s. 119.21 (2). [Bill 2-S]

119.60 History: 1969 c. 45; Stats. 1969 s. 119.60.

Legislative Council Note, 1969: Restates s. 119.21 (1). [Bill 2-S]

119.62 History: 1969 c. 45; Stats. 1969 s. 119.62.

Legislative Council Note, 1969: Restates s. 119.18. [Bill 2-S]

119.66 History: 1969 c. 45; Stats. 1969 s. 119.66.

Legislative Council Note, 1969: Revises s. 119.19. The word "janitor" was deleted in the enumeration in the 2nd sentence, since it is assumed this position is covered by the term "or other employe of the board". [Bill 2-S]

119.68 History: 1969 c. 45; Stats. 1969 s. 119.68.

Legislative Council Note, 1969: Sub. (1) restates s. 119.11 (1) (3rd, 4th and last sentences).

Sub. (2) restates s. 119.11 (2).

Present s. 119.11 (3) is deleted. The provision authorized a procedure for making payments for invalid contracts under certain circumstances. This provision was enacted as continuing law in the 1941 codification of the Milwaukee school laws, in the mistaken belief that it served as a counterpart to a provision in the general school laws. That general school law provision, however, was not continuing law but was limited to pre-1926 actions. In the 1953 recodification of the school laws, this provision was repealed as obsolete. [Bill 2-S]

In an action for negligence against a third party the school board cannot be impleaded as a defendant; such an action lies only against the city. *Helmin v. Student Transportation Co.* 29 W (2d) 302, 139 NW (2d) 103.

CHAPTER 120.

School District Government.

120.001 History: 1967 c. 92; Stats. 1967 s. 120.001.

Legislative Council Note, 1967: This section is new and specifies the types of school districts to which this subchapter applies. [Bill 353-S]

120.01 History: 1967 c. 92; Stats. 1967 s. 120.01.

Legislative Council Note, 1967: Restates and rearranges s. 40.26 (1) and adds a reference to the special method under present s. 40.26 (8) [s. 120.02 (2) (a)] for increasing school boards to 11 members. [Bill 353-S]

120.02 History: 1967 c. 92, 313; Stats. 1967 s. 120.02; 1969 c. 195 ss. 4, 10.

Legislative Council Note, 1967: Sub. (1) based on s. 40.26 (2).

Sub. (2) based on s. 40.26 (8).

Sub. (3) (a) to (c) revises s. 40.26 (3). Sub. (3) (d) restates s. 40.26 (7). The last sentence of par. (d) is based in part on s. 40.87 (1) (last sentence) and fills a void in existing law by giving the responsibility for the preparation

of an election plan to the state superintendent in those cases where he is required to approve the establishment of a union high school district under the special procedure of s. 117.05. Sub. (3) (e) like s. 40.26 (6).

Present s. 40.26 (5) deleted because s. 117.01 (2) (a) and (4) covers the same material. [Bill 353-S]

120.03 History: 1967 c. 92; Stats. 1967 s. 120.03; 1969 c. 195.

Legislative Council Note, 1967: The introductory paragraph makes it clear that the provisions of the section apply to both common and union high school districts. The provisions of s. 40.87 (1) are contained in the appropriate subsections. The last sentence of s. 40.87 (1) is deleted because it is covered in s. 120.02 (3) (d).

Sub. (1) based on part of ss. 40.25 (2nd sentence), 40.26 (4) (last sentence) and 40.27 (4) (a) and (g).

Sub. (2) restates part of ss. 40.25 (2nd sentence) and 40.26 (4) (1st sentence).

Sub. (3) (intro.) and (a) based on ss. 40.25 (4th sentence) and 40.27 (6) (intro.), (c) and (d). Sub. (3) (b) based on s. 40.27 (3) (j).

Sub. (4) based on s. 40.25 (5th and 6th sentences) and part of s. 40.35 (7).

Sub. (5) (a) based on ss. 40.25 (1st and 7th sentences) and 40.26 (4) (2nd and part of 3rd sentences). Present law uses the term "school district director." This act uses the term "president" uniformly, because in city and unified school districts the term "president" is specified by law and because, in fact if not by law, this term also is used in many common and union high school districts.

Sub. (5) (b) revises s. 40.25 (3rd sentence).

Sub. (6) revises s. 40.86 (1).

Sub. (7) based on s. 40.27 (4) (h).

Sub. (8) based on s. 40.27 (4) (f) and clarifies the method of election to fill unexpired terms.

Sub. (9) revises s. 40.28 (4).

Sub. (10) like s. 40.27 (4) (i).

Sub. (11) restates s. 40.27 (4) (j).

Sub. (12) restates s. 40.27 (4) (k). [Bill 353-S]

The offices of county judge and member of the school board are incompatible; acceptance of one vacates the other. 4 Atty. Gen. 771.

The offices of town treasurer and school director are compatible. 10 Atty. Gen. 740.

Membership upon a town board is incompatible with membership upon a school board of a common school district located within such town. 19 Atty. Gen. 353.

The offices of village trustee and treasurer of a joint school district which embraces the village are incompatible. 24 Atty. Gen. 567.

The clerk of a school district holds over when an annual school district meeting, because of a tie vote, fails to elect a successor. 25 Atty. Gen. 599.

A clerk of a school district, although irregularly elected, is a de facto clerk and proper holder of the office until removed by judicial proceedings instituted by one showing superior right to the office. 25 Atty. Gen. 672.

The offices of town clerk and school district clerk are compatible. The offices of village clerk and school district clerk are compatible. (5 Atty. Gen. 852, 23 Atty. Gen. 605 are fol-

lowed. 22 Atty. Gen. 43 is overruled.) 27 Atty. Gen. 549, 29 Atty. Gen. 384.

The offices of county board member and member of a school board are compatible. 35 Atty. Gen. 371.

The offices of city supervisor and director of a common school district are compatible. (35 Atty. Gen. 371 explained.) 37 Atty. Gen. 470.

120.04 History: 1967 c. 92; Stats. 1967 s. 120.04; 1969 c. 195.

Legislative Council Note, 1967: Sub. (1) based on s. 40.27 (1) (a) and states specifically the authority and options of common school districts regarding school board elections.

Sub. (2) based on s. 40.27 (1) (b).

Sub. (3) revises s. 40.27 (1) (d) (1st and 2nd sentences) and adds the first sentence which is a notice requirement presently applicable to elections on the day of the annual meeting.

Sub. (4) revises s. 40.27 (1) (c) (1st sentence).

Sub. (5) based on s. 40.27 (1) (d) (3rd and 4th sentences) and (e).

Sub. (6) based on s. 40.27 (1) (f) (1st and 3rd sentences) and (4) (c).

Sub. (7) based on s. 40.27 (1) (c) (2nd sentence), (f) (2nd sentence) and (g) and clarifies that all positions to be filled are voted upon at the same time. It also clarifies that the results of the election are announced at the annual meeting. [Bill 353-S]

120.05 History: 1967 c. 92; Stats. 1967 s. 120.05; 1969 c. 195.

Legislative Council Note, 1967: Sub. (1) restates part of s. 40.85 (3).

Sub. (2) (intro.) is new. Sub. (2) (a) based on s. 40.27 (2) (a) and (b). Sub. (2) (b) revises s. 40.27 (2) (c).

Sub. (3) is new and makes it clear that an election notice shall be included in the notice of the annual meeting in all cases.

Sub. (4) based on ss. 40.27 (2) (d) and 40.27 (4) (L) (intro.), 1 and 2 and specifies that a "separate petition" must meet the requirements of an original petition.

Sub. (5) based on s. 40.27 (2) (e) and adds that the notice of declaration of candidacy requirements shall be published 35 days prior to the meeting to insure that sufficient notice is given.

Sub. (6) revises s. 40.27 (2) (f).

Sub. (7) revises s. 40.27 (4) (c) and (e).

Sub. (8) restates s. 40.27 (2) (g).

Sub. (9) revises s. 40.27 (2) (h) and specifies that election results shall be reported to the school district clerk. [Bill 353-S]

120.06 History: 1967 c. 92; Stats. 1967 s. 120.06; 1969 c. 195.

Legislative Council Note, 1967: Sub. (1) (intro.) based on s. 40.27 (3) (a). Sub. (1) (a) based on s. 40.27 (3) (b). Sub. (1) (b) based on s. 40.27 (3) (c) and (d).

Sub. (2) revises s. 40.27 (3) (dm) and (e) and adds specific dates for the performance of certain steps in the election process.

Sub. (3) based on s. 40.27 (3) (f).

Sub. (4) based on s. 40.27 (3) (g).

Sub. (5) revises s. 40.27 (4) (b).

Sub. (6) revises s. 40.27 (4) (c) and (e).

Sub. (7) based on ss. 40.27 (3) (h) and (i), 40.27 (4) (d) 4 and 40.27 (4) (L) 3. [Bill 353-S]

120.08 History: 1967 c. 92; Stats. 1967 s. 120.08.

Legislative Council Note, 1967: Introductory paragraph is new.

Sub. (1) based on s. 40.20 (1), (2) and (3) and incorporates s. 40.85 (1) and (2).

Sub. (2) (a) revises s. 40.20 (4) and incorporates s. 40.85 (4). The number of electors required to request a special meeting in common and union high school districts is made uniform and the number of signatures needed to make such a request is increased and made identical to the number needed to request a change in the method of electing school board members. The increase in the number of signatures required recognizes the considerable increase in the size and population of common and union high school districts. The 5-voter requirement for a special meeting in a common school district appeared in the first Wisconsin statutes in 1849 (see ch. 19, s. 9, 1849 stats.) and has not been increased since that time. Sub. (2) (b) restates s. 40.20 (5) and incorporates s. 40.85 (1). Sub. (2) (c) revises s. 40.24 and incorporates s. 40.85 (1).

Sub. (3) based on s. 40.20 (6) and incorporates s. 40.85 (1) and clarifies that this subsection applies to special, as well as annual, meetings. [Bill 353-S]

Under sec. 427, Stats. 1915, which provided that a given subject should not be considered at more than one special meeting per year, where the first special meeting was illegal, another meeting could be legally called for the same purpose within the year. 6 Atty. Gen. 46.

A request for a special meeting to vote on the question of improving a school building and the conduct of such meeting is discussed in 23 Atty. Gen. 786.

The electors at an annual school district meeting may change the hour of the day but not the date specified in 40.03 (1) for holding the next annual meeting. A person otherwise regularly elected to a school district office at such meeting may be a de facto officer of the district. The fact that the money was borrowed by a school district pursuant to action taken at such meeting does not necessarily preclude recovery of the amount loaned. 42 Atty. Gen. 30.

120.09 History: 1967 c. 92; Stats. 1967 s. 120.09.

Legislative Council Note, 1967: Revises s. 40.21 and incorporates a portion of s. 40.85 (1). The present 30-day requirement is raised to 60 days. [Bill 353-S]

120.10 History: 1967 c. 92, 313; Stats. 1967 s. 120.10; 1969 c. 154.

Legislative Council Note, 1967: Introductory paragraph like s. 40.22 (intro.) and includes union high school districts. Under present s. 40.86 (7) the annual meeting of a union high school district is authorized to exercise the powers of the annual meeting of a common school district.

Sub. (1) restates s. 40.22 (1).

Sub. (2) like s. 40.22 (2).

Sub. (3) based on s. 40.22 (14) and s. 40.26 (4) (part of 3rd sentence). Since the word

"teacher" means the same thing it is used in place of the present word "departments."

Sub. (4) restates s. 40.22 (14a). The last sentence of s. 40.22 (14a) is deleted to permit prior authorization for payment of these expenses.

Sub. (5) like s. 40.22 (4) and incorporates s. 40.86 (2).

Sub. (6) restates s. 40.22 (5) and incorporates s. 40.86 (2).

Sub. (7) restates s. 40.22 (6).

Sub. (8) based on s. 40.22 (7).

Sub. (9) like s. 40.22 (9).

Sub. (10) revises s. 40.22 (17) (a). Present s. 40.22 (17) (b) and (c) deleted because the requirement that all territory be in a high school district made these provisions obsolete.

Sub. (11) identical to s. 40.22 (10).

Sub. (12) restates s. 40.22 (8).

Sub. (13) based on s. 40.22 (12) and incorporates s. 40.86 (5).

Sub. (14) like s. 40.22 (13).

Sub. (15) based on s. 40.22 (11) and s. 40.86 (4) which are merged. The "conditions" could mean free books, books supplied on a rental basis or otherwise.

Sub. (16) revises s. 40.22 (15).

Sub. (17) like s. 40.22 (16).

Sub. (18) identical to s. 40.22 (20).

