CHAPTER 62.

Cities, General Charter Law.

62.01 History: 1921 c. 242 s. 2; Stats. 1921 s. 62.01; 1935 c. 421 s. 3; 1955 c. 488; 1957 c. 352; Milwaukee v. Milwaukee, 269 W 276, 69 NW (2d) 242; Milwaukee v. Hoffmann, 29 W 26 (2d) 193, 138 NW (2d) 223; State ex rel. Baer v. Milwaukee, 33 W (2d) 624, 148 NW (2d) 21; and Milwaukee v. Christophersen, 46 W (2d) 186, 172 NW (2d) 690. By Ordinance No. 303, adopted on Feb. 6, 1933, 62.11 (3) was made applicable to the city of Milwaukee (See Common Council File No. 50796, Dallmann v. Kluchesky, 229 W 168, 175, and 55 Atty. Gen. 231, 232). Milwaukee need not adopt a “charter ordinance” to make the election authorized by 62.03 (2). Waukesha v. Milwaukee, 269 W 59, 63 NW (2d) 718.

Where a city of the first class by ordinance adopts a particular section of ch. 62, constituting the general charter law, such adoption embraces any subsequent amendment which the legislature may thereafter make in the adopted statute which is not wholly incompatible with such statute as it stood at the time the enacting ordinance was enacted. State ex rel. Cities S. O. Co. v. Board of Appeals, 21 W (2d) 516, 124 NW (2d) 869.

62.04 History: 1921 c. 242 s. 2; Stats. 1921 s. 62.04.

On legislative power generally and on delegation of power see notes to sec. 1, art. IV; on general laws on enumerated subjects see notes to sec. 32, art. IV; on municipal home rule see notes to sec. 3; art. XI; and on city manager plan and commission government see notes to various sections of ch. 64.

Cities are not of a dual nature, but are creatures of the state, having imposed upon them certain duties or functions in the interest of the general welfare, and also given certain powers in respect to local self-government and local affairs. A city is not authorized to maintain an action to restrain state officials from enforcing the gasoline tax law, as it is not part of the business of a city to censor or supervise the activities of its creator, the state. In re Application of Racine, 196 W 604, 220 NW 336, 221 NW 109. See also: Marshfield v. Cameron, 24 W (2d) 59, 127 NW (2d) 809, and Kernohan v. State, 35 W (2d) 217, 151 NW (2d) 39.

See note to 144.07, citing Behnke v. Neenah, 221 W 411, 568 NW 763. See note to 62.11 (5), citing State ex rel. State Historical Society v. Carroll, 261 W 6, 51 NW (2d) 723.

62.04 and 62.11 (5), Stats. 1967, applicable to cities of the second, third, and fourth classes, unless expressly limited, confer all broad self-governing powers upon a city operating under such laws which the legislature could confer and, when exercised, are to be liberally
construed. Gramling v. Wauwatosa, 44 W 2d 654, 171 NW (2d) 697.

62.05 History: 1899 c. 326 s. 1; Ann. Stats. 1899 s. 625c; 1902 c. 312 s. 1; Stats. 1899 s. 929—13; 1901 c. 242 s. 1; 1921 c. 509 s. 6; Stats. 1921 s. 605; 1961 c. 677.

When a city passes from a lower to higher class, it remains in the class attained, notwithstanding a subsequent decline in population, at least in the absence of adoption of an ordinance or resolution by the common council and publication of such fact in compliance with the provisions of statute. 9 Atty. Gen. 476.

A city with required population, as shown by the last federal census, to pass from fourth to third class, is a city of the third class within the meaning of 62.09 (1); he is prohibited from insuring city buildings, particularly the library. 12 Atty. Gen. 429.

A member of a city waterworks commission is a city officer and may not sell material or services to the city nor to a commission. 12 Atty. Gen. 642.

A charter ordinance purporting to abandon the city-manager form of government under ch. 94 and to restore the mayor-alderman plan under ch. 62 must not conflict with ch. 62. 26 Atty. Gen. 34.

62.08 (2) History: Stats. 1919 s. 925—27; 925—346, 925—346, 925—161, 925—170, 961; 1921 c. 242 s. 20; Stats. 1921 s. 62.08 (2); 1935 c. 321; 1949 c. 281; 1955 c. 719; 1956 c. 452, 490, 605.

On eligibility for office see notes to sec. 3, art. XIII, and notes to 66.11.

It is competent for the legislature to provide that "If any member of the common council shall, while a member, be elected to any other office of said city, such election shall be void." State ex rel. Tesch v. Von Baumbach, 12 W 310.

A person who was ineligible when elected to office may hold the office if his disability is removed before the commencement of his term. State v. Trumpf, 50 W 163, 5 NW 676, 6 NW 612.

The charter of Milwaukee provides that eligibility to the office of health commissioner shall consist of a continuous residence for one year prior to appointment. The word "residence" was held to be used in the broad sense of domicile requisite to citizenship. Kempster v. Milwaukee, 97 W 343, 72 NW 745.

Where the mayor of Milwaukee appointed a city officer whose appointment was rejected by the council, and within a year reappointed the same person to the same office, which appointment was again rejected, and 3 months later appointed the same person a third time, and the last appointment was confirmed, the appointee was ineligible at the time of the second and third appointments and his confirmation was unavailing. State ex rel. Gill v. Braman, 173 W 986, 161 NW 729.

The acceptance by the incumbent of one office of an incompatible office vacates the first, except in a case where the official cannot, by his own act, vacate such first office. A municipal judge, by accepting the incompatible office of city attorney thereby created a vacancy in the office of judge. State ex rel. Stark v. Himes, 194 W 34, 115 NW 447.

One who acted as deputy city clerk, but who could not, because of minority, be considered as a de jure deputy city clerk, may nevertheless be a de facto deputy, whose acts bind the city clerk and the city. State ex rel. Sisson v. Kalk, 177 W 772, 225 NW 63.

The offices of alderman and county clerk are compatible and may be held by the same person. 5 Atty. Gen. 607.

An alderman in a city of the fourth class cannot hold the office of justice of the peace. 13 Atty. Gen. 123.

The offices of city attorney and municipal judge are incompatible. 19 Atty. Gen. 188.

A ward supervisor is not eligible to the office of city relief director. 26 Atty. Gen. 48.

The office of assemblyman or state senator is compatible with the office of alderman. 25 Atty. Gen. 254.

A hardware and electrical equipment dealer
drawing a salary as mayor cannot be paid by a municipal light and water commission to solicit business. He cannot bid for or sell to the board of education appointed by the council any equipment or wiring on a new high school. 23 Atty. Gen. 407.

The office of alderman and employment as a teacher in city schools in the same city are incompatible. 26 Atty. Gen. 563.

An alderman may be elected to hold the office of police justice provided his term as alderman expires prior to the time he takes office as police justice. 27 Atty. Gen. 478.

A person who is not a resident of a city is eligible to appointment on the board of vocational and adult education of that city. The removal of the residence of a member of a city board of vocational and adult education to a place outside the city limits does not create a vacancy. 39 Atty. Gen. 74.

62.09(3) History: 1899 c. 326 s. 25; Ann. Stats. 1899 s. 925g sub. 25; 1899 c. 312 s. 13; 1897 c. 70 s. 1; 1897 c. 109 s. 2; Stats. 1906 s. 925—25; 1901 c. 60 s. 1; 1905 c. 215 s. 1; Suppl. 1906 s. 925—25; 1907 c. 493; 1908 c. 604; Stats. 1911 s. 925—25, 925—30; 1912 c. 242 s. 21; Stats. 1921 s. 62.09 (3); 1935 c. 306; 421; 1956 c. 320 s. 3; 1957 c. 421; 1959 c. 125; 1965 c. 20, 617.

On election or appointment of statutory officers see notes to sec. 9, art. XIII.

62.09(3) History: 1967, which permits the mayor of a city operating under the general charter laws to appoint officers subject to confirmation by the council, contains no provision for limiting the number of persons to be considered by him when making the appointment. Gramling v. Wauwatosa, 44 W 2d 134, 171 NW 2d 807.

Choosing of members of a board of police and fire commissioners may be made elective under the procedure outlined in 62.09 (3) (b), Stats. 1913. 21 Atty. Gen. 380.

62.09(4) History: 1899 c. 326 s. 34, 35; Ann. Stats. 1899 s. 925g sub. 33, 35; Stats. 1899 s. 925—34, 925—35; 1907 c. 493; Stats. 1911 s. 925—25, 925—35; 1913 c. 205 s. 8; 1919 c. 362 s. 15; 1919 c. 679 s. 41, 45; 1921 c. 242 s. 22; Stats. 1921 s. 62.09 (4); 1927 c. 473 s. 17; 1929 c. 104; 1929 c. 262 s. 11; 1929 c. 518 s. 6; 1949 c. 231.

A pound master who is appointed from time to time by a council does not hold an "office or place of trust" and need not take and subscribe an oath under a charter which uses the quoted words. Wilcox v. Hemming, 58 W 144, 15 NW 438.

There is no presumption that one elected as successor has qualified. O'Connor v. Fond du Lac, 161 W 83, 70 NW 1116.

Under sec. 925—29a, Stats. 1913, from which 62.09(4) was partly derived, where the common council elected a city attorney and made a proper record thereof, each election was not invalidated by a postponement by the aldermen under the supposition that there had been no election, nor by the failure of the mayor to declare the attorney elected, nor by the failure of the city clerk to issue a certificate of election. State ex rel. Berdich v. Tyrrell, 168 W 425, 149 NW 290.

62.09(5) History: 1899 c. 326 s. 26, 28; Ann. Stats. 1899 s. 925g sub. 28, 28; 1899 c. 312 s. 14, 15; 1899 c. 318 s. 13; 1897 c. 70 s. 20; 1897 c. 109 s. 3; Stats. 1898 s. 925—25, 925—28; 1901 c. 443 s. 1; 1903 c. 28 s. 1; 1905 c. 339 s. 1; Suppl. 1906 s. 925—25, 925—147; 1907 c. 7; 1909 c. 227; Stats., 1911 c. 925—25, 925—35, 925—29; 1921 c. 242 s. 23, 311; Stats., 1921 c. 62.09 (5); 1927 c. 473 s. 37; 1943 c. 60; 1945 c. 23, 67; 1947 c. 312; 1949 c. 231; 1963 c. 245; 1969 c. 20.

It is customary for officers to begin their terms upon noon of the day fixed by statute and such custom has the force of law. State ex rel. Emberger v. Byrne, 96 W 16, 73 NW 336.

62.09(6) History: 1899 c. 326 s. 30; Ann. Stats. 1899 s. 925g sub. 30; 1899 c. 312 s. 16; 1895 c. 150; Stats. 1898 s. 925—30; 1907 c. 493; Stats. 1911 s. 925—25, 925—31c; 1913 c. 347; 1917 c. 259; Stats. 1917 s. 925—30, 925—31c, 925—21; 1921 c. 242 s. 24; 1921 c. 590 s. 56; Stats. 1921 c. 62.09 (6); 1929 c. 311; 1935 c. 451; 1937 c. 372; 1949 c. 165; 1959 c. 362, 603; 1967 c. 24.

If the resolution of a council appointing night watchmen for one year fixes the salary to be paid during that time, a person so appointed cannot recover more than the sum so fixed though he did not know that such resolution reduced the compensation he had received for service in the preceding year. Doolan v. Manitowoc, 48 W 314, 4 NW 475.

Where a city surveyor submitted a claim for compensation for the preparation of sewer plans, and this work was outside the scope of the official duties prescribed by the council, he was entitled to recover. Koloczi v. Madison, 105 W 167, 60 NW 688.

An agreement between a city officer and the mayor, after the appointment of the former, by which he was to receive a smaller compensation than that fixed by the council, is void. Rettinghouse v. Ashland, 134 W 283, 114 NW 453.

An officer receiving a pension from the city and to the city as the office, Singing an agreement to take less is not an estoppel. Nelson v. Superior, 109 W 618, 85 NW 412.

The provision in sec. 925—29b, Stats. 1913, relates to compensation as well as to salary and the council may fix a specific fee for a duty rather than a salary. Rudolph v. Hutchinson, 154 W 283, 114 NW 45.

Sec. 925—30, Stats. 1913, does not apply to officials holding newly-created offices, whose salaries may be fixed whenever they are lawfully appointed. State ex rel. Elliott v. Kelly, 154 W 462, 142 NW 115.

An officer receiving a pension from the city is not deprived of drawing the salary of his office. State ex rel. Kleinsteuber v. Kotecki, 155 W 66, 144 NW 200.

Payments beyond salary, by the city clerk of Milwaukee, to an employee receiving an annual salary, of additional sums for his services as an expert performed outside of regular office hours, were recoverable by the city. Milwaukee v. Reiff, 157 W 226, 146 NW 1130.

The requirement that salaries of city officers shall be fixed by the common council at its first meeting in February is mandatory, and the first regular meeting in March does not constitute an adjournment of the Febru
ary meeting where there was merely an informal agreement at the February meeting to postpone the matter. A change in the amount of salaries at such March meeting was ineffectual and the salaries as last lawfully fixed continued the lawful salaries. Smith v. Philips, 174 W 54, 162 NW 238.

A city engineer who, after receiving the full amount of his fixed salary, returned 10 per cent of it at the city's request for use for rolled purposes, was not entitled subsequently to recover such amount from the city, since it constituted a voluntary contribution to the city. Where, however, the city levied a 40 per cent contribution on the city engineer's fixed salary, and the city engineer entered into a compromise by which the city retained only 20 per cent, he was entitled to recover the amount retained, since in such situation he did not make a voluntary contribution to the city. Schuh v. Waukesha, 220 W 600, 205 NW 699.

The purpose of 62.09(6) (a) and (b), Stats. 1936, was to remove questions of compensation of officers from the influence of partisan elections and to inform a candidate in advance of his election as to the salary he would receive. In enacting 10.43, authorizing in general terms the initiation of city ordinances by petition, the legislature did not intend to override the public policy embodied in 62.09 (6) (a) and (b), relative to the fixing or changing of salaries, and did not intend to permit the electors to do what the council was prohibited from doing. An ordinance proposing to change the salaries of aldermen, initiated by a petition under 10.43, presented to the common council after its first regular meeting in February, was not presented to the council at a time when it might lawfully change salaries so as to affect aldermen to be elected at the spring election. Peavel v. Appleton, 234 W 463, 251 NW 630.

Although a city officer cannot be coerced to waive part of his salary, he may voluntarily make a gift of a part of his salary to the city, and a determination of whether he has made a gift should not be made to turn on the mere mechanics of the operation nor be made to depend on the system of bookkeeping used in effecting the gift. Payments made to the city treasurer in excess of his legal salary were unlawful, and could be recovered by the city. Maxwell v. Madison, 238 W 114, 292 NW 301.

Only if the expense allowance is patently for the purpose and design of permitting the officer holder to convert the allowance to his own use regardless of whether any expenses have been incurred should the money be regarded as compensation and within the prohibition of the statute. Geysos v. Cudahy, 34 W (2d) 476, 149 NW (2d) 611.

62.09(7) (a) History: 1869 c. 326 s. 54; Ann. Stats. 1869 s. 925X sub. 44; Stats. 1869 s. 925-54; 1921 c. 242 s. 25; Stats. 1925 s. 62.09 (7) (a).

62.09 (7) (b) History: 1869 c. 326 s. 49; 264; Ann. Stats. 1889 s. 925X sub. 48, 925X sub. 254; Stats. 1869 s. 925-49, 925-254; 1919 c. 925; Stats. 1919 s. 925-49, 925-254, 925-148; 1921 c. 242 s. 26; Stats. 1921 s. 62.09 (7) (b).

Members of a common council, compelled by mandamus to issue a renewal of his taxicab license, were not liable in such proceeding for damages to the plaintiff, they not having acted fraudulently or corruptly in refusing to grant the plaintiff's application for a renewal of his permit, but having so refused because of their mistaken interpretation of the applicable city licensing ordinance. Corran v. Mortier, 7 W (2d) 494, 96 NW (2d) 251.

62.09 (7) (c) History: 1921 c. 242 s. 27; Stats. 1921 s. 62.09 (7) (c).

62.09 (7) (d) History: 1869 c. 326 s. 54; Ann. Stats. 1869 s. 925X sub. 44; Stats. 1869 s. 925-54; 1921 c. 242 s. 28; Stats. 1921 s. 62.09 (7) (e); 1959 c. 603 s. 3; 1959 c. 641 s. 14; Stats. 1959 s. 62.09 (7) (d).

62.09 (7) (e) History: 1917 c. 190; Stats. 1917 s. 959-140; 1921 c. 242 s. 96; Stats. 1921 s. 62.09 (7) (f); 1959 c. 603 s. 3; 1959 c. 641 s. 14; Stats. 1959 s. 62.09 (7) (e).

Editor's Note: In connection with this provision see Kempster v. Milwaukee, 163 W 421, 79 NW 411 (1899).

The word "may," as used in statutes, means "must" or "shall" only in cases where the public interests or rights are concerned and where the public or third persons have a claim de jure that the power should be exercised. Curry v. Forlaje, 166 W 35, 217 NW 705.

Public officers, discharging legislative and quasi-judicial functions and acting within their jurisdiction, are not liable to an individual for damages either for mistake, errors of judgment or corrupt conduct, except as to damages resulting from an unjustifiable invasion of private property. Wasserman v. Kenosha, 217 W 225, 256 NW 637.

62.09 (8) History: 1869 c. 326 s. 38, 40; Ann. Stats. 1869 s. 925X sub. 38, 40; 1869 c. 316 s. 10; 1895 c. 510 s. 3; Stats. 1898 s. 925-38, 925-40; 1917 c. 470; 1921 c. 242 s. 30; Stats. 1921 s. 62.09 (8).

If, after the commencement of an action against a city, the plaintiff's attorney becomes the mayor thereof he may appear afterward for the plaintiff on the trial of the action. McKeigue v. Janesville, 68 W 50, 31 NW 295.

The acting mayor can perform no official duty as mayor while absent from the city. Appointments of a commission by the acting mayor while absent from the city is void, as the mayor can perform no official act while absent. State ex rel. Emberson v. Byrne, 98 W 11, 73 NW 295.

A removal proceeding by the common council was not invalidated by the participation in an advisory capacity of the mayor, city clerk and city attorney. State ex rel. Cleveland v. Common Council, 177 W 557, 188 NW 601.