Sub. (19) like s. 40.86 (3). [Bill 353-S]

On limitation on indebtedness and direct annual tax to pay debt see notes to sec. 3, art. XI.

It is competent for the electors at a regularly called special meeting to provide for the employment of an attorney to defend an action against the district. *McCaffrey v. School Dist.* 74 W 100, 42 NW 103.

Members of a committee appointed at a district meeting to defend the district in a pending suit are not officers of district so as to make a contract with one of their number improper. *McCaffrey v. School Dist.* 74 W 100, 42 NW 103.

The district meeting may assume liability for a claim which could not be enforced against it at law, as to levy a tax for and authorize payment of a claim of a subcontractor for work and materials furnished to the principal contractor who defaulted when the actual value of the building exceeded the contract cost. *Lafebre v. Board of Education*, 81 W 660, 51 NW 952.

On the effect of a failure to vote on items separately, see *Hixon v. Oneida County*, 82 W 515, 52 NW 445.

Laborers and materialmen have no lien upon the property of a school district for labor and materials furnished for a school building. *Electric A. Co. v. United States F. & G. Co.* 110 W 438, 85 NW 648.

Plaintiff made a contract with a school district to furnish all the mill work for a school for \$850. At the time of making this contract the school district was indebted up to within \$594.44 of the constitutional limit of indebtedness. A school district meeting with full notice of the facts authorized the board to borrow a further sum and voted the levy of a tax of \$1,600 therefor. Such action was a ratification of the action of the building committee in contracting for the building of a schoolhouse without the funds having been provided, notwithstanding that the vote by which the levy was attempted to be made was

illegal and void. The contract was binding upon the district up to the amount of the constitutional limit of indebtedness, and the plaintiff could recover the amount of \$594.44. *McGillivray v. Joint School Dist.*, 112 W 354, 88 NW 310.

The district meeting cannot authorize the school board to contract a debt on behalf of the district or to levy a tax beyond the limit it may itself go; nor can it ratify a contract or act of the board which it would have no power to authorize in the first instance. *Nevil v. Clifford*, 63 W 435, 24 NW 65; *Montpelier S. B. & T. Co. v. School Dist.* 115 W 622, 92 NW 439.

When an annual school district meeting votes a tax to raise a specified sum to build a schoolhouse, it thereby fixes the maximum cost and the school board has no authority in its conduct of building operations to bind the district in excess of the amount voted. But the action of the board in procuring a building at a greater cost can be validated by subsequent action of the district. *O'Laughlin v. Dorn*, 168 W 205, 169 NW 562.

A school district is not a municipal corporation. It is but the agent for administering the public education system of the state and has only express powers and those necessarily implied. The courts will not inquire into the motives of a legislative body. The legislative body of a school district, if any, is the school district meeting. The designation of a schoolhouse site, or providing for the building of a schoolhouse, is ministerial rather than legislative, in character, and the power relative thereto cannot be exercised to gratify whim, caprice or passion, but must be exercised in good faith and in the public interest, and for the purpose of accomplishing, rather than defeating, the purpose for which the power is conferred. Mandamus will lie to compel the operation of school the minimum period of time, and to levy the necessary taxes therefor. *Iverson v. Union Free High School Dist.* 186 W 342, 202 NW 788.

A bank delivered money to the school district treasurer on orders illegally issued. The funds were intended as a loan to the district. In an action for money had and received, the bank was bound to prove that the funds were actually used by the district for lawful purposes, as a condition of recovery. The failure of the bank to demand payment within 6 months after the loan was made was laches. *First Nat. Bank v. Joint School Dist.* 187 W 547, 203 NW 762.

A free high school district board is authorized to bring an action without authority of the electors only where management, control and conservation of property and affairs of the district require speedy application for process. *State ex rel. Hawkins Free High School Dist. v. Nelson*, 212 W 116, 249 NW 172.

The district meeting has power to determine which property is no longer needed, so that, where the electors voted to close a specified one of 2 schools located within the district, the school board may not continue to operate such school. *State ex rel. Wiedenhoft v. Anderson*, 248 W 566, 22 NW (2d) 516.

The fact that a district meeting does not make provision for transportation does not limit the power of the school board to provide

transportation. *Van Ness v. Rindle*, 252 W 181, 31 NW (2d) 168.

After a school district has obtained a loan from the state trust funds the electors may request a special meeting of the district to decide on a new site. A change of site does not affect the validity of the loan. 7 Atty. Gen. 208.

Under 40.56, Stats. 1923, electors of a high school district do not have the power to suspend high school. 13 Atty. Gen. 541.

A salary voted in excess of the statutory maximum is illegal, and, if paid, action for return thereof to the district treasury may be maintained against all members of the school board participating in such illegal payment. 19 Atty. Gen. 43.

A construction contract let by a building committee appointed by a school district meeting is void, since the school district and school board may not delegate powers vested in them. 27 Atty. Gen. 349.

A common school district does not have legal authority to establish a junior college. 29 Atty. Gen. 96.

Powers and duties of a school district and board are limited to property under control of the district. The district may rent a school building furnished by the U. S. government on federal lands where additional facilities are required to accommodate children of the district. The obligation of the district to furnish school facilities for children of families residing in a federal housing project on government-owned lands within the district is the same as its obligation to other children of the district. 31 Atty. Gen. 266.

Where land is located in a common school district which does not maintain a high school, and is also located in a high school district, each district meeting has power to vote a tax for the operation of the school or schools maintained by it in an amount not to exceed 20 mills of the last state equalized valuation of the taxable property in the district, so that taxes aggregating 40 mills could be voted for such purposes against the land mentioned in event the maximum tax were voted by both the common school and high school district meetings. 37 Atty. Gen. 229.

120.11 History: 1967 c. 92; Stats. 1967 s. 120.11.

Legislative Council Note, 1967: Sub. (1) revises s. 40.28 (1) (1st, 5th, 6th and 7th sentences) and incorporates a portion of s. 40.87 (2).

Sub. (2) based on s. 40.28 (1) (2nd, 3rd and 4th sentences).

Sub. (3) based on s. 40.28 (2).

Sub. (4) based on s. 40.28 (3). [Bill 353-S] See note to 118.21, citing *School Dist. v. Baier*, 98 W 22, 73 NW 448.

120.12 History: 1967 c. 92; Stats. 1967 s. 120.12; 1969 c. 310.

Legislative Council Note, 1967: Introductory paragraph is new and makes unnecessary the repetition of "the school board shall" in the various subsections. Under s. 40.87 (2) the school boards of union high school districts have the duties of school boards of common school districts.

Sub. (1) restates s. 40.29 (1).

Sub. (2) based on s. 40.29 (12).

Sub. (3) based on s. 40.29 (8) and incorporates s. 40.88 (4). The "3rd Monday in October" date is made uniformly applicable.

Sub. (4) based on s. 40.29 (8a).

Sub. (5) like s. 40.29 (2).

Sub. (6) like s. 40.29 (3).

Sub. (7) restates s. 40.29 (11).

Sub. (8) restates s. 40.29 (5).

Sub. (9) revises s. 40.29 (6).

Sub. (10) based on s. 40.29 (7).

Sub. (11) like s. 40.29 (13).

Sub. (12) like s. 40.29 (4).

Sub. (13) like s. 40.29 (10).

Sub. (14) based on s. 40.89 (1) and makes it clear that this subsection applies to the school board of a union high school district and a K-12 common school district. [Bill 353-S]

The school board has no power to build a school or to cause one to be built and make the cost of it a charge against the district. *Nevil v. Clifford*, 63 W 435, 24 NW 65.

If a contract to erect a school is void or voidable the school board cannot enjoin the contractor from proceeding with his work, because the district cannot be damaged if he does proceed. The district may decline to ratify or affirm the contract and may successfully defend against an action for the contract price. *Joint School Dist. v. Reid*, 82 W 96, 51 NW 1089.

Sec. 441, Stats. 1913, empowers the school board to discharge a teacher who has failed to perform his duties under his contract. *Curkeet v. Joint School Dist.*, 159 W 149, 149 NW 708.

Schoolhouses are to be built out of funds provided for that purpose. Funds for maintenance or operation cannot be diverted to that purpose. *Riesen v. School Dist.* 192 W 283, 212 NW 783.

A contract of employment will not be implied against the school district. *School Dist. v. Industrial Comm.* 194 W 342, 216 NW 844.

40.16 (2), Stats. 1937, is not an amplification of the safe-place statute as applied to school districts, does not make the school district liable to third persons for the failure of the board to perform the enumerated duties, and does not abrogate the common-law rule of nonliability of a municipality for negligence in the performance of a governmental function. *Lawver v. Joint District*, 232 W 608, 288 NW 192.

See note to 120.10, citing *State ex rel. Wiedenhoft v. Anderson*, 248 W 566, 22 NW (2d) 516.

The duty to keep the school buildings and grounds in good repair and in a "safe" condition is imposed by 40.29 (2), Stats. 1951, on the school board and not on the individual members of the board; the liability, if any, to third parties for injuries sustained as the result of a failure to perform such duty is not a personal liability of the individual members of the board. *Meyer v. Carman*, 271 W 329, 73 NW (2d) 514.

When a sufficient tax has not been voted by the electors, failure of school district officers to levy a maintenance tax is willful neglect of duty imposed by law. 12 Atty. Gen. 290.

A school board may engage a teacher at a higher salary than that fixed by electors at the annual meeting if the salary so fixed is

so low that the board cannot obtain a teacher; it may levy a tax or use surplus funds not specifically appropriated for other purposes. 13 Atty. Gen. 380.

A determination by a high school board of the necessity for additional tax under the provisions of 40.52 (4), Stats. 1923, is final in the absence of abuse of discretion. 14 Atty. Gen. 148.

A school board has no power to remodel a school building unless an appropriation therefor is made at the annual meeting. Members of the board who fail to file an inventory of district property annually are guilty of malfeasance in office. 20 Atty. Gen. 850.

A school board has power to raise sufficient funds for operation of a school regardless of a referendum limiting the amount to be raised by taxes. 25 Atty. Gen. 411.

Neither a school board nor a city is liable for injuries to pupils or others arising out of negligence in operation of schools or conduct of athletic activities in connection therewith, except that neither may maintain a public nuisance. 26 Atty. Gen. 59.

A common school district board may not employ an attorney at a stipulated fee per month to handle actions or proceedings in which the district is not at the time interested. 27 Atty. Gen. 747.

The board of a common school district may employ an attorney at a stipulated fee per month to handle legal work of the district other than actions or proceedings. 27 Atty. Gen. 826.

Under 40.16 (2), Stats. 1941, school districts may obtain insurance against liability for accidental injuries to members of the public caused by defective construction or maintenance of school buildings under 101.06. But school districts have no authority to obtain insurance against injuries for which they are not liable, such as injuries caused by negligence of employes or by any other cause not covered by the safe-place statute. (18 Atty. Gen. 559 reviewed and modified.) 31 Atty. Gen. 176.

See note to 120.10, citing 31 Atty. Gen. 266.

A school district board has power and authority to permit private school students to attend the district school on a part-time basis. 53 Atty. Gen. 187.

120.13 History: 1967 c. 92; Stats. 1967 s. 120.13; 1969 c. 276 s. 589 (1) (a); 1969 c. 301.

Legislative Council Note, 1967: Introductory paragraph is new and makes unnecessary the repetition of "the school board may" in the various subsections. Under s. 40.87 (2) the school boards of union high school districts have the powers of school boards of common school districts.

Sub. (1) revises s. 40.30 (17).

Sub. (2) based on s. 40.30 (19).

Sub. (3) based on s. 40.30 (14).

Sub. (4) based on s. 40.30 (11) and (12).

Sub. (5) based on s. 40.30 (15).

Sub. (6) revises s. 40.30 (8).

Sub. (7) restates s. 40.30 (16).

Sub. (8) restates s. 40.30 (17m).

Sub. (9) like s. 40.30 (21).

Sub. (10) restates s. 40.30 (9).

Sub. (11) revises s. 40.30 (10) and (10c).

Sub. (12) based on s. 40.30 (13).

Sub. (13) based on s. 40.30 (7). Last sentence deleted because it is repetitious.

Sub. (14) based on s. 40.30 (13).

Sub. (15) based on s. 40.39 (2) (1st sentence). See note to s. 120.12 (14).

Sub. (16) restates s. 40.30 (20).

Sub. (17) restates s. 40.30 (2).

Sub. (18) restates s. 40.30 (3).

Sub. (19) based on s. 40.30 (5).

Sub. (20) revises s. 40.30 (4).

Sub. (21) restates s. 40.30 (6). [Bill 353-S]

A school board has the power to make rules and regulations for the organization, graduation and government of the school, and to suspend any pupil for noncompliance with the reasonable rules established by it or by the teacher with its consent. *Morrow v. Wood*, 35 W 59; *State ex rel. Burpee v. Burton*, 45 W 150.

A pupil cannot be suspended for refusing to comply with a regulation that each pupil, on returning to school after recess, shall bring into the room a stick of wood. *Mandamus* lies to compel officers to reinstate a pupil wrongfully suspended. *State ex rel. Bowe v. Board of Education*, 63 W 234, 23 NW 102.

A school board alone has the power of expulsion and therefore the wrongful exaction of tuition by a teacher and principal of a school as a condition of allowing the pupil to remain in school, and the payment of such fee under protest, are not equivalent to expulsion. *State ex rel. Smith v. Board of Education*, 96 W 95, 71 NW 123.

School authorities are vested with a broad discretion in the government and discipline of pupils, and courts will not interfere with the exercise of such authority unless it has been unreasonably or illegally exercised. They may suspend a pupil for an offense committed outside of school hours, and not in the presence of the teacher, where such offense has a direct and immediate tendency to influence the conduct of the pupils while in the schoolroom. *State ex rel. Dresser v. District Board*, 135 W 619, 116 NW 232.

A school board has power, acting in good faith, to determine that by reason of physical ailments the presence of a boy in school was harmful to the school and to other pupils, and that therefore he should be excluded. Such a determination by a school board should not be interfered with by the courts unless it is shown to have been illegal or unreasonable. *State ex rel. Beattie v. Board of Education*, 169 W 231, 172 NW 153.

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing *Breen v. Kahl*, 296 F Supp. 702.

A resolution of a school board duly recorded in the minutes is a rule of the board and is enforceable by expulsion. 8 Atty. Gen. 110.

A school board may grant permission to hold Chautauquas, the proceeds of which are turned over to the school fund of the city, if such lectures are held under the "auspices" of the school. 9 Atty. Gen. 484.

A resolution by a school district to raise \$300 for band purposes is legal if the school board determined to give instruction in band music and the fund is to be used for that purpose. 17 Atty. Gen. 354; 18 Atty. Gen. 49.

A high school board of education has the power to abrogate, with consent of a teacher, an executory contract of employment and to

enter into a new contract with the teacher calling for a salary in excess of that in the first contract. 35 Atty. Gen. 156.

See note to 118.14, citing 38 Atty. Gen. 424.

Under 40.30 (12), Stats. 1957, after 2 years of operation on a tuition basis, a district is not entitled to aids without the approval of the state superintendent. 47 Atty. Gen. 162.

On released time for religious instruction see 38 Atty. Gen. 281, and 48 Atty. Gen. 121.

40.30 (14), Stats. 1965, which authorizes construction contracts between school districts and other municipalities, is a valid enactment. 56 Atty. Gen. 1.

Basis for validity of released time program for religious education. 35 MLR 385.

High school authorities' power to expel students for wearing long hair. 1969 WLR 303.

120.14 History: 1967 c. 92; Stats. 1967 s. 120.14.

Legislative Council Note, 1967: Consolidates in one section the various references to an audit of school district accounts.

Sub. (1) based on and rearranges s. 40.29 (14). It makes general a requirement that now applies to almost all school districts and thus makes obsolete s. 40.23 (1) and (1m) which are deleted.

Sub. (2) based on s. 40.30 (1). Sub. (3) based on s. 40.22 (18). [Bill 353-S]

120.15 History: 1967 c. 92; Stats. 1967 s. 120.15.

Legislative Council Note, 1967: Introductory paragraph is from s. 40.33 (intro.) and incorporates a portion of s. 40.87 (2).

Sub. (1) based on ss. 40.33 (1) and 40.88 (1).

Sub. (2) restates first part of s. 40.33 (2).

Sub. (3) revises last part of s. 40.33 (2).

Sub. (4) revises s. 40.33 (3).

Sub. (5) restates s. 40.33 (4). [Bill 353-S]

A school director can recover from the district the amount of necessary expenses which he may have been put to by attending suits by or against it; but before he can recover he must present his claim to the district board or district meeting. *Fobes v. School Dist. 10 W 117*.

A school director may bring suit for an injury to the schoolhouse without direction from the electors. *School Dist. v. Arnold*, 21 W 657.

Where the electors of a school district appointed a committee of 3, of which the plaintiff (an attorney at law) was a member, to conduct the defense in an action against the district, and at a subsequent meeting of the electors a proposition to rescind the appointment of such committee was voted down, there was a valid employment of the plaintiff as an attorney by the district, and he was entitled to compensation for his services. *McCaffrey v. School Dist. 74 W 100, 42 NW 103*.

Under sec. 442, Stats. 1898, it is the duty of a director to begin an action on the treasurer's bond but this power is subordinate to that of the district meeting, which may dismiss the action against the protest of the director. *School Dist. v. Clifcorn*, 133 W 465, 112 NW 1099.

120.16 History: 1967 c. 92; Stats. 1967 s. 120.16.

Legislative Council Note, 1967: Introduc-

tory paragraph is from s. 40.34 (2) (intro.) and incorporates a portion of s. 40.87 (2).

Sub. (1) based on s. 40.34 (1).

Sub. (2) revises s. 40.34 (2) (a) and part of s. 40.88 (1) and restates s. 40.34 (3).

Sub. (3) revises s. 40.34 (2) (b).

Sub. (4) based on s. 40.34 (2) (c) and permits the presentation of a summarized statement of disbursements by the treasurer and eliminates the requirement that he exhibit each voucher.

Sub. (5) revises s. 40.34 (2) (d). [Bill 353-S]

A school district treasurer is personally liable to a teacher after presentation of a proper order drawn on him in favor of the teacher, and payment demanded and refused, if he has sufficient moneys belonging to the district to pay the same. *Edson v. Hayden*, 18 W 628.

A school district treasurer duly elected and qualified, who failed upon reelection to give a new bond but continued acting as treasurer until his death, was a de facto and a de jure officer. But the sureties on his bond for the first term were held not liable beyond the first term. *Board of School Directors v. Kuhnke*, 155 W 343, 144 NW 987.

A school district treasurer's bond was duly executed by himself and sureties, except that the penal sum was left blank. They all intended to give and believed that they had given the statutory bond. They authorized the director and clerk to ascertain the proper amount required by law and insert it in the blank space. The bond was not invalid and did not prevent the treasurer from qualifying. *State ex rel. Dorwin v. White*, 161 W 170, 152 NW 825.

A school district treasurer is the custodian of funds of the district, which include proceeds of insurance collected on a fire loss, and if he accepts such funds through an agent he has the same responsibility as though he had the funds in hand. *School Dist. v. Larson*, 196 W 211, 218 NW 847.

The official bond required by 40.10, Stats. 1929, to be filed by the treasurer obligates such officer to safely keep and account for moneys which come to his hands. Such public officer is an insurer of public funds lawfully in his possession and is therefore liable for losses which occur even without his fault. The treasurer and his sureties may escape financial liability in event the funds are deposited in a bank designated by school officers. 18 Atty. Gen. 698.

It is the duty of a school district treasurer to pay an order in proper form, if he has in his hands funds of the district of sufficient amount. Refusal to do so creates personal liability to the holder of the order and constitutes malfeasance. 21 Atty. Gen. 787.

A school treasurer may refuse to turn over money to his successor, who was elected but did not file a bond sufficient to cover funds in the treasury. 24 Atty. Gen. 640.

The state superintendent may refuse to certify state aid to a school district whose treasurer fails to furnish the bond required by 40.10 (1), Stats. 1937. 27 Atty. Gen. 82.

See note to 76.28, citing 27 Atty. Gen. 537.

120.17 History: 1967 c. 92; Stats. 1967 s. 120.17; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Introductory

tory paragraph is from s. 40.35 (intro.) and incorporates a portion of s. 40.87 (2).

Sub. (1) revises s. 40.35 (1).

Sub. (2) based on s. 40.35 (2) and clarifies that the school district clerk shall record proceedings of special, as well as annual, meetings.

Sub. (3) like s. 40.35 (3).

Sub. (4) like s. 40.35 (4).

Sub. (5) based on s. 40.35 (5) and clarifies that a special, as well as annual, meeting may direct that orders be drawn on the school district treasurer.

Sub. (6) revises s. 40.35 (6).

Sub. (7) restates last part of s. 40.35 (7).

Sub. (8) based on s. 40.35 (8) and (8a) and incorporates part of s. 40.88 (1), (2) and (3).

Sub. (8) (a) based on s. 40.35 (8) (1st and 2nd sentences). The provisions presently stated separately for towns within the school district and municipalities within a joint school district are combined and clarified. Sub. (8) (b) based on s. 40.35 (8) (last sentence). Sub. (8) (c) revises s. 40.35 (8a).

Sub. (9) like s. 40.35 (9).

Sub. (10) is new and gives the school district clerk the authority to give the oath of office to school board members. [Bill 353-S]

Under sec. 1, ch. 81, Laws 1869, a certificate of a clerk which merely stated "that, at the annual school meeting, voted to raise \$300 for teachers' salaries, in building a wood shed, and all incidental expenses during the year," was not sufficient to confer authority to levy the tax. *Arnold v. Juneau County*, 43 W 627.

The failure of the clerk to file the statement required goes to the groundwork of the tax. *Powell v. St. Croix County*, 46 W 210, 50 NW 1013.

No order can be drawn except where the money is due and immediately payable to the person to whom it is issued, and where the funds for the payment of such debt have been apportioned to the district or voted by it to the payment thereof; orders chargeable on taxes to be thereafter voted by the district, in the nature of contracts payable in the future, are void. *Kane v. School Dist.* 52 W 502, 9 NW 459.

The offices of town clerk and school district clerk may be held by the same person. 5 Atty. Gen. 852.

The offices of school district clerk and village treasurer are compatible. 17 Atty. Gen. 493.

120.18 History: 1967 c. 92; Stats. 1967 s. 120.18; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Introductory paragraph based on and combines s. 40.74 (1) (intro.), (2) and (3) and incorporates a portion of s. 40.87 (2). Consistent with present departmental practice, the (intro.) provides that the state superintendent can request portions of the annual report at such times as he determines, but all parts of the annual report must be filed by August 15. Since the annual report is of substantial bulk, it is a more realistic procedure than under present law to require that a copy of the report be sent to the school district administrator with notification to the person in charge of the separate schools that the report is on file in the central office.

Sub. (2) (1st sentence) restates s. 119.13 (2).
Sub. (2) (2nd sentence) revises s. 119.13 (3) (first phrase). [Bill 2-S]

119.26 History: 1969 c. 45; Stats. 1969 s. 119.26.

Legislative Council Note, 1969: Restates s. 119.135. [Bill 2-S]

119.28 History: 1969 c. 45; Stats. 1969 s. 119.28.

Legislative Council Note, 1969: Sub. (1) restates s. 119.09 (4) (1st phrase). Instead of enumerating the various types of handicapped children, the cross reference to the general definition of "handicapped children" is used.

Sub. (2) like s. 119.09 (4) (2nd phrase).

Sub. (3) like s. 119.09 (4) (1st part of 3rd phrase).

Sub. (4) revises s. 119.09 (4) (2nd part of 3rd phrase).

Sub. (5) based on s. 119.09 (4) (last part of 3rd phrase).

Present s. 119.09 (4) (last phrase) is deleted because it is covered by cross reference under s. 119.04.

Present s. 119.13 (3) (2nd phrase) is deleted because it is covered in s. 115.82 (1) (b) (last sentence) which applies to Milwaukee by cross reference in s. 119.04.

Present ss. 119.13 (3) (last 4 phrases) and 119.08 (4) (j) are deleted because the same material is covered in the basic law relating to handicapped children (see s. 115.82) which applies to Milwaukee by cross reference in s. 119.04. Also, the deletions are warranted because in some instances the provisions of ss. 119.13 (3) and 119.08 (4) (j) conflict with the provisions of s. 115.82. [Bill 2-S]

119.30 History: 1969 c. 45; Stats. 1969 s. 119.30.

Legislative Council Note, 1969: Sub. (1) restates s. 119.28 (1) and (2) (1st sentence) and (1st phrase of 2nd sentence). Obsolete material in s. 119.28 (1) is deleted.

Sub. (2) restates s. 119.28 (2) (last phrase of 2nd sentence) and (last sentence).

Sub. (3) revises s. 119.28 (5). In the present law, there is a reference to "trade school fund". Ch. 213, laws of 1941, in effect included the old "trade school fund" in the "school operations fund" and the appropriate change is made here.

Present s. 119.28 (3) is deleted. It is a transitional provision relating to trade school budgets which will not be needed again.