A resolution by a city council authorizing the purchase of land for a city hall which was not submitted to the mayor for approval did not constitute a legal offer to purchase nor a basis of a contract to purchase, the mayor being a part of the law-making power of the city. Wintzinger v. Waupun, 163 W 32, 197 NW 249.

The offices of mayor and commissioner of...
62.09 (13) History: 1889 c. 326 s. 45, 125; Ann. Stats. 1899 s. 925b sub. 45, 925c sub. 125; 1898 s. 41, 253; 1903 c. 129 s. 1; Suppl. 1906 s. 925c sub. 125; 1911 c. 477; 1913 c. 490; 1921 c. 242 s. 3; Suppl. 1921 c. 125; 1949 c. 330; 1957 c. 925h sub. 41, 925q sub. 41; Suppl. 1906 s. 925c sub. 125; 1911 c. 125; 1935 c. 199; 1941 c. 129; 1947 c. 362 s. 2; 1961 c. 534; 1965 c. 232.

A city's action for a penalty for disorderly persons charged with violation of city ordinances or the state criminal law; find a person the right to find a person guilty of an offense by means of illegal arrest or illegal search.

For a penalty for disorderly conduct because of unlawful assemblage need not be dismissed on motion of the city attorney, and, where he then withdrew, the court properly called a member of the bar to appear for the city, as against the contention that only the city council could appoint an attorney, and that, in the absence of such appointment, resort to mandamus was the only remedy. Guiterman v. Milwaukee, 217 W 334, 258 NW 865.

A city attorney may not be paid, in addition to his salary, compensation for services rendered to a municipally owned public utility. 26 Atty. Gen. 496.

The offices of city mayor and justice of the peace are incompatible. 11 Atty. Gen. 470.

The offices of city mayor and justice of the peace are incompatible. 17 Atty. Gen. 325.

The offices of city treasurer and constable may be held by the same person in a city of the fourth class. 7 Atty. Gen. 325.

The offices of city treasurer and constable may be held by the same person in a city of the fourth class provided that the duties of those officers the powers of constables to arrest without warrant any person found violating a city ordinance, or admit to bail for violation of a city ordinance, include' female offenders. Janesville v. Tweedell, 217 W 395, 258 NW 129.

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sworn in as a deputy sheriff so as to be within 59.29. 34 Atty. Gen. 44.

63.22 (14) History: 1925 c. 132; Stats. 1925 s. 62.00 (14).

62.11 (1) History: 1889 s. 326 a. 49; Ann. Stats. 1889 s. 925t sub. 49; 1893 c. 312 s. 24; Stats. 1898 s. 925–49; 1902 c. 342 s. 36; Stats. 1921 s. 62.11 (1); 1943 c. 36.

It is against public policy for a registered pharmacist, whose license and ordinance committee of the council. 24 Atty. Gen. 292.

62.11 (2) History: 1889 s. 326 a. 50; Ann. Stats. 1889 s. 926t sub. 50; Stats. 1889 s. 925–50; 1910 c. 100; 1921 c. 242 s. 37; Stats. 1921 s. 62.11 (2).

62.11 (3) History: 1889 s. 326 s. 51; Ann. Stats. 1889 s. 926t sub. 51; 1897 c. 138 s. 7; Stats. 1898 s. 925–51; 1921 c. 242 s. 38; Stats. 1921 s. 62.11 (3); 1932 c. 307 s. 8.

Under a provision that the vote on the passage of every resolution requiring work on the streets shall be taken by yeas and nays and duly entered in the journal, a separate vote on each resolution of that kind is not essential. Wright v. Forrestal, 69 W 341, 27 NW 52.

The power conferred upon the common council of the city of Milwaukee by sec. 6, ch. 334, Laws 1882, to "judge of the election and qualification of its own members", does not exclude the common-law jurisdiction of the courts to determine the right to the office of alderman. State ex rel. Anderton v. Kempf, 69 W 470, 34 NW 226.

An ordinance which has not as yet become absolutely binding may be reconsidered. Waukesha H. S. Co. v. Waukesha, 83 W 475, 53 NW 675.

The rules for the construction of statutes and municipal ordinances are the same. Where an ordinance provides that a former ordinance "is hereby amended so as to read as follows," any provision of the former ordinance not found in the latter one are regarded as having been denied. That rule was changed by said chapter. Since then cities possess all powers not denied by the statutes or the constitution. Instead of the absolute privilege under secs. 15 and 16, art. IV, of members of the legislature, the privilege involved is nevertheless a qualified or conditional privilege, and it is essential to a conditional privilege that such a statement be made or published in good faith. Hranigan v. State, 209 W 246, 244 NW 767.

62.11 (4) History: 1889 s. 326 s. 52; Stats. 1889 s. 925–52; 1910 c. 285; Stats. 1918 s. 925–49; 925–52 (68); 1921 c. 242 s. 39; Stats. 1921 s. 62.11 (4); 1959 c. 70; 1961 c. 104; 1983 c. 107; 1987 c. 560; 1959 c. 435; 1961 c. 622; 1965 c. 252.

62.11 (5) History: Stats. 1919 s. 925–52; 1921 c. 242 s. 49; Stats. 1921 s. 62.11 (5).

Editor's Note: Prior to the enactment of 62.11 (5) by ch. 242, Laws 21 (repeal of city charter law), cities possessed specified powers. Their powers were limited to those expressly given in the statutes and those necessarily implied by the express powers. All other powers were regarded as having been denied. That rule was changed by said chapter. Since then cities possess all powers not denied by the statutes or the constitution. Instead of the absolute privilege under sec. 15 and 16, art. IV, of a member of the legislature, the privilege involved is nevertheless a qualified or conditional privilege, and it is essential to a conditional privilege that such a statement be made or published in good faith. Hranigan v. State, 209 W 246, 244 NW 767.

62.11 (6) History: 1889 s. 326 s. 53; Stats. 1889 s. 925–53; 1921 c. 242 s. 40; Stats. 1921 s. 62.11 (6).
Authority conferred upon a city council in permissive language must be exercised if there are persons who have an absolute right to have it exercised. But if the power is discretionary the city is not liable for the non-exercise of it. Kelley v. Milwaukee, 18 W 83.

An ordinance which fixes the maximum speed for railroad trains in cities at less than the rate allowed by the general law of the state is void. Horn v. Chicago & Northwestern R. Co. 38 W 493.

Under authority to manage and control the finances and all the property of the city and to exercise its corporate powers and manage its concerns the city authorities may lease a hall which it owns for concert, theater and other entertainments. Bell v. Platteville, 71 W 138, 36 NW 831.

Under its police power a city may provide by ordinance that whenever it shall be necessary to cross the line of any existing electric, telegraph or telephone line, the person making such crossing shall supply all necessary safeguards for the same. Wisconsin T. Co. v. Janesville S. R. Co. 87 W 72, 97 NW 970.

An action by a city to recover a penalty for the violation of a municipal ordinance prohibiting an act which is a crime or misdemeanor and punishable at common law or by statute, and prescribing a penalty for its violation is quasi-criminal. Although an act is a penal offense under the laws of the state, further penalties for its commission may, under proper legislative authority, be imposed by municipal bylaws or ordinances, and the enforcement of the one does not preclude the enforcement of the other. State ex rel. City of Milwaukee v. Newman, 96 W 258, 71 NW 436.

Under ch. 27, Laws 1889, and its charter, the city of La Crosse had no power to accept a privilege, granted to it by the legislature of Minnesota, of constructing a highway over territory within such state, subject to liability for all damage caused by the improper construction or want of repair of such highway. Becker v. La Crosse, 84 W 414, 73 NW 84.

A city cannot, without express authority, exact a license fee from a telephone company, operating within its limits, which has paid a state license fee. Wisconsin T. Co. v. Oakshoo, 62 W 32, 21 NW 828; Wisconsin T. Co. v. Milwau­kee, 106 W 1, 104 NW 1909. See also Mil­waukee v. Milwaukee E. R. L. Co. 147 W 456, 133 NW 593.

A municipal corporation may sue in equity to prevent encroachment upon or obstruction of a highway by land or water within its charge. Milwaukee v. Ginnbel Brothers, 120 W 31, 116 NW 7.

A city cannot surrender the police power it possesses or tie its hands to the embarrassment of its future governmental functions, no matter what the consideration may be. Superior v. Railroad Comm. 154 W 345, 141 NW 295.

A city council possesses a large measure of power to legislate for the benefit of trade and commerce. State ex rel. Elliott v. Kelly, 154 W 482, 145 NW 153.

An ordinance may make an act punishable by penalty collectable in a civil action, although a statute already makes the act a misdemeanor. The term "fine" or "punishment by fine" in a city ordinance implies a penalty collectable by civil action in the name of the city; and in such action the city has the right of appeal. Milwaukee v. Rup­linger, 156 W 391, 146 NW 42.

The power to enact police regulations by ordinance need not be given to a city in express words. Mehles v. Milwaukee, 156 W 391, 146 NW 862.

Ch. 566, Laws 1911, does not furnish a complete scheme for the regulation of weights and measures. A city may adopt reasonable regulations for the weighing and sale of coal not in conflict with any statute of the state. An ordinance should not be wholly annulled because some of its provisions are found unreasonable, unless the court can say that the valid and void parts cannot be separated. Brit­tingham v. Sparta, 87 W 72, 57 NW 970.