Present s. 119.28 (4) is deleted because it is covered generally. [Bill 2-S]

119.32 History: 1969 c. 45; Stats. 1969 s. 119.32.

Legislative Council Note, 1969: Sub. (1) restates s. 119.09 (1) (1st sentence) and (1st part of 2nd sentence). An obsolete provision is deleted which is applicable only to the superintendent of schools who was in office on April 6, 1957.

Sub. (2) restates and rearranges s. 119.09 (2) (1st sentence).

Sub. (3) based on s. 119.09 (2) (2nd sentence).

Sub. (4) like s. 119.09 (2) (last sentence).

Sub. (5) restates s. 119.09 (3) (2nd sentence). [Bill 2-S]

119.34 History: 1969 c. 45; Stats. 1969 s. 119.34.

Legislative Council Note, 1969: Sub. (1) revises s. 119.10 (1st sentence).

Sub. (2) restates s. 119.10 (2nd sentence).

Sub. (3) revises s. 119.10 (1st part of 3rd sentence).

Sub. (4) based on s. 119.10 (last sentence) and deletes unnecessary detail relating to census expenses. [Bill 2-S]

119.36 History: 1969 c. 45; Stats. 1969 s. 119.36.

Legislative Council Note, 1969: Based on s. 119.12. [Bill 2-S]

119.38 History: 1969 c. 45; Stats. 1969 s. 119.38.

Legislative Council Note, 1969: Restates s. 119.11 (1) (1st and 2nd sentences). [Bill 2-S]

119.40 History: 1969 c. 45; Stats. 1969 s. 119.40.

Legislative Council Note, 1969: Sub. (1) (a) revises s. 119.16 (3). An archaic reference to "common or graded" schools is deleted as is an outdated minimum salary schedule. A reference to a 200-day teaching limitation is deleted here, because it is covered in s. 119.18 (6) (a).

Sub. (1) (b) restates s. 119.16 (4) (a).

Sub. (2) identical to s. 119.16 (4) (b).

Present s. 119.16 (4) (c) is deleted. It is an obsolete provision relating to teacher classification which was enacted for a specific purpose and is no longer necessary. [Bill 2-S]

Editor's Note: Sec. 3, ch. 29, Spl. S. 1920, providing that the Milwaukee school board "shall annually determine and fix a schedule of salaries for all 'teachers' in the common or graded schools of such city" was discussed and applied in *Peterson v. Milwaukee*, 226 W 540, 277 NW 128.

119.42 History: 1969 c. 45; Stats. 1969 s. 119.42.

Legislative Council Note, 1969: Sub. (1) based on s. 119.24 (18). The 3rd sentence modifies existing law so that it is clear that this is an initial provision.

Sub. (2) restates s. 119.16 (1) (d). [Bill 2-S]

Editor's Note: The following cases (among others) dealt with the application of prior statutory provisions to questions concerning discharge, probation and acquisition of tenure in the Milwaukee school system: *State ex rel. Thompson v. Board of School Directors*, 179 W 284, 191 NW 746; *State ex rel. Mellen v. Trustees*, 185 W 653, 201 NW 383; *State ex rel. Nyberg v. School Directors*, 190 W 570, 209 NW 683; *State ex rel. Schroeder v. Board of School Directors*, 225 W 444, 274 NW 301; *Blau v. Milwaukee*, 232 W 197, 285 NW 347, 286 NW 874; 287 NW 594; *Morgan v. Potter*, 238 W 246, 298 NW 763; and *State ex rel. Wasilewski v. Board of School Directors*, 14 W (2d) 243, 111 NW (2d) 198.

119.44 History: 1969 c. 45; Stats. 1969 s. 119.44.

Legislative Council Note, 1969: Based on s. 119.235. [Bill 2-S]

119.46 History: 1969 c. 45; 1969 c. 154 ss. 295g, 295r; Stats. 1969 s. 119.46.

Legislative Council Note, 1969: Sub. (1) based on s. 119.16 (1) (a) (1st sentence). The specific reference in present law to "trade schools" is deleted because the general language of this subsection covers those schools.

Sub. (2) based on s. 119.16 (1) (b) (1st sentence, 1st part). The present law is considerably shortened by deleting the specific levy rate requirements and inserting a cross reference to s. 65.07 (1) (e), which states the specific requirements. [Bill 2-S]

119.47 History: 1969 c. 45; Stats. 1969 s. 119.47.

Legislative Council Note, 1969: New and is designed primarily to cross refer to board functions in s. 43.50. [Bill 2-S]

119.48 History: 1969 c. 45; Stats. 1969 s. 119.48.

Legislative Council Note, 1969: Sub. (1) based on s. 119.16 (1) (a) (2nd sentence) and (b) (part of last part of 1st sentence and last sentence).

Sub. (2) revises s. 119.16 (1) (b) (2nd sentence).

Sub. (3) (a) based on s. 119.16 (1) (b) (part of last part of 1st sentence). The present law is shortened by deleting the specific levy rate requirement and inserting a cross reference to s. 65.07 (1) (f), which states the specific requirement.

Sub. (3) (b) restates s. 119.16 (1) (b) (3rd sentence). [Bill 2-S]

119.49 History: 1969 c. 45; Stats. 1969 s. 119.49.

Legislative Council Note, 1969: Revises s. 119.17. [Bill 2-S]

119.50 History: 1969 c. 45; Stats. 1969 s. 119.50.

Legislative Council Note, 1969: Restates s. 119.16 (2). The reference to the "finance committee of the board" is deleted. This committee is not created by statute and does not in fact perform the function indicated. [Bill 2-S]

119.52 History: 1969 c. 45; Stats. 1969 s. 119.52.

Legislative Council Note, 1969: Revises and rearranges s. 119.07 (2) (last part) and (3). [Bill 2-S]

119.54 History: 1969 c. 45; Stats. 1969 s. 119.54.

Legislative Council Note, 1969: Based on s. 119.16 (1) (c). In sub. (2), the necessary additions are made to take into account the possibility that an insufficient petition may be filed. In sub. (3) (a), the "regular election" date is geared to "the date of such certificate". [Bill 2-S]

119.58 History: 1969 c. 45; Stats. 1969 s. 119.58.

Legislative Council Note, 1969: Based on s. 119.21 (2). [Bill 2-S]

119.60 History: 1969 c. 45; Stats. 1969 s. 119.60.

Legislative Council Note, 1969: Restates s. 119.21 (1). [Bill 2-S]

119.62 History: 1969 c. 45; Stats. 1969 s. 119.62.

Legislative Council Note, 1969: Restates s. 119.18. [Bill 2-S]

119.66 History: 1969 c. 45; Stats. 1969 s. 119.66.

Legislative Council Note, 1969: Revises s. 119.19. The word "janitor" was deleted in the enumeration in the 2nd sentence, since it is assumed this position is covered by the term "or other employe of the board". [Bill 2-S]

119.68 History: 1969 c. 45; Stats. 1969 s. 119.68.

Legislative Council Note, 1969: Sub. (1) restates s. 119.11 (1) (3rd, 4th and last sentences).

Sub. (2) restates s. 119.11 (2).

Present s. 119.11 (3) is deleted. The provision authorized a procedure for making payments for invalid contracts under certain circumstances. This provision was enacted as continuing law in the 1941 codification of the Milwaukee school laws, in the mistaken belief that it served as a counterpart to a provision in the general school laws. That general school law provision, however, was not continuing law but was limited to pre-1926 actions. In the 1953 recodification of the school laws, this provision was repealed as obsolete. [Bill 2-S]

In an action for negligence against a third party the school board cannot be impleaded as a defendant; such an action lies only against the city. *Helmin v. Student Transportation Co.* 29 W (2d) 302, 139 NW (2d) 103.

CHAPTER 120.

School District Government.

120.001 History: 1967 c. 92; Stats. 1967 s. 120.001.

Legislative Council Note, 1967: This section is new and specifies the types of school districts to which this subchapter applies. [Bill 353-S]

120.01 History: 1967 c. 92; Stats. 1967 s. 120.01.

Legislative Council Note, 1967: Restates and rearranges s. 40.26 (1) and adds a reference to the special method under present s. 40.26 (8) [s. 120.02 (2) (a)] for increasing school boards to 11 members. [Bill 353-S]

120.02 History: 1967 c. 92, 313; Stats. 1967 s. 120.02; 1969 c. 195 ss. 4, 10.

Legislative Council Note, 1967: Sub. (1) based on s. 40.26 (2).

Sub. (2) based on s. 40.26 (8).

Sub. (3) (a) to (c) revises s. 40.26 (3). Sub. (3) (d) restates s. 40.26 (7). The last sentence of par. (d) is based in part on s. 40.87 (1) (last sentence) and fills a void in existing law by giving the responsibility for the preparation

of an election plan to the state superintendent in those cases where he is required to approve the establishment of a union high school district under the special procedure of s. 117.05. Sub. (3) (e) like s. 40.26 (6).

Present s. 40.26 (5) deleted because s. 117.01 (2) (a) and (4) covers the same material. [Bill 353-S]

120.03 History: 1967 c. 92; Stats. 1967 s. 120.03; 1969 c. 195.

Legislative Council Note, 1967: The introductory paragraph makes it clear that the provisions of the section apply to both common and union high school districts. The provisions of s. 40.87 (1) are contained in the appropriate subsections. The last sentence of s. 40.87 (1) is deleted because it is covered in s. 120.02 (3) (d).

Sub. (1) based on part of ss. 40.25 (2nd sentence), 40.26 (4) (last sentence) and 40.27 (4) (a) and (g).

Sub. (2) restates part of ss. 40.25 (2nd sentence) and 40.26 (4) (1st sentence).

Sub. (3) (intro.) and (a) based on ss. 40.25 (4th sentence) and 40.27 (6) (intro.), (c) and (d). Sub. (3) (b) based on s. 40.27 (3) (j).

Sub. (4) based on s. 40.25 (5th and 6th sentences) and part of s. 40.35 (7).

Sub. (5) (a) based on ss. 40.25 (1st and 7th sentences) and 40.26 (4) (2nd and part of 3rd sentences). Present law uses the term "school district director." This act uses the term "president" uniformly, because in city and unified school districts the term "president" is specified by law and because, in fact if not by law, this term also is used in many common and union high school districts.

Sub. (5) (b) revises s. 40.25 (3rd sentence).

Sub. (6) revises s. 40.86 (1).

Sub. (7) based on s. 40.27 (4) (h).

Sub. (8) based on s. 40.27 (4) (f) and clarifies the method of election to fill unexpired terms.

Sub. (9) revises s. 40.28 (4).

Sub. (10) like s. 40.27 (4) (i).

Sub. (11) restates s. 40.27 (4) (j).

Sub. (12) restates s. 40.27 (4) (k). [Bill 353-S]

The offices of county judge and member of the school board are incompatible; acceptance of one vacates the other. 4 Atty. Gen. 771.

The offices of town treasurer and school director are compatible. 10 Atty. Gen. 740.

Membership upon a town board is incompatible with membership upon a school board of a common school district located within such town. 19 Atty. Gen. 353.

The offices of village trustee and treasurer of a joint school district which embraces the village are incompatible. 24 Atty. Gen. 567.

The clerk of a school district holds over when an annual school district meeting, because of a tie vote, fails to elect a successor. 25 Atty. Gen. 599.

A clerk of a school district, although irregularly elected, is a de facto clerk and proper holder of the office until removed by judicial proceedings instituted by one showing superior right to the office. 25 Atty. Gen. 672.

The offices of town clerk and school district clerk are compatible. The offices of village clerk and school district clerk are compatible. (5 Atty. Gen. 852, 23 Atty. Gen. 605 are fol-

lowed. 22 Atty. Gen. 43 is overruled.) 27 Atty. Gen. 549, 29 Atty. Gen. 384.

The offices of county board member and member of a school board are compatible. 35 Atty. Gen. 371.

The offices of city supervisor and director of a common school district are compatible. (35 Atty. Gen. 371 explained.) 37 Atty. Gen. 470.

120.04 History: 1967 c. 92; Stats. 1967 s. 120.04; 1969 c. 195.

Legislative Council Note, 1967: Sub. (1) based on s. 40.27 (1) (a) and states specifically the authority and options of common school districts regarding school board elections.

Sub. (2) based on s. 40.27 (1) (b).

Sub. (3) revises s. 40.27 (1) (d) (1st and 2nd sentences) and adds the first sentence which is a notice requirement presently applicable to elections on the day of the annual meeting.

Sub. (4) revises s. 40.27 (1) (c) (1st sentence).

Sub. (5) based on s. 40.27 (1) (d) (3rd and 4th sentences) and (e).

Sub. (6) based on s. 40.27 (1) (f) (1st and 3rd sentences) and (4) (c).

Sub. (7) based on s. 40.27 (1) (c) (2nd sentence), (f) (2nd sentence) and (g) and clarifies that all positions to be filled are voted upon at the same time. It also clarifies that the results of the election are announced at the annual meeting. [Bill 353-S]

120.05 History: 1967 c. 92; Stats. 1967 s. 120.05; 1969 c. 195.

Legislative Council Note, 1967: Sub. (1) restates part of s. 40.85 (3).

Sub. (2) (intro.) is new. Sub. (2) (a) based on s. 40.27 (2) (a) and (b). Sub. (2) (b) revises s. 40.27 (2) (c).

Sub. (3) is new and makes it clear that an election notice shall be included in the notice of the annual meeting in all cases.

Sub. (4) based on ss. 40.27 (2) (d) and 40.27 (4) (L) (intro.), 1 and 2 and specifies that a "separate petition" must meet the requirements of an original petition.

Sub. (5) based on s. 40.27 (2) (e) and adds that the notice of declaration of candidacy requirements shall be published 35 days prior to the meeting to insure that sufficient notice is given.

Sub. (6) revises s. 40.27 (2) (f).

Sub. (7) revises s. 40.27 (4) (c) and (e).

Sub. (8) restates s. 40.27 (2) (g).

Sub. (9) revises s. 40.27 (2) (h) and specifies that election results shall be reported to the school district clerk. [Bill 353-S]

120.06 History: 1967 c. 92; Stats. 1967 s. 120.06; 1969 c. 195.

Legislative Council Note, 1967: Sub. (1) (intro.) based on s. 40.27 (3) (a). Sub. (1) (a) based on s. 40.27 (3) (b). Sub. (1) (b) based on s. 40.27 (3) (c) and (d).

Sub. (2) revises s. 40.27 (3) (dm) and (e) and adds specific dates for the performance of certain steps in the election process.

Sub. (3) based on s. 40.27 (3) (f).

Sub. (4) based on s. 40.27 (3) (g).

Sub. (5) revises s. 40.27 (4) (b).

Sub. (6) revises s. 40.27 (4) (c) and (e).

Sub. (7) based on ss. 40.27 (3) (h) and (i), 40.27 (4) (d) 4 and 40.27 (4) (L) 3. [Bill 353-S]

120.08 History: 1967 c. 92; Stats. 1967 s. 120.08.

Legislative Council Note, 1967: Introductory paragraph is new.

Sub. (1) based on s. 40.20 (1), (2) and (3) and incorporates s. 40.85 (1) and (2).

Sub. (2) (a) revises s. 40.20 (4) and incorporates s. 40.85 (4). The number of electors required to request a special meeting in common and union high school districts is made uniform and the number of signatures needed to make such a request is increased and made identical to the number needed to request a change in the method of electing school board members. The increase in the number of signatures required recognizes the considerable increase in the size and population of common and union high school districts. The 5-voter requirement for a special meeting in a common school district appeared in the first Wisconsin statutes in 1849 (see ch. 19, s. 9, 1849 stats.) and has not been increased since that time. Sub. (2) (b) restates s. 40.20 (5) and incorporates s. 40.85 (1). Sub. (2) (c) revises s. 40.24 and incorporates s. 40.85 (1).

Sub. (3) based on s. 40.20 (6) and incorporates s. 40.85 (1) and clarifies that this subsection applies to special, as well as annual, meetings. [Bill 353-S]

Under sec. 427, Stats. 1915, which provided that a given subject should not be considered at more than one special meeting per year, where the first special meeting was illegal, another meeting could be legally called for the same purpose within the year. 6 Atty. Gen. 46.

A request for a special meeting to vote on the question of improving a school building and the conduct of such meeting is discussed in 23 Atty. Gen. 786.

The electors at an annual school district meeting may change the hour of the day but not the date specified in 40.03 (1) for holding the next annual meeting. A person otherwise regularly elected to a school district office at such meeting may be a de facto officer of the district. The fact that the money was borrowed by a school district pursuant to action taken at such meeting does not necessarily preclude recovery of the amount loaned. 42 Atty. Gen. 30.

120.09 History: 1967 c. 92; Stats. 1967 s. 120.09.

Legislative Council Note, 1967: Revises s. 40.21 and incorporates a portion of s. 40.85 (1). The present 30-day requirement is raised to 60 days. [Bill 353-S]

120.10 History: 1967 c. 92, 313; Stats. 1967 s. 120.10; 1969 c. 154.

Legislative Council Note, 1967: Introductory paragraph like s. 40.22 (intro.) and includes union high school districts. Under present s. 40.86 (7) the annual meeting of a union high school district is authorized to exercise the powers of the annual meeting of a common school district.

Sub. (1) restates s. 40.22 (1).

Sub. (2) like s. 40.22 (2).

Sub. (3) based on s. 40.22 (14) and s. 40.26 (4) (part of 3rd sentence). Since the word

"teacher" means the same thing it is used in place of the present word "departments."

Sub. (4) restates s. 40.22 (14a). The last sentence of s. 40.22 (14a) is deleted to permit prior authorization for payment of these expenses.

Sub. (5) like s. 40.22 (4) and incorporates s. 40.86 (2).

Sub. (6) restates s. 40.22 (5) and incorporates s. 40.86 (2).

Sub. (7) restates s. 40.22 (6).

Sub. (8) based on s. 40.22 (7).

Sub. (9) like s. 40.22 (9).

Sub. (10) revises s. 40.22 (17) (a). Present s. 40.22 (17) (b) and (c) deleted because the requirement that all territory be in a high school district made these provisions obsolete.

Sub. (11) identical to s. 40.22 (10).

Sub. (12) restates s. 40.22 (8).

Sub. (13) based on s. 40.22 (12) and incorporates s. 40.86 (5).

Sub. (14) like s. 40.22 (13).

Sub. (15) based on s. 40.22 (11) and s. 40.86 (4) which are merged. The "conditions" could mean free books, books supplied on a rental basis or otherwise.

Sub. (16) revises s. 40.22 (15).

Sub. (17) like s. 40.22 (16).

Sub. (18) identical to s. 40.22 (20).

Sub. (19) like s. 40.86 (3). [Bill 353-S]

On limitation on indebtedness and direct annual tax to pay debt see notes to sec. 3, art. XI.

It is competent for the electors at a regularly called special meeting to provide for the employment of an attorney to defend an action against the district. *McCaffrey v. School Dist. 74 W 100, 42 NW 103.*

Members of a committee appointed at a district meeting to defend the district in a pending suit are not officers of district so as to make a contract with one of their number improper. *McCaffrey v. School Dist. 74 W 100, 42 NW 103.*

The district meeting may assume liability for a claim which could not be enforced against it at law, as to levy a tax for and authorize payment of a claim of a subcontractor for work and materials furnished to the principal contractor who defaulted when the actual value of the building exceeded the contract cost. *Lafebre v. Board of Education, 81 W 660, 51 NW 952.*

On the effect of a failure to vote on items separately, see *Hixon v. Oneida County, 82 W 515, 52 NW 445.*

Laborers and materialmen have no lien upon the property of a school district for labor and materials furnished for a school building. *Electric A. Co. v. United States F. & G. Co. 110 W 438, 85 NW 648.*

Plaintiff made a contract with a school district to furnish all the mill work for a school for \$850. At the time of making this contract the school district was indebted up to within \$594.44 of the constitutional limit of indebtedness. A school district meeting with full notice of the facts authorized the board to borrow a further sum and voted the levy of a tax of \$1,600 therefor. Such action was a ratification of the action of the building committee in contracting for the building of a schoolhouse without the funds having been provided, notwithstanding that the vote by which the levy was attempted to be made was

illegal and void. The contract was binding upon the district up to the amount of the constitutional limit of indebtedness, and the plaintiff could recover the amount of \$594.44. *McGillivray v. Joint School Dist.*, 112 W 354, 88 NW 310.

The district meeting cannot authorize the school board to contract a debt on behalf of the district or to levy a tax beyond the limit it may itself go; nor can it ratify a contract or act of the board which it would have no power to authorize in the first instance. *Nevil v. Clifford*, 63 W 435, 24 NW 65; *Montpelier S. B. & T. Co. v. School Dist.* 115 W 622, 92 NW 439.

When an annual school district meeting votes a tax to raise a specified sum to build a schoolhouse, it thereby fixes the maximum cost and the school board has no authority in its conduct of building operations to bind the district in excess of the amount voted. But the action of the board in procuring a building at a greater cost can be validated by subsequent action of the district. *O'Laughlin v. Dorn*, 168 W 205, 169 NW 562.

A school district is not a municipal corporation. It is but the agent for administering the public education system of the state and has only express powers and those necessarily implied. The courts will not inquire into the motives of a legislative body. The legislative body of a school district, if any, is the school district meeting. The designation of a schoolhouse site, or providing for the building of a schoolhouse, is ministerial rather than legislative, in character, and the power relative thereto cannot be exercised to gratify whim, caprice or passion, but must be exercised in good faith and in the public interest, and for the purpose of accomplishing, rather than defeating, the purpose for which the power is conferred. *Mandamus* will lie to compel the operation of school the minimum period of time, and to levy the necessary taxes therefor. *Iverson v. Union Free High School Dist.* 186 W 342, 202 NW 788.

A bank delivered money to the school district treasurer on orders illegally issued. The funds were intended as a loan to the district. In an action for money had and received, the bank was bound to prove that the funds were actually used by the district for lawful purposes, as a condition of recovery. The failure of the bank to demand payment within 6 months after the loan was made was laches. *First Nat. Bank v. Joint School Dist.* 187 W 547, 203 NW 762.

A free high school district board is authorized to bring an action without authority of the electors only where management, control and conservation of property and affairs of the district require speedy application for process. *State ex rel. Hawkins Free High School Dist. v. Nelson*, 212 W 116, 249 NW 172.

The district meeting has power to determine which property is no longer needed, so that, where the electors voted to close a specified one of 2 schools located within the district, the school board may not continue to operate such school. *State ex rel. Wiedenhoft v. Anderson*, 248 W 566, 22 NW (2d) 516.

The fact that a district meeting does not make provision for transportation does not limit the power of the school board to provide

transportation. *Van Ness v. Rindle*, 252 W 181, 31 NW (2d) 168.

After a school district has obtained a loan from the state trust funds the electors may request a special meeting of the district to decide on a new site. A change of site does not affect the validity of the loan. 7 Atty. Gen. 208.

Under 40.56, Stats. 1923, electors of a high school district do not have the power to suspend high school. 13 Atty. Gen. 541.

A salary voted in excess of the statutory maximum is illegal, and, if paid, action for return thereof to the district treasury may be maintained against all members of the school board participating in such illegal payment. 19 Atty. Gen. 43.

A construction contract let by a building committee appointed by a school district meeting is void, since the school district and school board may not delegate powers vested in them. 27 Atty. Gen. 349.

A common school district does not have legal authority to establish a junior college. 29 Atty. Gen. 96.

Powers and duties of a school district and board are limited to property under control of the district. The district may rent a school building furnished by the U. S. government on federal lands where additional facilities are required to accommodate children of the district. The obligation of the district to furnish school facilities for children of families residing in a federal housing project on government-owned lands within the district is the same as its obligation to other children of the district. 31 Atty. Gen. 266.

Where land is located in a common school district which does not maintain a high school, and is also located in a high school district, each district meeting has power to vote a tax for the operation of the school or schools maintained by it in an amount not to exceed 20 mills of the last state equalized valuation of the taxable property in the district, so that taxes aggregating 40 mills could be voted for such purposes against the land mentioned in event the maximum tax were voted by both the common school and high school district meetings. 37 Atty. Gen. 229.

120.11 History: 1967 c. 92; Stats. 1967 s. 120.11.

Legislative Council Note, 1967: Sub. (1) revises s. 40.28 (1) (1st, 5th, 6th and 7th sentences) and incorporates a portion of s. 40.87 (2).

Sub. (2) based on s. 40.28 (1) (2nd, 3rd and 4th sentences).

Sub. (3) based on s. 40.28 (2).

Sub. (4) based on s. 40.28 (3). [Bill 353-S] See note to 118.21, citing *School Dist. v. Baier*, 98 W 22, 73 NW 448.

120.12 History: 1967 c. 92; Stats. 1967 s. 120.12; 1969 c. 310.

Legislative Council Note, 1967: Introductory paragraph is new and makes unnecessary the repetition of "the school board shall" in the various subsections. Under s. 40.87 (2) the school boards of union high school districts have the duties of school boards of common school districts.