The general welfare clause confers upon cities the power to regulate the use of bill­boards, and the courts will interfere with the exercise of that power only when there has been a clear abuse of it. Cream City B. P. Co. v. Milwaukee, 115 W 88, 147 NW 25.

The fact that in its proprietary capacity a city has, as a part of its contractual powers, the incidental authority to limit the hours of labor on public works, does not prevent it in its governmental capacity from enforcing the limitation by ordinance. Milwaukee v. Raufl, 164 W 172, 159 NW 819.

A city, without possessing any right or interest in land for street purposes by dedic­ation or condemnation, attempted to acquire such right by special contract with a bridge company by which the city obligated itself to maintain at its own cost as a highway one of the approaches to a bridge, such mainte­nance being a legal duty of the bridge company. That contract was void. State ex rel. Superior v. Duluth & Superior B. Co. 171 W 293, 177 NW 332.

Except as limited by statutory or constitutional provision a city may borrow money for all lawful municipal purposes. Miles v. Ashland, 172 W 605, 176 NW 779.

A city had no authority under the provi­sions of sec. 925-52 (31), State, 1910, to require an interurban railway, which had laid its tracks upon its own private right of way before the city was organized, to move its tracks from such right of way which it still owned to another portion of the street so as to bring the tracks in the center thereof. State ex rel. West Allis v. Milwaukee L. R. & T. Co. 173 W 220, 180 NW 938.

62.11 (5) does not delegate power to a city council to purchase land for city purposes without the approval of the mayor. It must be construed in connection with the veto power. Such approval is not ministerial, but legislative. Winninger v. Waupun, 138 W 32, 197 NW 249.

In the operation and maintenance of its waterworks system, a city acts in a proprie­tary capacity. The city had the right to contract with the owner of a dam to relieve the owner from the obligation of maintaining a bridge across a race way, in consideration of the reconstruction of the dam by the
owner, making the water in the mill pond available to the city for fire protection. Generally, a contract entered into by a city in its proprietary capacity cannot be rescinded or modified in any degree without the consent of both parties. West Bend v. West Bend H. & L. Co., 136 W 184, 262 NW 556.

A city engaged in its proprietary capacity may exercise such powers as a private concern engaged in a like business exercises. Chicago, St., P., M. & O. R. Co. v. Black River Falls, 195 W 379, 215 NW 469.

See note to 102.04, on public employers, citing Burlington v. Industrial Comm. 195 W 536, 518 NW 416.

Cities are not a dual nature, but are creatures of the state, having imposed upon them certain duties or functions in the interest of the general welfare, and also given certain powers in respect to local self-government and local affairs. In re Application of Racine, 194 W 804, 220 NW 398, 221 NW 109.

An ordinance forbidding the keeping of a junk yard without a license did not vest in the city council purely arbitrary power to grant and revoke licenses. But the council's act in denying a permit for a junk yard should not be disturbed except for clear abuse of discretion. Lerner v. Delavan, 263 W 92, 233 NW 609.

"That 62.11 confers power far beyond that conferred in the so-called general welfare clause of the general character as it stood prior to 1921 is plain, and a city operating under the general charter, finding no limitations in express language, has under the provisions of this chapter all the powers that the legislature could by any possibility confer upon it." Black v. Mineral Point, 203 W 210, 219, 233 NW 82, 84.

If a city refuses to act, a taxpayer may maintain an action in its behalf to recover from its officers money illegally paid out under street improvement contracts, but the city must be a party to the action. Coyle v. Richter, 203 W 599, 234 NW 996.

An ordinance providing for the revocation of a license by the mayor "for the good order of the city" was not a delegation of a legislative function, as it leaves to the mayor only the administrative function of ascertaining the existence of facts because of which revocation is necessary or expedient for such good order. A licensee, seeking to set aside the revocation of a license, is precluded from asserting that the ordinance under which the license was granted and under which he claims to be invalid, State ex rel. Flammond Amusement Park v. Mayes, 207 W 657, 240 NW 847.

In an action to restrain the city from interfering with the use of real property, the evidence is held to show that refusal by the council of a permit for erection of a filling station was not arbitrary, it appearing with reasonable certainty that the application was denied because the council believed that the establishment of such a station at the point in question would create an additional traffic hazard. Wadham's Oil Co. v. Delavan, 208 W 378, 243 NW 224.

The safety requirements fixed by the industrial commission for buildings pursuant to ch. 101 are to be considered as minimum requirements, and they do not preclude city ordinances including severer regulations, when reasonably necessary, than the state code. This section, empowering cities to enforce their ordinances by suppression, confiscation and other convenient means, does not give a city the right to create remedies to be applied by the courts, or entitle a city to an injunction against an ordinance violation not constituting a nuisance per se. Caedres v. Platteville, 219 W 344, 201 NW 245.

A city council was without authority to use money, ostensibly borrowed to pay current expenses, to pay a bonus to a company to induce it to locate a plant in the city. Wendland v. Hartford A. & I. Co., 222 W 204, 268 NW 230.

A municipality does not become liable by reason of any act of its officers or agents, either for money, services, or goods, where the municipality had no power originally to make itself liable by contract. Shulse v. Mayville, 223 W 624, 271 NW 642.

The city may determine and may change the public use to which land dedicated as a public square without restriction may be devoted and no prescriptive right can be acquired to any particular form of public use. A city ordinance which prohibited peddlers and transient merchants from occupying any part of the public square longer than 15 minutes is construed as intended to prohibit the use of the square by peddlers and transient merchants for vending purposes and as so construed is valid. Stevens Point v. Backus, 235 W 737, 374 NW 509.

A city ordinance prohibiting any marathon, walkathon or similar endurance contest was not superseded by or in conflict with the subsequent statutory enactment 352.48 (1), Stats. 1937 prohibiting like contests wherein any participant participates for a stated period. Fox v. Racine, 225 W 542, 276 NW 513.

Although a city, under the general police powers conferred by 62.11 (5), has power to enact an ordinance for licensing the erection and maintenance of structures for the sale of gasoline and other petroleum products, an ordinance prohibiting the erection or maintenance of a gasoline or oil bulk or filling station within the city limits without first obtaining a permit from the common council, but not providing or indicating any standard to guide the council, is not a lawful exercise of a purely arbitrary power. Junes v. Badger Co-op. Oil Co., 227 W 629, 279 NW 666.

Under 62.11 (5), 66.05 (7) and 146.11 (2), Stats. 1937, regulatory control over rendering plants is vested in the state board of health to the exclusion of cities, and cities have the power to enact ordinances providing for the licensing of such plants. A city ordinance, prohibiting the conduct of any rendering business in the city without obtaining a license from the common council, and containing provisions for the prevention of offensive odors, is not void as conferring arbitrary powers on the council to grant or deny licenses without prescribing any standards to be considered thereby. La Crosse Rendering Works v. La Crosse, 231 W 436, 268 NW 393.

A city ordinance requiring that, before proceeding with the erection of any building within fire limits, the owner shall obtain a permit from the mayor and chief engineer,
A city ordinance imposing a license tax of $10 per day for carrying on a business of a transient photographer is beyond the power of the city and void as designed to suppress, rather than to regulate, a lawful business. Racine v. Weyhe, 241 W 133, 5 NW (2d) 747.

Under its police power, broadly granted by 62.11 (5), a city has authority to prohibit the use or occupancy of a building for failure to comply with valid requirements of a building ordinance where the owner or occupant fails to make the building comply after notice of his violation thereof; and such prohibition does not violate the due-process clause of either the state or the federal constitution. Miller v. Foster, 244 W 98, 11 NW (2d) 874.

Where a contract by which a city agreed to pay money to a corporation if the corporation would move its plant to the city was ultra vires, and where the acts of all concerned did not result in a benefit to the city nor proceed so as to create special circumstances, the city may recover from the corporation the money paid, but the directors of the corporation, acting in good faith and not knowing that the city would rescind the transaction, are not individually liable. In respect to individual liability for the return of money received by a corporation pursuant to a transaction subsequently rescinded by the other contracting party, the corporate officers and directors are not "agents" and the corporation is not their "principal" in the usual sense, but they are the alter ego of the corporation in acting in the transaction; and the corporation itself, acting per se by means of its own authorized organization, is alone responsible in its ordinary and usual transactions, unless its officer injects his individual responsibility by doing some act such as a wilful wrong. Kiel v. Frank Shoof Mfg. Co., 245 W 292, 14 NW (2d) 164.

See note to 260.05, citing State ex rel. Keefe v. Schmiege, 231 W 79, 26 NW (2d) 345.

Under 62.94 and 62.11 (5), the council of Prairie du Chien was acting within its powers in accepting a deed of the Villa Louis from the owner thereof, and in later joining with Prairie du Chien as an historical site.

Prairie du Chien was a historical site.

It could authorize the construction of a municipal television-translator tower to improve the quality of television reception in the local community, as a permissible municipal activity in promotion of public health, safety and welfare, and an expenditure of public funds for a public purpose. Bescondex v. Dallington, 14 W (2d) 366, 111 NW (2d) 164.