Sub. (1) restates s. 40.29 (1).

Sub. (2) based on s. 40.29 (12).

Sub. (3) based on s. 40.29 (8) and incorporates s. 40.88 (4). The "3rd Monday in October" date is made uniformly applicable.

Sub. (4) based on s. 40.29 (8a).

Sub. (5) like s. 40.29 (2).

Sub. (6) like s. 40.29 (3).

Sub. (7) restates s. 40.29 (11).

Sub. (8) restates s. 40.29 (5).

Sub. (9) revises s. 40.29 (6).

Sub. (10) based on s. 40.29 (7).

Sub. (11) like s. 40.29 (13).

Sub. (12) like s. 40.29 (4).

Sub. (13) like s. 40.29 (10).

Sub. (14) based on s. 40.89 (1) and makes it clear that this subsection applies to the school board of a union high school district and a K-12 common school district. [Bill 353-S]

The school board has no power to build a school or to cause one to be built and make the cost of it a charge against the district. *Nevill v. Clifford*, 63 W 435, 24 NW 65.

If a contract to erect a school is void or voidable the school board cannot enjoin the contractor from proceeding with his work, because the district cannot be damaged if he does proceed. The district may decline to ratify or affirm the contract and may successfully defend against an action for the contract price. *Joint School Dist. v. Reid*, 82 W 96, 51 NW 1089.

Sec. 441, Stats. 1913, empowers the school board to discharge a teacher who has failed to perform his duties under his contract. *Curkeet v. Joint School Dist.*, 159 W 149, 149 NW 708.

Schoolhouses are to be built out of funds provided for that purpose. Funds for maintenance or operation cannot be diverted to that purpose. *Riesen v. School Dist.* 192 W 283, 212 NW 783.

A contract of employment will not be implied against the school district. *School Dist. v. Industrial Comm.* 194 W 342, 216 NW 844.

40.16 (2), Stats. 1937, is not an amplification of the safe-place statute as applied to school districts, does not make the school district liable to third persons for the failure of the board to perform the enumerated duties, and does not abrogate the common-law rule of nonliability of a municipality for negligence in the performance of a governmental function. *Lawver v. Joint District*, 232 W 608, 288 NW 192.

See note to 120.10, citing *State ex rel. Wiedenhoft v. Anderson*, 248 W 566, 22 NW (2d) 516.

The duty to keep the school buildings and grounds in good repair and in a "safe" condition is imposed by 40.29 (2), Stats. 1951, on the school board and not on the individual members of the board; the liability, if any, to third parties for injuries sustained as the result of a failure to perform such duty is not a personal liability of the individual members of the board. *Meyer v. Carman*, 271 W 329, 73 NW (2d) 514.

When a sufficient tax has not been voted by the electors, failure of school district officers to levy a maintenance tax is willful neglect of duty imposed by law. 12 Atty. Gen. 290.

A school board may engage a teacher at a higher salary than that fixed by electors at the annual meeting if the salary so fixed is

so low that the board cannot obtain a teacher; it may levy a tax or use surplus funds not specifically appropriated for other purposes. 13 Atty. Gen. 380.

A determination by a high school board of the necessity for additional tax under the provisions of 40.52 (4), Stats. 1923, is final in the absence of abuse of discretion. 14 Atty. Gen. 148.

A school board has no power to remodel a school building unless an appropriation therefor is made at the annual meeting. Members of the board who fail to file an inventory of district property annually are guilty of malfeasance in office. 20 Atty. Gen. 850.

A school board has power to raise sufficient funds for operation of a school regardless of a referendum limiting the amount to be raised by taxes. 25 Atty. Gen. 411.

Neither a school board nor a city is liable for injuries to pupils or others arising out of negligence in operation of schools or conduct of athletic activities in connection therewith, except that neither may maintain a public nuisance. 26 Atty. Gen. 59.

A common school district board may not employ an attorney at a stipulated fee per month to handle actions or proceedings in which the district is not at the time interested. 27 Atty. Gen. 747.

The board of a common school district may employ an attorney at a stipulated fee per month to handle legal work of the district other than actions or proceedings. 27 Atty. Gen. 826.

Under 40.16 (2), Stats. 1941, school districts may obtain insurance against liability for accidental injuries to members of the public caused by defective construction or maintenance of school buildings under 101.06. But school districts have no authority to obtain insurance against injuries for which they are not liable, such as injuries caused by negligence of employes or by any other cause not covered by the safe-place statute. (18 Atty. Gen. 559 reviewed and modified.) 31 Atty. Gen. 176.

See note to 120.10, citing 31 Atty. Gen. 266.

A school district board has power and authority to permit private school students to attend the district school on a part-time basis. 53 Atty. Gen. 187.

120.13 History: 1967 c. 92; Stats. 1967 s. 120.13; 1969 c. 276 s. 589 (1) (a); 1969 c. 301.

Legislative Council Note, 1967: Introductory paragraph is new and makes unnecessary the repetition of "the school board may" in the various subsections. Under s. 40.87 (2) the school boards of union high school districts have the powers of school boards of common school districts.

Sub. (1) revises s. 40.30 (17).

Sub. (2) based on s. 40.30 (19).

Sub. (3) based on s. 40.30 (14).

Sub. (4) based on s. 40.30 (11) and (12).

Sub. (5) based on s. 40.30 (15).

Sub. (6) revises s. 40.30 (8).

Sub. (7) restates s. 40.30 (16).

Sub. (8) restates s. 40.30 (17m).

Sub. (9) like s. 40.30 (21).

Sub. (10) restates s. 40.30 (9).

Sub. (11) revises s. 40.30 (10) and (10c).

Sub. (12) based on s. 40.30 (13).

Sub. (13) based on s. 40.30 (7). Last sentence deleted because it is repetitious.

Sub. (14) based on s. 40.30 (18).

Sub. (15) based on s. 40.89 (2) (1st sentence). See note to s. 120.12 (14).

Sub. (16) restates s. 40.30 (20).

Sub. (17) restates s. 40.30 (2).

Sub. (18) restates s. 40.30 (3).

Sub. (19) based on s. 40.30 (5).

Sub. (20) revises s. 40.30 (4).

Sub. (21) restates s. 40.30 (6). [Bill 353-S]

A school board has the power to make rules and regulations for the organization, graduation and government of the school, and to suspend any pupil for noncompliance with the reasonable rules established by it or by the teacher with its consent. *Morrow v. Wood*, 35 W 59; *State ex rel. Burpee v. Burton*, 45 W 150.

A pupil cannot be suspended for refusing to comply with a regulation that each pupil, on returning to school after recess, shall bring into the room a stick of wood. *Mandamus* lies to compel officers to reinstate a pupil wrongfully suspended. *State ex rel. Bowe v. Board of Education*, 63 W 234, 23 NW 102.

A school board alone has the power of expulsion and therefore the wrongful exaction of tuition by a teacher and principal of a school as a condition of allowing the pupil to remain in school, and the payment of such fee under protest, are not equivalent to expulsion. *State ex rel. Smith v. Board of Education*, 96 W 95, 71 NW 123.

School authorities are vested with a broad discretion in the government and discipline of pupils, and courts will not interfere with the exercise of such authority unless it has been unreasonably or illegally exercised. They may suspend a pupil for an offense committed outside of school hours, and not in the presence of the teacher, where such offense has a direct and immediate tendency to influence the conduct of the pupils while in the schoolroom. *State ex rel. Dresser v. District Board*, 135 W 619, 116 NW 232.

A school board has power, acting in good faith, to determine that by reason of physical ailments the presence of a boy in school was harmful to the school and to other pupils, and that therefore he should be excluded. Such a determination by a school board should not be interfered with by the courts unless it is shown to have been illegal or unreasonable. *State ex rel. Beattie v. Board of Education*, 169 W 231, 172 NW 153.

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing *Breen v. Kahl*, 296 F Supp. 702.

A resolution of a school board duly recorded in the minutes is a rule of the board and is enforceable by expulsion. 8 Atty. Gen. 110.

A school board may grant permission to hold Chautauquas, the proceeds of which are turned over to the school fund of the city, if such lectures are held under the "auspices" of the school. 9 Atty. Gen. 484.

A resolution by a school district to raise \$300 for band purposes is legal if the school board determined to give instruction in band music and the fund is to be used for that purpose. 17 Atty. Gen. 354; 18 Atty. Gen. 49.

A high school board of education has the power to abrogate, with consent of a teacher, an executory contract of employment and to

enter into a new contract with the teacher calling for a salary in excess of that in the first contract. 35 Atty. Gen. 156.

See note to 118.14, citing 38 Atty. Gen. 424. Under 40.30 (12), Stats. 1957, after 2 years of operation on a tuition basis, a district is not entitled to aids without the approval of the state superintendent. 47 Atty. Gen. 162.

On released time for religious instruction see 38 Atty. Gen. 281, and 48 Atty. Gen. 121. 40.30 (14), Stats. 1965, which authorizes construction contracts between school districts and other municipalities, is a valid enactment. 56 Atty. Gen. 1.

Basis for validity of released time program for religious education. 35 MLR 385.

High school authorities' power to expel students for wearing long hair. 1969 WLR 303.

120.14 History: 1967 c. 92; Stats. 1967 s. 120.14.

Legislative Council Note, 1967: Consolidates in one section the various references to an audit of school district accounts.

Sub. (1) based on and rearranges s. 40.29 (14). It makes general a requirement that now applies to almost all school districts and thus makes obsolete s. 40.23 (1) and (1m) which are deleted.

Sub. (2) based on s. 40.30 (1). Sub. (3) based on s. 40.22 (18). [Bill 353-S]

120.15 History: 1967 c. 92; Stats. 1967 s. 120.15.

Legislative Council Note, 1967: Introductory paragraph is from s. 40.33 (intro.) and incorporates a portion of s. 40.87 (2).

Sub. (1) based on ss. 40.33 (1) and 40.88 (1).

Sub. (2) restates first part of s. 40.33 (2).

Sub. (3) revises last part of s. 40.33 (2).

Sub. (4) revises s. 40.33 (3).

Sub. (5) restates s. 40.33 (4). [Bill 353-S]

A school director can recover from the district the amount of necessary expenses which he may have been put to by attending suits by or against it; but before he can recover he must present his claim to the district board or district meeting. *Fobes v. School Dist.* 10 W 117.

A school director may bring suit for an injury to the schoolhouse without direction from the electors. *School Dist. v. Arnold*, 21 W 657.

Where the electors of a school district appointed a committee of 3, of which the plaintiff (an attorney at law) was a member, to conduct the defense in an action against the district, and at a subsequent meeting of the electors a proposition to rescind the appointment of such committee was voted down, there was a valid employment of the plaintiff as an attorney by the district, and he was entitled to compensation for his services. *McCaffrey v. School Dist.* 74 W 100, 42 NW 103.

Under sec. 442, Stats. 1898, it is the duty of a director to begin an action on the treasurer's bond but this power is subordinate to that of the district meeting, which may dismiss the action against the protest of the director. *School Dist. v. Clifcorn*, 133 W 465, 112 NW 1099.

120.16 History: 1967 c. 92; Stats. 1967 s. 120.16.

Legislative Council Note, 1967: Introduc-

tory paragraph is from s. 40.34 (2) (intro.) and incorporates a portion of s. 40.87 (2).

Sub. (1) based on s. 40.34 (1).

Sub. (2) revises s. 40.34 (2) (a) and part of s. 40.88 (1) and restates s. 40.34 (3).

Sub. (3) revises s. 40.34 (2) (b).

Sub. (4) based on s. 40.34 (2) (c) and permits the presentation of a summarized statement of disbursements by the treasurer and eliminates the requirement that he exhibit each voucher.

Sub. (5) revises s. 40.34 (2) (d). [Bill 353-S]

A school district treasurer is personally liable to a teacher after presentation of a proper order drawn on him in favor of the teacher, and payment demanded and refused, if he has sufficient moneys belonging to the district to pay the same. *Edson v. Hayden*, 18 W 628.

A school district treasurer duly elected and qualified, who failed upon reelection to give a new bond but continued acting as treasurer until his death, was a de facto and a de jure officer. But the sureties on his bond for the first term were held not liable beyond the first term. *Board of School Directors v. Kuhnke*, 155 W 343, 144 NW 987.

A school district treasurer's bond was duly executed by himself and sureties, except that the penal sum was left blank. They all intended to give and believed that they had given the statutory bond. They authorized the director and clerk to ascertain the proper amount required by law and insert it in the blank space. The bond was not invalid and did not prevent the treasurer from qualifying. *State ex rel. Dorwin v. White*, 161 W 170, 152 NW 825.