A municipal corporation has the power to submit to arbitration any claims asserted by or against it, whether based on contract or on tort. Madison v. Frank Lloyd Wright Foundation, 20 W (2d) 361, 126 NW (2d) 406.

See note to 66.05, citing Melhost v. Melhost, 29 W (2d) 567, 139 NW (2d) 116.

62.11 (5) confers power to enact an ordinance licensing retail food sellers which is valid even though the seller (a bakery) is also required to have a state license under 97.10, since different activities are regulated. Johnston v. Sheboygan, 30 W (2d) 170, 149 NW (2d) 247.

See note to 97.36, citing Johnston v. Sheboygan, 30 W (2d) 170, 149 NW (2d) 247.

When the validity of a city ordinance enacted under its police power is challenged, the following established rules are applied by the courts in determining whether or not the ordinance is constitutional: (1) The ordinance is presumed constitutional and the attacking party must establish its invalidity beyond a reasonable doubt.
reasonable doubt; (2) the ordinance must be sustained if there is any reasonable basis for its enactment, and the courts will only interfere with the exercise of police power by a municipality when it is clearly illegal; and (3) the function of a reviewing court is solely for the purpose of determining whether legislative action under the power delegated to the municipality passes boundaries of its limitations or exceeds boundaries of reason. Clark Oil & Refining Corp. v. Tomah, 30 W 2d 347, 141 NW (2d) 269.

In reviewing findings and conclusions of a trial court where the constitutionality of a municipal ordinance has been challenged, the supreme court is only bound by the usual rule (i.e., that findings and conclusions are to be upheld unless against the great weight and clear preponderance of the evidence) when such findings and conclusions concern themselves with adjudicative facts. Clark Oil & Refining Corp. v. Tomah, 30 W 2d 347, 141 NW (2d) 269.


The power of cities in this state under 62.11 (5), Stats. 1951, is very broad. 15 Atty. Gen. 515.

The general rule is that municipal regulations must not directly or indirectly contravene the general law. Nor can such regulations be repugnant to the policy of the state as declared in general legislation. As a general rule, regulations which are additional to the state law do not constitute a conflict therewith. 21 Atty. Gen. 962.

Under 62.11 (5), Stats. 1935, a municipality may pass ordinances strictly regulating abandon­ed wells, require permits on installation of private wells, and provide penalties for failure to comply with ordinances. 24 Atty. Gen. 404.

Cities may by ordinance prohibit slot machines and pin ball games as potential gambling devices. 25 Atty. Gen. 585.

Subject to possible doubt created by the preamble to the state rent law, 234.36, Stats. 1949, any city, including Milwaukee, under proper conditions, has power under 62.11 (5), to enact ordinances limiting maximum rents and imposing conditions upon terminations of tenancies. 39 Atty. Gen. 407.

The authority of a city to protect the public health, whether under 62.11 (5) or 144.06, Stats. 1949, is not limited to the construction of a sewer pipe to the basement of a residence, but extends to the installation at the owner's expense of such facilities as are necessary to permit the drainage of household sewage into the public sewer system. 39 Atty. Gen. 499.

Under 62.11 (5), Stats. 1901, the city council has the management and control of city property and may pursuant to valid contract convey real estate by the form of conveyance contemplated by 253.19 (2) without the mayor's signature, but the action of the council must be submitted to the mayor for his veto under 62.09 (6) (c) and if he vetoes the council's action, it will be necessary to override the veto by a three-fourths vote of the members of the council. 40 Atty. Gen. 134.


The legislature has not delegated to towns, cities and villages the power to charge a fee for the use of navigable waters within their boundaries. 45 Atty. Gen. 23.

See note to 101.80, citing 55 Atty. Gen. 231.

See note to 160.03, citing 55 Atty. Gen. 268.

school purposes as well as for other city purposes. 11 Atty. Gen. 769.

A city council may levy a tax more than sufficient to cover operating expenses of the school system and create a fund to be used for building a high school, provided said levy, together with levy for all other purposes, does not exceed 3 1/2 per cent of the assessed valuation plus eight-tenths of one per cent on said valuation. 13 Atty. Gen. 590.

62.12 (5) History: 1897 c. 329 s. 121, 122, 123, 124; Ann. Stats. 1899 s. 928q sub. 121, 928q sub. 122, 928q sub. 123, 928q sub. 124; 1897 c. 312 s. 40; Stats. 1898 s. 928—121; 1911 c. 242 s. 48; Stats. 1921 s. 62.12 (5.)

62.12 (8) History: 1899 c. 328 s. 121, 122, 123, 124; Ann. Stats. 1899 s. 928q sub. 121, 928q sub. 122, 928q sub. 123, 928q sub. 124; 1893 c. 312 s. 38; Stats. 1899 s. 928—121, 928—122, 928—123, 928—124; 1911 c. 242 s. 48; Stats. 1921 s. 62.12 (6); 1941 c. 125; 1947 c. 362 s. 6.

Money which has been received by taxation for a specific purpose constitutes money appropriated by law for that purpose. Welp v. Wausau, 143 W 94, 128 NW 429.

62.12 (7) History: 1899 c. 328 s. 121 to 125; Ann. Stats. 1899 s. 928q sub. 126, 928q sub. 127; 1893 c. 312 s. 40; 1897 c. 22; Stats. 1898 s. 925—127, 925—128, 925—129; 1911 c. 130; Stats. 1911 s. 925—127, 925—127a, 925—128, 925—129; 1913 c. 773 s. 24; Stats. 1918 s. 925—127, 925—128, 925—129, 925—170m; 1921 c. 242 s. 47 to 50; Stats. 1921 s. 62.12 (7); Spl. S. 1931 c. 1 s. 1; 1933 c. 435 s. 2; 1941 c. 129.

The sureties on a depository bond securing municipal deposits are entitled upon payment of a judgment in favor of the city to offset the common council by 62.25 (1) for allowance or disallowance; and a claim for a specified amount as damages to a stock of goods shipped for a municipality does not exceed 3 1/2 per cent of the assessed valuation plus eight-tenths of one per cent on said valuation. 13 Atty. Gen. 345.

62.12 (2) History: 1897 c. 329 s. 134, 135; Ann. Stats. 1899 s. 928q sub. 134, 135; Stats. 1898 s. 929-134, 929-135; 1917 c. 553 s. 2; 1921 c. 242 s. 51, 52; Stats. 1921 s. 62.12 (6); 1939 c. 107; 1945 c. 43.

A claim was presented to the council when it was filed with the city clerk. Bacon v. Antigo, 108 W 10, 79 NW 31; Mason v. Ashley, 97 W 540, 74 NW 337; Oaksho W. W. Co. v. Oaksho, 108 W 65, 61 NW 1044.

This section does not apply to the fixing or the paying of salaries of officials. State ex rel. Elliott v. Kelly, 154 W 493, 143 NW 153.

Tort claims are not included in the claims specified in this section and required to be "itemized," but are required to be presented to the common council by 62.25 (1) for allowance or disallowance, and a claim for a specified amount as damages to a stock of goods by flooding caused by the negligent construction of a sewer, was "not too indefinite." J. F. Hoppel Co. v. Manistow, 162 W 141, 195 NW 369.

62.13 (3) History: 1897 c. 328 s. 959—41; 1898 c. 176 s. 1; 1897 c. 176 s. 1, 3; Suppl. 1897 c. 326 s. 134, 135; 1917 c. 67; 1921 c. 17; 1921 c. 773 s. 24; Stats. 1921 s. 62.13 (3).

Where a chief of police had been appointed by the board and where the board thereafter had been abolished the chief of police could not be removed from office without proof of good cause. State ex rel. Monty v. Tilleson, 321 W 119, 285 NW 501.

Under the provisions of 62.13 (3) and (4), Stats. 1937, that the board of police commissioners of a city shall appoint the chief of police and that the chief shall appoint subordinates, a captain of police is a "subordinate," so that the board has no authority to appoint a permanent captain of police and endow him with the right to hold the office or employment until discharged for cause. Walsh v. Richland Center, 201 W 265, 285 NW 791.

Out-of-state candidates being eligible to be appointed chief of police in a city operating under the city-manager plan, the expenses of such candidates in coming to the city for interviews, approved by the board of police and fire commissioners, should be paid by the city. Evjue v. Howell, 255 W 257, 25 NW 247.
reasonableness of a determination of the commis-

sioners, shall be final and conclusive and

that an order of the circuit court on the

declarations of legislative intent in 62.13 (12)

boards of ch. 586, 1917, authorizing

invalid, he was not entitled

sion, where his earnings elsewhere during such

in rank, the sole questIOn for determmatIOn

is, as expressly prescribed by 62.13 (5) (h),

Stat. 1945, authorizing the appeal, whether

on the evidence the order of the commission

was reasonable. Petition of Heffernan, 244

1911, applicable to Milwaukee, but, by virtue of exclu-

provisions in 62.03 (1), the provisions of

c. 63, in particular 62.13 (5) (b) and (c),

relating in part to hearings for policemen or

firemen suspended by the board or chief of city, are not applicable to Milwaukee. State ex rel. Curtis v. Steinkeiner, 247 W 1, 18 NW (2d) 305.

A police patrolman was not a “public officer”
either under the enumeration of officers in 62.09 (1) (a) or under any city ordinance, but was an employer, and, after certeriori pro-
ceedings in which it was determined that a board order suspending him for a year was invalid, he was not entitled to recover from the city any salary for the period of suspen-
sion, where his earnings elsewhere during such period exceeded the salary he would have re-
cieved from the city had he worked in the police department during such period. Heffernan v. Janeville, 246 W 296, 21 NW (2d) 651.

The provisions of 62.13 (5) (c), as well as of

c. 63, Laws 1911, authorizing appeals to the

circuit court from disciplinary orders of boards of fire and police commissioners, and

providing for a review by the circuit court only as to the reasonableness of the order of the board, considered together with identical declarations of legislative intent in 62.13 (12) and 68.01 (15), indicate a legislative intent

that an order of the circuit court on the reasonableness of a determination of the commis-

sioners shall be final and conclusive and that the commissioners shall have no right
to appeal therefrom, as against a contention that later-enacted amendments to ch. 274, State, dealing with appeals generally, and particularly 274.09, 274.10, 274.11 and 274.33

should be held to authorize an appeal in such case. Zenderjanski v. Police and Fire Commissio-
ners, 207 W 590, 44 NW (2d) 270.

The provision in 62.13 (5) (b) that the court shall

application file a date of trial after which

appeal to the circuit court from an

appeal to the circuit court from disciplinary orders of

was not an “office” but was merely an employe, and hence

the dismissal of his complaint against the city for damages, on the ground that the situation was governed by the rule that when the salary of an “office” has been paid to a de facto officer the de jure officer cannot recover from the municipality the sums so paid, was error. Olson v. Superior, 240 W 108, 2 NW (2d) 711.

A resolution adopted by the common

council of a city directing the chief of police to file

charges against a subordinate is not an unlawful interference with the executive branch of government, nor will the fact that damage will occur to the subordinate justify an in-


The scope of review of the decision of the circuit court under 62.13 (5) is discussed in

State ex rel. Kaczowski v. Fire & Police Comm. 33 W (2d) 488, 149 NW (2d) 44.

62.13 (5m) History: 1933 c. 58; Stats. 1933

s. 62.13 (5m).

A pipeman who was wrongfully dismissed in di-

agreement with the rules of the civil service branch of

under 62.13 (5m) (b) and (c), and whose work

was thereafter done by others, was not an “offi
cer” but was merely an employe, and his de-

nial of his complaint against the city for

damages, on the ground that the situation was

governed by the rule that when the salary of an “office” has been paid to a de facto

officer the de jure officer cannot recover from the municipality the sums so paid, was error. Olson v. Superi-

or, 240 W 108, 2 NW (2d) 711.

62.13 (6) History: 1913 c. 506; Stats. 1913

s. 62.13 (6).

A communication from the board of police

and fire commissioners to the common
council, offering a “suggested” plan of salary
waiver, disclosed a substantial compliance with this subsection, requiring a

“recommen-
dation” of the board before the council may

decide policemen’s salaries, and the council

may not exceed the amount of decrease so


A resolution of the board of fire and police

commissioners that the city council be per-

mitted to reduce salaries of police and fire
department personnel by such per cent as the

council should deem proper after careful study and survey was sufficient compliance with the statute permitting reduction of salaries only on recommendation of the board. The resolution was valid even though the board was only a de facto board. Silgen v. Fond du Lac, 253 W 260, 274 NW 266.

Where policemen did not protest against

and police commissioners, and

the reduction of salary made by city as emer-
gency economy measure and accepted reduced salaries for several years the policemen were estopped to claim the amount deducted. Al-

tenberg v. Superior, 228 W 272, 280 NW 342.
Laws 1939, the legislative measure to compel the award him a pension. (State ex rel. Weber v. Board of Trustees v. Viroqua, 244 W 615, 12 NW (2d) 912."

62.13 (8) History: 1889 c. 326 s. 72, 74, 75; Ann. Stats. 1955, is entitled to vote for 3 members of the board of a pension board, in a village board. is authorized to make an order of the board, in a village board, to retire a disabled policeman only after such a finding has been made, and a policeman's pension, containing no allegation that the necessary finding by a medical officer or physician ordered by the board has been made, is insufficient to entitle him to a writ of mandamus to compel the board to retire him and award him a pension. (State ex rel. Weber v. Trustees of Policemen's Pension Fund, 119 W 438, ap'd.) State ex rel. Wendt v. Trustees of Police Pension Fund, 239 W 55, 300 NW 510.

Under 62.13 (9), a city treasurer or ex officio officer of a pension board, such as the fireman's pension board of a city, is without authority to determine the validity of an order of the board, and the city's remedy, if dissatisfied with such order, is by certiorari, wherein the court may review the board's findings. In a judicial review of the pension board's determination, the reviewing court is limited in matters of evidence to the question of whether the finding is supported by substantial evidence in view of the entire record. Graff v. Denny, 12 W 253, 65, 16 NW (2d) 311.

Funds coming into the hands of the city treasurer or ex officio treasurer of retirement board of policemen's annuity and benefit fund are subject to the public deposits law ch. 34 27 Atty. Gen. 298."

Moneys owing fireman's pensioner under this section are not exempt under the provisions of this paragraph from the state's claim for income taxed owing by the pensioner. Express provisions of 74.11 (3) (c) and 47.36, Stats. 1937, prevail over 62.13 (9) (d). The state proceeds under 71.36 cannot reach pension by order of court in supplementary proceedings but can reach pension only by proceeding under 304.21, 22 Atty. Gen. 229.

For interpretations of ch. 206 and 556, Laws 1947, as they apply to police pension funds outside of cities of the first class see 36 Atty. Gen. 498.

A policeman in a city of the second or third class who joined the department on or after January 1, 1944, and who is under the Wisconsin retirement fund rather than the police pension fund created pursuant to 62.13 (9), Stats. 1855, is entitled to vote for 3 members of the board of trustees of the latter pension fund. 44 Atty. Gen. 191. 62.13 (9a) History: 1917 c. 210; Stats. 1917 s. 925-52w; 1919 c. 161; 1921 c. 242 a. 78;
The time when a person has been in service as a volunteer, devoting only a portion of his time to the service, is to be measured as part of the 22 years and he is entitled to the pension if he is receiving a monthly compensation at the termination of such period. State ex rel. Schaetzle v. Knowles, 145 W 322, 130 NW 451.

The intention of sec. 959-46 s. 590; Stats. 1921 s. 62.13 (11), to exclude from the right of a pension any member of a fire department who may be permanently retired prior to 22 years of service because of disability or disease which is not the outgrowth of his performance of duty. State ex rel. Johnson v. Board of Trustees, 170 W 154, 174 NW 455.

It is the intent of the firemen's pension law to bestow a pension only for the discharge of a firemen's duties the requisite length of time. It does not contemplate the bestowal of such a pension for services, the bulk of which had no relation to those of firemen's duties. The fact that one man held 2 offices, or discharged the separate duties, would not warrant the tacking of the one to the other making positions available to those in whom members of a department for the purpose of filling them or discharged the separate duties, would not warrant the tacking of the one to the other.

The firemen's pension board cannot retire a person who is not entitled to a pension thereunder. Tilkens ex rel. Swoboda, 225 W 162, 273 NW 534.

An authorization by the common council for the erection of a schoolhouse is not effective where it does not appear that the common council substituted the school board for the board of public works. Hoppeiner-Bertelt Co. v. Rhinelander, 142 W 226, 130 NW 454.

The effect of 62.14 (1) and 66.06 (10) (g), Stats. 1921, is that in a city of the fourth class a municipal utility may be managed either by a nonpartisan commission or by a board of public works, and that the board of public works, as constituted by 62.14 (1), may be dispensed with and its duties performed by such officers and boards as the common council may designate. Rice Lake v. United States F. & G. Co. 216 W 1, 255 NW 451.

Cities maintaining fire departments consist­of both paid and volunteer firemen are required to have a firemen's pension fund.

For interpretations of chs. 206 and 556, Laws 1947, they apply to firemen's pension funds outside of cities of the first class see 36 Atty. Gen. 469.

62.13 (10) History: 1935 c. 193; Stats. 1935 s. 62.135 History:


On municipal home rule see notes to sec. 3, art. XI.

62.135 History: 1961 c. 492; Stats. 1961 s. 62.135.

See note to sec. 12, art. I, on impairment of contracts, citing 57 Atty. Gen. 172.

62.14 (1) History: 1889 c. 326 s. 78; Ann. Stats. 1889 s. 925m sub. 78; 1893 c. 312 s. 28; Stats. 1898 s. 926—75; 1921 c. 242 s. 85; Stats. 1921 s. 62.14 (1); 1946 c. 183; 1947 c. 398.

An authorization by the common council for the school board to enter into a contract for the erection of a schoolhouse is not effective where it does not appear that the common council substituted the school board for the board of public works. Hoppeiner-Bertelt Co. v. Rhinelander, 142 W 226, 130 NW 454.

The effect of 62.14 (1) and 66.06 (10) (g), Stats. 1921, is that in a city of the fourth class a municipal utility may be managed either by a nonpartisan commission or by a board of public works, and that the board of public works, as constituted by 62.14 (1), may be dispensed with and its duties performed by such officers and boards as the common council may designate. Rice Lake v. United States F. & G. Co. 216 W 1, 255 NW 451.