A school district treasurer is the custodian of funds of the district, which include proceeds of insurance collected on a fire loss, and if he accepts such funds through an agent he has the same responsibility as though he had the funds in hand. *School Dist. v. Larson*, 196 W 211, 218 NW 847.

The official bond required by 40.10, Stats. 1929, to be filed by the treasurer obligates such officer to safely keep and account for moneys which come to his hands. Such public officer is an insurer of public funds lawfully in his possession and is therefore liable for losses which occur even without his fault. The treasurer and his sureties may escape financial liability in event the funds are deposited in a bank designated by school officers. 18 Atty. Gen. 698.

It is the duty of a school district treasurer to pay an order in proper form, if he has in his hands funds of the district of sufficient amount. Refusal to do so creates personal liability to the holder of the order and constitutes malfeasance. 21 Atty. Gen. 787.

A school treasurer may refuse to turn over money to his successor, who was elected but did not file a bond sufficient to cover funds in the treasury. 24 Atty. Gen. 640.

The state superintendent may refuse to certify state aid to a school district whose treasurer fails to furnish the bond required by 40.10 (1), Stats. 1937. 27 Atty. Gen. 82.

See note to 76.28, citing 27 Atty. Gen. 537.

120.17 History: 1967 c. 92; Stats. 1967 s. 120.17; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Introduc-

tory paragraph is from s. 40.35 (intro.) and incorporates a portion of s. 40.87 (2).

Sub. (1) revises s. 40.35 (1).

Sub. (2) based on s. 40.35 (2) and clarifies that the school district clerk shall record proceedings of special, as well as annual, meetings.

Sub. (3) like s. 40.35 (3).

Sub. (4) like s. 40.35 (4).

Sub. (5) based on s. 40.35 (5) and clarifies that a special, as well as annual, meeting may direct that orders be drawn on the school district treasurer.

Sub. (6) revises s. 40.35 (6).

Sub. (7) restates last part of s. 40.35 (7).

Sub. (8) based on s. 40.35 (8) and (8a) and incorporates part of s. 40.88 (1), (2) and (3).

Sub. (8) (a) based on s. 40.35 (8) (1st and 2nd sentences). The provisions presently stated separately for towns within the school district and municipalities within a joint school district are combined and clarified. Sub. (8) (b) based on s. 40.35 (8) (last sentence). Sub. (8) (c) revises s. 40.35 (8a).

Sub. (9) like s. 40.35 (9).

Sub. (10) is new and gives the school district clerk the authority to give the oath of office to school board members. [Bill 353-S]

Under sec. 1, ch. 81, Laws 1869, a certificate of a clerk which merely stated "that, at the annual school meeting, voted to raise \$300 for teachers' salaries, in building a wood shed, and all incidental expenses during the year," was not sufficient to confer authority to levy the tax. *Arnold v. Juneau County*, 43 W 627.

The failure of the clerk to file the statement required goes to the groundwork of the tax. *Powell v. St. Croix County*, 46 W 210, 50 NW 1013.

No order can be drawn except where the money is due and immediately payable to the person to whom it is issued, and where the funds for the payment of such debt have been apportioned to the district or voted by it to the payment thereof; orders chargeable on taxes to be thereafter voted by the district, in the nature of contracts payable in the future, are void. *Kane v. School Dist.* 52 W 502, 9 NW 459.

The offices of town clerk and school district clerk may be held by the same person. 5 Atty. Gen. 852.

The offices of school district clerk and village treasurer are compatible. 17 Atty. Gen. 493.

120.18 History: 1967 c. 92; Stats. 1967 s. 120.18; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Introductory paragraph based on and combines s. 40.74 (1) (intro.), (2) and (3) and incorporates a portion of s. 40.87 (2). Consistent with present departmental practice, the (intro.) provides that the state superintendent can request portions of the annual report at such times as he determines, but all parts of the annual report must be filed by August 15. Since the annual report is of substantial bulk, it is a more realistic procedure than under present law to require that a copy of the report be sent to the school district administrator with notification to the person in charge of the separate schools that the report is on file in the central office.

Sub. (1) based on s. 40.74 (1) (a) and (4) and incorporates a prohibition contained in s. 40.87 (2).

Sub. (2) revises s. 40.74 (1) (b).

Sub. (3) revises s. 40.74 (1) (c).

Sub. (4) revises s. 40.74 (1) (d).

Sub. (5) revises s. 40.74 (1) (e).

Sub. (6) revises s. 40.74 (1) (f).

Sub. (7) like s. 40.74 (1) (g).

Sub. (8) restates s. 40.74 (1) (i). [Bill 353-S]

Under 40.13 (4), Stats. 1931, compensation of the census taker employed by the district clerk must be paid out of school district funds. 21 Atty. Gen. 212.

120.19 History: 1967 c. 92; Stats. 1967 s. 120.19.

Legislative Council Note, 1967: Sub. (1) based on s. 40.305 (1) and clarifies that this provision applies both to common and union high school districts.

Sub. (2) revises s. 40.305 (2).

Sub. (3) based on s. 40.305 (3).

Sub. (4) identical to s. 40.305 (4).

Sub. (5) based on s. 40.305 (5). [Bill 353-S]

On limitation on indebtedness see notes to sec. 3, art. XI.

120.21 History: 1967 c. 92; Stats. 1967 s. 120.21.

Legislative Council Note, 1967: Revises and consolidates s. 40.89 (3) and (4). [Bill 353-S]

120.22 History: 1967 c. 92; Stats. 1967 s. 120.22.

Legislative Council Note, 1967: Restates s. 40.89 (6) and replaces an obsolete reference to a specific federal act with a general reference to any act of congress. [Bill 353-S]

120.23 History: 1967 c. 92; Stats. 1967 s. 120.23.

Legislative Council Note, 1967: Revises s. 40.16. [Bill 353-S]

120.40 History: 1967 c. 92; Stats. 1967 s. 120.40.

Legislative Council Note, 1967: This section is new and specifies the type of school district to which this subchapter applies. [Bill 353-S]

120.41 History: 1967 c. 92; Stats. 1967 s. 120.41.

Legislative Council Note, 1967: Sub. (1) based on ss. 40.80 (1) and 40.801 (1). The present reference to "city school plan" is deleted because it is confusing and the thought can be better expressed by referring to a "city school district" or to "this subchapter".

Sub. (1) states specifically the limitation, which necessarily is inferred from present law and which has been ratified by case law, that a city school district is not a separate legal entity. Also, sub. (1) clarifies that a city school district including territory outside the city constitutes a joint city school district.

Sub. (2) based on s. 40.80 (2) (c). With the elimination of municipal boards as reorganization authorities and with other recent major changes in school district reorganization law, present s. 40.13 [ss. 117.02 and 117.03] and allied statutes should be the only vehicle for reorganization. Accordingly, sub. (2) expands present s. 40.80(2) (c) to prohibit the creation

or abolition of a city school district in *any* city of the 2nd, 3rd or 4th class, except under the specified sections, and deletes s. 40.80 (2) (a).

Sub. (3) based on s. 40.80 (2) (b) which also is expanded to cover territory in any city of the 2nd, 3rd or 4th class. [Bill 353-S]

On limitation on indebtedness see notes to sec. 3, art. XI.

The term "school district" as used in the city school plan implies a system rather than a municipal entity. The board of education of a city of the second class is merely an arm of the city government and cannot coerce the common council to issue bonds for the erection of school buildings, nor may the school board use funds in the treasury for the erection of buildings unless approved by the common council. *State ex rel. Board of Education v. Racine*, 205 W 389, 236 NW 553.

Ch. 425, Laws 1927, revising and codifying the statutes relating to public schools, and providing for a city school plan, imposed a uniform system of school government upon all cities of the third class, and as impliedly repealing private and local laws creating a school district which included a city of the third class. *State ex rel. Thompson v. Beloit City School Dist.* 215 W 409, 253 NW 598.

The superintendent of a school district which was a separate entity from the city but whose territory was coextensive with the city's, was discharged by the district before the expiration of his contract and before the effective date of the city school plan. The plan was effective as to such city when the plaintiff commenced his action for breach of the contract, the school district was then no longer in existence as a separate entity, and the city, as its successor, was liable for the plaintiff's claim. *Seifert v. School District*, 235 W 489, 292 NW 286.

In a city operating under the city school plan, the members of the city school board are officers of the city and the board is an arm of the city government, so that whatever the board does pursuant to statutory authority it does for the city, and the board's employes in doing what is thus authorized are employes of the city, and any liability arising from their acts is a liability of the city. *Huettner v. Eau Claire*, 243 W 80, 9NW (2d) 583.

120.42 History: 1967 c. 92; Stats. 1967 s. 120.42.

Legislative Council Note, 1967: Based on ss. 40.26 (1) (c), 40.803 (1) (intro.) (part of 1st sentence) and 40.803 (1) (a) (1st sentence). Section 40.803 (1) (intro.) (remainder of 1st sentence and 2nd to 6th sentences) are deleted because their provisions were transitional and have been implemented, thus making them obsolete.

The term "school board" is used throughout this subchapter. Section 115.01 (4) specifies that "school board" may include "board of education." [Bill 353-S]

120.43 History: 1967 c. 92, 313; Stats. 1967 s. 120.43; 1969 c. 331.

Legislative Council Note, 1967: Sub. (1) (a) is new and consolidates in one place various references to the alternative methods which can be employed to select school board members in city school districts and speci-

fies that the plan of apportionment under present s. 40.26 (8) [s. 120.02 (2)] applies to city school districts.

Sub. (1) (b) restates s. 40.803 (1) (b) 1 (part of last sentence) and clarifies that these provisions are generally applicable.

Sub. (2) (intro.) restates s. 40.803 (1) (intro.) (7th sentence). Sub. (2) (a) and (b) revises s. 40.803 (1) (a) (2nd and last sentences).

Sub. (3) restates s. 40.803 (1) (intro.) (9th sentence).

Sub. (4) revises s. 40.803 (1) (intro.) (10th and 11th sentences).

Sub. (5) based on s. 40.803 (1) (intro.) (8th sentence).

Sub. (6) based in part on s. 40.27 (6) (a) and clarifies the commencement date for both regular and unexpired terms of school board members. [Bill 353-S]

A vacancy in the board of education should be filled by appointment by the mayor for the residue of the unexpired term, subject to confirmation by the council. 21 Atty. Gen. 344.

120.44 History: 1967 c. 92, 313; Stats. 1967 s. 120.44.

Legislative Council Note, 1967: Based on s. 40.803 (1) (b). [Bill 353-S]

120.45 History: 1967 c. 92; Stats. 1967 s. 120.45.

Legislative Council Note, 1967: Revises s. 40.801 (2). [Bill 353-S]

120.46 History: 1967 c. 92; Stats. 1967 s. 120.46.

Legislative Council Note, 1967: Based on s. 40.803 (1) (c). [Bill 353-S]

120.48 History: 1967 c. 92; Stats. 1967 s. 120.48; 1969 c. 91, 392; 1969 c. 424 s. 26.

Legislative Council Note, 1967: Sub. (1) revises s. 40.803 (2). Sub. (2) based on s. 40.803 (3) and for the sake of uniformity refers to "school district clerk" instead of "secretary". Sub. (3) makes the school district clerk responsible for filing the annual school district report (see note to s. 118.24). Sub. (4) revises s. 40.825. Sub. (5) based on s. 40.827. [Bill 353-S]

Under 40.60, Stats. 1935, the proceedings of a school board must be published in full. 24 Atty. Gen. 646.

Under 40.52 (3), Stats. 1935, a member of a nonsalaried city school board may act as its secretary and receive compensation therefor. 25 Atty. Gen. 167.

Salaries of school board members fixed pursuant to ch. 163, Laws 1939, are not subject to the limitations contained in 62.09 (6) (b). 28 Atty. Gen. 698.

120.49 History: 1967 c. 92, 313; Stats. 1967 s. 120.49; 1969 c. 301.

Legislative Council Note, 1967: Introductory paragraph restates s. 40.809 (intro.).

Sub. (1) revises and combines s. 40.809 (1) (part) and (3).

Sub. (2) restates s. 40.809 (14).

Sub. (3) restates and combines s. 40.809 (2), (7) and (8).

Sub. (4) (a) restates s. 40.809 (9) and includes those portions of s. 40.809 (4) which are germane to the provisions of s. 40.809 (9). Sub.

(4) (b) restates part of s. 40.809 (4). Sub. (4) (c) incorporates a qualified power of school boards under s. 40.30 (14). Sub. (4) (d) identical to s. 40.811 (1).

Sub. (5) identical to s. 40.809 (5).

Sub. (6) restates the relevant portion of s. 40.30 (19).