62.14 (2) History: 1889 c. 326 s. 79; Ann. Stats. 1889 s. 925m sub. 79; 1895 c. 318 s. 9; Stats. 1898 s. 925—79; 1921 c. 242 s. 85; Stats. 1921 s. 62.14 (2).

62.14 (3) History: 1889 c. 326 s. 80; Ann. Stats. 1889 s. 925m sub. 80; Stats. 1889 s. 925—82; 1921 c. 242 s. 86; Stats. 1921 s. 62.14 (3).

62.14 (4) History: 1889 c. 326 s. 84; Ann. Stats. 1889 s. 925m sub. 84; Stats. 1889 s. 925—84; 1921 c. 242 s. 87; Stats. 1921 s. 62.14 (4).

62.14 (5) History: 1889 c. 326 s. 85; Ann. Stats. 1889 s. 925m sub. 85; Stats. 1889 s. 925—85; 1921 c. 242 s. 88; Stats. 1921 s. 62.14 (5).

62.14 (6) History: 1889 c. 326 ss. 86, 88, 90; Ann. Stats. 1889 s. 925m subs. 86, 88, 90; Stats. 1889 s. 925—86, 90, 92; 1921 c. 243 ss. 86, 88, 90, 92; 1921 c. 242 s. 90; Stats. 1921 s. 62.14 (6).

Where an electric light company had obtained permission from the public authorities to set a pole and string its wires on certain side of a street, it should be enjoined from placing such a pole in front of the premises of a person who objected thereto until an order is obtained authorizing the placing of the pole at this point. Malone v. Waukesha Rice, Light Co. 130 W 465, 94 NW 247.

It is the duty of a city to keep its public streets, ways and thoroughfares, including bridges, which carry such thoroughfares across streams, in repair. Although a city's contractual obligation to keep up and maintain a footbridge across a river may not have been enforceable because of alleged invalidity of the contract by reason of the fact that one of the donors of the bridge was a member of the council and voted to accept the offer,
nevertheless, where the city made the bridge a part of its street system in keeping up and maintaining the bridge as a public highway or thoroughfare for more than 35 years, and improving the bridge by putting fences along its sides and installing electric lights on it, the city, quite apart from any contractual obligation, had the duty to maintain the bridge, so that the city was required to replace it after it had been washed out. Herbert v. Richland Center, 264 W 8, 58 NW (2d) 461.

62.14 (7) History: 1889 c. 326 s. 81; Ann. Stats. 1899 s. 925m sub. 90; Stats. 1900 s. 925-81; 1921 c. 242 s. 95; Stats. 1921 s. 63.14 (7).

62.15 (1) to (4) History: 1889 c. 326 s. 90, 190; Ann. Stats. 1919 s. 925m sub. 90, 925s sub. 166; 1923 c. 312 s. 20; 1985 s. 302 s. 3; Stats. 1899 s. 925-90, 925-95, 925-96; 1903 s. 48 s. 1; Supp. 1905 s. 925-186; 1907 c. 493, 672; 1909 c. 539; Stats. 1911 c. 283-364, 925-90, 925-96, 925-95, 925-96, 925-95, 925-96, 1913 c. 773 s. 85; 1915 c. 459; 1919 c. 73; 1921 c. 242 s. 96; Stats. 1921 s. 62.15 (1) to (4); 1937 c. 322; 1949 c. 461; 1951 c. 559; 1953 c. 603; 1957 c. 539; 1965 c. 252.

Although by a city charter the expense of improving streets and sidewalks is not chargeable upon the city or ward, but only upon the several lots in front of which the work is done, yet such work is public work, done for the city or ward, and the officers of the city in letting the contracts act as public agents. Mitchell v. Milwaukee, 16 W 32.

The work to be done, the manner or style in which it is to be done and the material to be used must be definitely described in the plans and specifications upon which proposals are asked and in the contract. Wells v. Burnham, 20 W 112.

A contract is invalid unless due notice of the time and place of letting it is given. The amount of work intended to be included in each contract must be specified when it is practicable, and the time within which it is to be finished, the manner in which it is to be done and the quality of the materials to be furnished. Officers cannot reserve the right to divide the work after the bids are received according to the abilities of the contractors to do the same, or as they may think for the best interest of the property affected and that of the public.” Kneeland v. Furlong, 20 W 437.

The notice to contractors did not define the exact size and number of the manholes connected with a sewer or specify the quality of the cement to be used. It appeared that the cost of the manholes, as compared with the cost of the whole work was trifling and did not affect the bids, and that the best quality of cement was used. A sewer tax was not invalidated by these omissions. It is enough if the plan made is as full and perfect as it is usual for persons of competent skill to make of similar works. A requirement that the plan be filed in a designated office is satisfied if it is left there for inspection though it is not marked “filed.” Houghton v. Burnham, 22 W 301, 309.

The fact that a contract for a pavement was not let within the time fixed by law and that no plan or profile of the work was filed before the letting will not authorize the interference of a court of equity if the party complaining does not show that he was injured thereby. Warner v. Knox, 60 W 429, 7 NW 372.

If the board is not required to let the whole work on a proposed improvement at one time and is unable to get satisfactory bids a contract may be let for part of it at one time and for the remainder at another. Wright v. Forrester, 65 W 341, 27 NW 52.

Under the charter of Superior, ch. 124, Laws 1891, competition on one plan was required and where 2 or more different plans or processes for public work were submitted, and neither adopted by the council prior to the bidding, the contract was invalid. Stocking v. Warren Brothers Co. 134 W 239, 114 NW 789.

Bidders must be guided by the plans and specifications filed, and have no right to rely upon any other statements or estimates furnished by officials. Hanrahan v. Jonesville, 145 W 457, 130 NW 462.

Publication of notice for one week instead of for 2 successive weeks did not affect the jurisdiction of the common council to make the improvement and assess the cost. Newton v. Superior, 146 W 308, 190 NW 243, 131 NW 586.

A city ordinance limiting the hours of employment on public works does not conflict with a provision in the city charter requiring all contracts for such works to be let to the lowest bidder. Milwaukee v. Haulif, 164 W 172, 159 NW 619.

A provision that all work done for or material purchased by a city, exceeding in cost a specified sum, shall be let to the lowest responsible bidder does not require the common council to procure such work or material at the lowest possible cost. A wide field of discretion is vested in such council and it has the power and responsibility of determining questions of public policy affecting the community as a whole. A city council has power to determine the grade or quality of material to be used in public works. The motives which prompt a legislative body to act on a matter within its power are not subject to judicial scrutiny. An ordinance providing a minimum wage scale to be paid to all city employees engaged upon public work, and to be paid by all contractors carrying on such work, is not so unreasonable, as matter of law, as to invalidate it, where it was the voluntary act of the city and was subject to change at will by the city. Wagner v. Milwaukee, 180 W 640, 192 NW 594.

City officers cannot let a contract for a water reservoir without specifications on file and without advertising for bids. Such action is malfeasance in office. Equity may refuse, however, to compel a restoration of the contract price under some circumstances, whatever the remedy may be at law. Eldred v. Smith, 182 W 296, 196 NW 584.

A municipality has no power to make contracts for public improvements unless it proceeds in the manner prescribed by law, and a contract entered into without complying with the charter provisions is void. Such a contract is not validated by complete per-

A surety for the performance of a contract, who signed the contract, thereby bound himself. That was a substantial compliance with the statute. Lumbeck v. Waterloo, 220 W 512, 284 NW 519.

A contract entered into by the utility commission of a city pursuant to authorization of the common council, whereby a firm of consulting engineers was employed and paid to make certain surveys and prepare plans and specifications relating to a proposed rebuilding and extension of the electric plant of the city, was not within 62.15 (1), requiring that “public work” be let to the lowest responsible bidder. Flintom v. Cunningham, 234 W 654, 291 NW 777.

Where a city entered into a contract for the construction of sidewalks, which specified that the contractor was to furnish sufficient filling, in the form of cinders, slag, or small broken stone, the city engineer had no authority to specify sand, and the contractor is not entitled to recover for the sand, nor is he entitled to recover as for extras, the contract making no provision for extras. Proebst v. Menasha, 245 W 512, 284 NW 519.

Municipal non-liability for extras furnished without compliance with statutory mode of contracting. 29 MLR 70.

The fact that a taxpayer was acting as attorney for a city during a period when the mayor ordered work to be done without any bids taken or any formal contract let or any formal authorization received from the common council, and a first payment of $600 was made out of the general funds of the city for the work, did not estop such taxpayer from subsequently maintaining an action on behalf of all taxpayers in respect to the matter, even though he might have been subject to estoppel himself alone as an individual taxpayer. Leuch v. Egelhoff, 236 W 29, 38 NW (2d) 1.

See note to 59.08, citing State ex rel. Gross v. Board of Supervisors, 263 W 518, 56 NW (2d) 70.

Where a contract was awarded by a common council to a bidder who was not the lowest bidder, the trial court did not abuse its discretion in quashing a writ of certiorari to obtain a review, on behalf of the lowest bidder, of the action of the common council in awarding the contract. State ex rel. Hron Bros. Co. v. Port Washington, 265 W 597, 62 NW (2d) 1.

See note to 66.29, citing Drum Co. v. Knapp, 6 W (2d) 418, 94 NW (2d) 615.