Sub. (7) restates and combines s. 40.809 (12) and (13).

Sub. (8) identical to s. 40.809 (6).

Sub. (9) restates s. 40.809 (10).

Sub. (10) revises part of s. 40.809 (1). The last sentence of s. 40.809 (1) is deleted because this prohibition is contained in the state aid provisions.

Sub. (11) like s. 40.809 (11). [Bill 353-S]

A city school superintendent is not an officer, for no definite term is prescribed, no official oath is required and no functions of sovereignty are conferred. It would be contrary to public policy to hold them to be public officers for that would forbid the selection of nonresidents for superintendents, as 62.09, Stats. 1921, requires all city officers to be citizens of the state, and, with a few express exceptions, electors of the city. *Sieb v. Racine*, 176 W 617, 187 NW 989.

The preparation of plans and the advertising for bids for school buildings should be done by the board of education, and the board should sign the building contracts, the applicable statute being sec. 925-118a, Stats. 1919. *Bauman v. West Allis*, 187 W 506, 204 NW 907.

A high school principal is authorized to sell supplies to students at cost. *Cook v. Chamberlain*, 199 W 42, 225 NW 141.

Funds collected for school purposes under the city school plan of 40.50 to 40.60, Stats. 1929, are the property of the city and not of the board of education and the city is entitled to retain interest received thereon. *Board of Education v. Racine*, 205 W 489, 238 NW 413; *State ex rel. Board of Education v. Eisenhut*, 205 W 493, 238 NW 414.

A provision in a teacher's contract for termination of the contract by either the city school board or the teacher on 60 days' notice is valid. *Kuebler v. Two Rivers*, 216 W 428, 257 NW 591.

Since title to all the school property in a city governed by the city school plan vested in the city under 40.53 (6), Stats. 1939, and since the razing of the school building was ordered by the common council as well as by the legally constituted board of education, the city acted within its power in proceeding with the razing of the building. *Ross v. Crandon*, 234 W 114, 290 NW 587.

The provision in 40.809 (4), Stats. 1953, that in the case of a city school district the title to all school property shall vest in the city, as applied to the city school district continued by the instant reorganization order of a joint county school committee, is not objectionable on the ground of prohibiting any future reorganization or change of boundary of this school district by the municipal officers of an affected town or an affected village under 40.06. The taxpayers of the village as a village entity and of the town as a town entity have no vested inviolable interest in such matter. *Zawerschnik v. Joint County School Committee*, 271 W 416, 73 NW (2d) 566.

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing *Breen v. Kahl*, 296 F Supp. 702.

The board of education may pass a resolution to accept a certified check equal to 5 per cent of a bid as a guaranty. 12 Atty. Gen. 253.

Moneys once raised and apportioned for city school purposes can be expended only by the city school board, regardless of whether the fiscal year has expired. 22 Atty. Gen. 40.

A common council, with or without a request from the board of education, may order a referendum election on school site and building plans. In a city operating under a city school plan, the site for a school must be selected by the board of education but the purchase must have the approval of the council. Plans for the school building must be adopted by the board of education, but construction work should be supervised by the board of public works. The common council may refuse to appropriate money for a school building. A city may purchase land outside the city limits but adjacent thereto, for a school site. 25 Atty. Gen. 617.

The board of education in a city operating under the city school plan may use part of the general school fund for construction purposes if such construction was approved by the city council. 26 Atty. Gen. 139.

Under 40.53, Stats. 1937, a city school board has the power to hire employes and prescribe the terms of employment; and this power may not be divested by city ordinance. 27 Atty. Gen. 207.

A regulation of a city school board requiring vaccination of all teachers and other employes is invalid as an unreasonable exercise of rule-making power of the school board. 27 Atty. Gen. 446.

The mayor of a city is without authority to demand that the athletic association of the local high school deposit its receipts with the city treasurer and render financial statements to the mayor respecting the same. 27 Atty. Gen. 744.

Where school authorities by proper action take necessary steps which result in the school becoming a member of a voluntary association which has established certain rules or regulations regarding the conduct of interscholastic athletic competition, the effect is to make the rules or regulations of that association those of the school. So far as the individual pupil is concerned such rules and regulations are those of the school and he must comply with them to compete. The school authorities have power to judge and determine the facts as to whether the pupil has failed to comply with a rule or regulation and to discipline him accordingly, without permitting the pupil a hearing. 38 Atty. Gen. 82.

Where a city is operating under the city school plan and has territory attached thereto for school purposes only, issuance of bonds by such city to construct schools is under 67.04 (2) (b), Stats. 1951, and to be voted by the city council. Bonds may be issued by such city to construct schools regardless of whether the schools are to be located in the city proper or in the attached area. 41 Atty. Gen. 324.

High school authorities' power to expel students for wearing long hair. 1969 WLR 303.

120.50 History: 1967 c. 92, 313; Stats. 1967 s. 120.50.

Legislative Council Note, 1967: Present law does not name the fiscal control body established under this section. Case law has referred to it as the "fiscal board" and that name is used herein.

Sub. (1) revises s. 40.807 (1).

Sub. (2) based on s. 40.807 (2) (1st, 2nd and 3rd sentences). Sub. (2) specifies that a vote is given for remaining fractions of \$200,000 of equalized valuation in determining the number of municipal unit votes on a fiscal board. Sub. (2) (b) is new and gives representation on a fiscal board to territory of a city which is attached to another city for school purposes. Sub. (2) (c) clarifies the vote to which the city operating the city school district and its individual common council members are entitled.

Sub. (3) based on s. 40.807 (3).

Sub. (4) revises s. 40.807 (2) (4th and last sentences).

Sub. (5) based on s. 40.807 (4).

Sub. (6) based on s. 40.095 (1) (last sentence). [Bill 353-S]

120.51 History: 1967 c. 92, 313; Stats. 1967 s. 120.51.

Legislative Council Note, 1967: Revises s. 40.813 (2) and (3). [Bill 353-S]

Draftsman's Note, 1967: The language of (2) reflects the Wisconsin Supreme Court holding in *West Milwaukee v. West Allis* (1966), 31 W (2d) 397, that the fiscal board has the sole authority to levy the school tax. [Bill 506-S]

120.52 History: 1967 c. 92; Stats. 1967 s. 120.52.

Legislative Council Note, 1967: Based on s. 40.813 (2a). [Bill 353-S]

120.53 History: 1967 c. 92; 1967 c. 313 s. 53; Stats. 1967 s. 120.53.

Legislative Council Note, 1967: Based on s. 40.815. [Bill 353-S]

Where a city is operating under the city school plan, and has territory attached thereto for school purposes only, annual instalments of the irrevocable tax to retire bonds issued by such city to construct schools are collectible as a tax spread each year as they accrue over the property in both the city proper and the attached area in that year. 41 Atty. Gen. 324.

120.54 History: 1967 c. 92; Stats. 1967 s. 120.54.

Legislative Council Note, 1967: Based on s. 40.817. [Bill 353-S]

After approving a budget and providing money for the school board, the city council has no power over the expenditure of money by the school board. The council may impose reasonable regulations on paying out school moneys and has legal power to audit accounts of the school board. 24 Atty. Gen. 71.

City school funds are to be disbursed by checks drawn on the school fund and signed by the city clerk pursuant to a certified bill, voucher or schedule signed by the president and secretary of the school board, giving names of claimants and the amount and nature of

each claim. When an official is charged by law with the duty of drawing and issuing checks, he may delegate to assistants ministerial work connected therewith if done under his direction. 26 Atty. Gen. 130.

A city treasurer who fails to keep separate accounts of school funds as required by 40.57, Stats. 1939, may be punished for malfeasance but state aid may not be withheld because of violation of 40.57. 27 Atty. Gen. 82.

120.55 History: 1967 c. 92; Stats. 1967 s. 120.55.

Legislative Council Note, 1967: Based on s. 40.811 (2). [Bill 353-S]

120.56 History: 1967 c. 92; Stats. 1967 s. 120.56; 1969 c. 105.

Legislative Council Note, 1967: Based on s. 40.813 (1). [Bill 353-S]

120.57 History: 1967 c. 92; Stats. 1967 s. 120.57.

Legislative Council Note, 1967: Sub. (1) based on s. 40.821. Many of the changes were made so that sub. (1) would contain general language to which new sub. (3) could apply. Sub. (2) like s. 40.823.

Sub. (3) is new and states that subs. (1) and (2) can be used in a joint city school district. [Bill 353-S]

120.58 History: 1967 c. 92; Stats. 1967 s. 120.58.

Legislative Council Note, 1967: Revises s. 40.807 (4a) (b) and (c). [Bill 353-S]

The term "school property" in 40.807 (4a) (b), Stats. 1961, includes all school assets, tangible and intangible, and tuition payable to a city previously operating under the city school plan becomes payable to the unified school district. *Racine v. Unified School Dist.* 24 W (2d) 521, 129 NW (2d) 246.

120.70 History: 1967 c. 92; Stats. 1967 s. 120.70.

Legislative Council Note, 1967: This section is new and specifies the type of school district to which this subchapter applies. [Bill 353-S]

120.71 History: 1967 c. 92, 313; Stats. 1967 s. 120.71.

Legislative Council Note, 1967: Sub. (1) cross refers to the section containing the provisions of present s. 40.095 (1) and (2) relating to the creation and reorganization of a unified school district and completes the list of appropriate sections providing for the establishment of unified school districts. It also restates s. 40.807 (4a) (a).

Sub. (2) like s. 40.095 (4). [Bill 353-S]

120.72 History: 1967 c. 92; Stats. 1967 s. 120.72.

Legislative Council Note, 1967: First sentence restates s. 40.095 (3) (a) (last part of 1st sentence and 2nd sentence).

The 2nd sentence clarifies that a unified school district may change the number of school board members under s. 120.02 (1) [present s. 40.26 (2)].

The 3rd sentence specifies the applicability of s. 120.02 (2) [present s. 40.26 (8)], which

presently applies by its general language to unified school districts. [Bill 353-S]

120.73 History: 1967 c. 92; Stats. 1967 s. 120.73.

Legislative Council Note, 1967: Sub. (1) (a) (1st sentence) revises s. 40.095 (3) (c) and is based in part on s. 40.095 (3) (a) (1st sentence). Sub. (1) (a) (last sentence) combines and revises s. 40.095 (3) (d) (4th and 5th sentences).

Sub. (1) (b) (1st sentence) revises s. 40.095 (3) (d) (1st sentence). Sub. (1) (b) (2nd sentence) based on ss. 40.095 (3) (a) (3rd sentence), 40.095 (3) (d) (last sentence) and 40.27 (6) (b). Sub. (1) (b) (3rd sentence) is new and clarifies the method of election to fill unexpired terms.

Sub. (1) (c) based on s. 40.095 (3) (e).

Sub. (2) based on s. 40.095 (3) (d) (2nd, 3rd, 6th and 7th sentences). The deadline for filing declarations of candidacy is specified and the type and frequency of notice to be given is set forth. [Bill 353-S]

120.74 History: 1967 c. 92; Stats. 1967 s. 120.74.

Legislative Council Note, 1967: Sub. (1) based on s. 40.095 (3) (a) (last sentence).

Sub. (2) revises s. 40.095 (3) (f) (1st sentence).

Sub. (3) revises s. 40.095 (3) (b).

Sub. (4) restates s. 40.095 (3) (f) (last sentence). [Bill 353-S]

120.75 History: 1967 c. 92, 313; Stats. 1967 s. 120.75; 1969 c. 301.

Legislative Council Note, 1967: First sentence identical to s. 40.095 (3) (a) (1st part of 1st sentence).

Second and third sentences based on s. 40.095 (5) (1st and 2nd sentences).

Fourth sentence states specifically a duty of the school district clerk.

Fifth sentence based on s. 40.819 (1).

Sixth sentence like s. 40.095 (5) (last sentence). [Bill 353-S]

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing *Breen v. Kahl*, 296 F Supp. 702.

A unified school district is authorized to enter into a deferred use plan transaction with the U.S. Dept. of Health, Educ. and Welfare for acquisition of a site for future school buildings. 51 Atty. Gen. 48.

High school authorities' power to expel students for wearing long hair. 1969 WLR 303.

120.76 History: 1969 c. 490; Stats. 1969 s. 120.76.

CHAPTER 121.

School Finance.

121.01 History: 1967 c. 92; Stats. 1967 s. 121.01.

Legislative Council Note, 1967: Combines and restates ss. 40.66 and 40.69. [Bill 353-S]

121.02 History: 1967 c. 92; Stats. 1967 s. 121.02; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Based on s. 40.67. Sub. (1) (d) also includes the substance of s. 40.71 (7) (b) (last sentence). A