Since 62.15, Stats. 1965, requires public construction which exceeds $1,000 to be let by contract to the lowest responsible bidder, any person who, ignoring the statutory requirement, performs work under such a contract to another cannot claim to be a party thereto without violating the statute. Ledges Construction Co. v. Butler, 43 W (2d) 227, 180 NW (2d) 502.

The condition of defeasance in 62.15 (3), Stats. 1963, providing that liability on the bond ceases when the bidder enters into a formal contract with the municipality and gives bond for the faithful performance of such contract, has nothing to do with what is to be paid in the event of breach of the bid agreement, but only with the termination of liability where there is no breach. Lake Geneva v. State Imp. Co. 45 W (2d) 50, 172 NW (2d) 176.

See note to 63.05, citing 38 Atty. Gen. 175.

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Under a charter which required the city to provide in contracts for street improvement that the contractor "shall put up and maintain such barriers and lights as will effectually prevent the happening of any accident," where this has been done and the barrier put up has been removed by some unknown person, the city is not liable for an accident without proof that it had actual or implied notice of the removal of the barrier and that a reasonable time had expired for guarding against the resulting danger. Klaas v. Milwaukee, 53 W 196, 10 NW 162.

A contractor doing street work cannot avoid liability for damages resulting from an unlighted excavation on the ground that the duty to place lights was retained by the city in the contract. Clausen v. Eckstein, 7 W (2d) 409, 97 NW (2d) 301.

That provision of 62.15 (11), Stats. 1963, which places the duty to safeguard street obstructions on the contractor subjects it to absolute liability, regardless of who commits the negligent act. So much of 62.15 (11) as renders the contractor liable for damages caused by the negligent digging up of streets, or which may result from his carelessness in the prosecution of such work, renders the contractor responsible only for damages caused by his negligence, and such liability is not absolute. Frew v. Dupont Construction Co. 37 W (2d) 576, 155 NW (2d) 596.

Where a contractor, engaged to replace deteriorated sidewalks and curbs, removed old slabs by power equipment thereby impairing lateral support of adjoining pieces of sidewalk, but erected no surrounding barricade, it violated 62.15 (11), Stats. 1961, and a city ordinance containing like requirements, by creating a potential danger to pedestrians, and such violation constituted negligence per se. Burke v. Poeschl Brothers, Inc. 38 W (2d) 225, 156 NW (2d) 378.

The provisions of ch. 67, relating to municipal borrowing and municipal bonds, alone govern a contract arising out of a bid for municipal bonds, and as to such a contract the provision in this subsection requiring that contracts by a city shall be countersigned by the comptroller and approved as to form by the city attorney, is inapplicable, at least to the extent that a city may not refuse to return the deposit of a bond bidder merely because of the absence of such countersigning or approval. Milwaukee Co. v. Tomashaw, 238 W 452, 300 NW 257.

The right to recover damages is not affected because the officers of the city failed to comply with the charter by filing profiles, etc. Goodrich v. Milwaukee, 24 W 632.

The right to recover damages is not affected because they had not established any general system of grades for streets. Stonewall v. Milwaukee, 31 W 512.

If there is a change in the established grade of a street the lot owner who is affected thereby may recover the expense necessary to restore his premises to their former position relative to the street. If the ordinances of a city require that the alleys shall conform to the grade of the street adjoining them the expense of grading that part of a lot which fronts on an alley may be recovered. Church v. Milwaukee, 31 W 512 and 34 W 65.

Under a charter which provided that where the grade of a street once established is changed "all damages, cost and charges arising therefrom shall be paid by the city to the owner of any lot or parcel of land or tenement which may be affected or injured by consequence of the alteration of such grade," the damages sustained by the owner or occupant of the adjoining tenement by reason of inconvenience in the transaction of his business, or the interruption or total suspension of it, or of the loss of his trade, custom or profit necessarily caused by the making and carrying on of the work of public improvement, and while it progresses, and until completion, or so caused by the work of restoring the adjacent premises to the same relative position or condition as before the change of grade, are not to be considered. The injuries contemplated are those to land or buildings, and costs or charges necessary to restore them to their former relative condition and usefulness. Studler v. Milwaukee, 24 W 95.

The right to recover damages is not affected because the person who was injured signed the petition for the alteration in the grade. Luscombe v. Milwaukee, 36 W 235.

If a property owner fills a street in front of his land to conform to a new grade, with knowledge that the order under which he acted was void, he cannot recover for the damages caused his property. If he does it believing that the order was valid and fails to appeal from the assessment it will be presumed that he was satisfied therewith. And if he does it without taking steps to ascertain whether the proceedings were regular or not he will still be considered to be bound to take the amount awarded. Owens v. Milwaukee, 47 W 461, 3 NW 1.

The damages which may be recovered include all necessary expenses in changing the grade of the lot to conform it properly to the new grade, and also the expense of repaving the street, where that has been charged upon the lot and rendered necessary by the change of grade, although the expense of conforming the grade of the lot to that of the street as finally established has been more than it would have been if the final grade was determined upon originally. French v. Milwaukee, 49 W 564, 6 NW 244.

If the value of property adjacent to a street, the grade of which has been changed, is as great after such change was made as before, the owner of it cannot recover dam-
62.16(2)

ages. There can be no recovery for a change of grade which has been ordered but not made. Tyson v. Milwaukee, 50 W 78, 5 NW 914.

If a city causes a street to be graded without proceeding as its charter requires it to do in order that the work may be lawful, it is liable for resulting injuries to adjoining property. Meinzer v. Racine, 68 W 341, 32 NW 138 and 70 W 561, 36 NW 260; Addy v. Janesville, 70 W 401, 35 NW 931.

A city has a right to change the natural course of surface water by improvements on its streets, even though the flow of such water to and upon adjoining land is thereby changed. Shoemaker v. Cedarburg, 181 W 34, 152 NW 445.

Damages for change of grade can be recovered only when the facts of the case fall within the terms of the statute. Henry v. La Crosse, 165 W 625, 165 NW 174.

A compliance with 62.16 (3) (b), Stats. 1923, providing that no street shall be worked until the grade is established and recorded, is a condition precedent to making a special assessment or reassessment, and failure to establish the grade is not a mere irregularity. Bekkedal v. Viroqua, 183 W 176, 196 NW 979, 197 NW 707.

Where a city, without intending to change a street grade by virtue of the power granted by 62.16 (a) and (b), Stats. 1923, adopted plans and specifications for a pavement on a new and different grade, the established grade was not legally changed and an abutting property owner was entitled to recover any damage suffered by him which was caused by constructing the pavement above established grade. As the grade was not changed his remedy was by action for damages. The change of a street grade can be effected only by a clear exercise by a city

Editor's Note: The foregoing history shows only the history of the 3 subsections remaining after the repeal of the major part of the whole section in 1937. For the histories of the repealed subsections see Wis. Annotations, 1960.

All cities organized under special charters, being authorized to repair and keep in order their streets, are "authorized by their charters to construct sewers" within the meaning of ch. 224, Laws 1893, since the authority first mentioned carries with it the latter. Johnson v. Milwaukee, 88 W 383, 60 NW 270.

A municipality has no more right to create a nuisance to the injury of another than has an individual, and hence damages are recoverable where a sewer outlet is a private nuisance, so that a municipality will be liable where a sewer is maintained by it so as to discharge sewage and filth on private property, or to emit offensive odors creating an insanitary and dangerous condition interfering with the safe and comfortable enjoyment of such property so as to impair its value. Legislative authority to install a sewer carries no implication of authority to create or maintain a nuisance and, if such nuisance is created, the same remedies may be invoked as if the perpetrator were an individual. Briggs v. Viroqua, 264 W 47, 58 NW (2d) 546.

Where a city annexes an area receiving sewer service from a sanitary district, the city may put the area into a special district and levy assessments to pay the remaining cost of installing sewers. Williams v. Madison, 18 W (2d) 480, 113 NW (2d) 395.

62.18 History: 1891 c. 269; Stats. 1931 s. 62.185.


62.20 History: 1889 c. 326 s. 188, 189, 190, 205, 215, 225, 234; Stats. 1891 s. 2901, sub. 108, 109, 110, 197; 1893 c. 312 s. 61; Stats. 1893 s. 925—932; 1907 c. 220; 1917 c. 509; 1921 c. 242 s. 129; Stats. 1921 s. 62.16 (b) (6); 1921 c. 312 s. 8; Stats. 1921 s. 62.16 (6); 1921 c. 500 s. 30 (e).

Under a city charter prohibiting the paving of streets in which gas and water mains were located without first requiring connections therewith to be made and pipes run therefrom to the curb, a substantial compliance with the charter provisions is sufficient, in equity, to sustain the proceedings. Gleason v. Waukesha, 189 W 220, 70 NW 245.
62.22(1) History: 1965 c. 105; Stats. 1965 s. 62.22 (1m).

62.22 (2) History: 1949 c. 596; Stats. 1949 s. 62.22(2); 1957 c. 548.

62.22 (3) History: 1897 c. 201; Stats. 1898 s. 695 to 38; 1921 c. 242 s. 206; Stats. 1921 s. 62.22 (3).

62.22 (4) History: 1899 c. 336 s. 155 to 165; 1905 c. 295 s. 52 to 56; 1913 c. 155 s. 165; 1921 c. 242 s. 210 to 214; Stats. 1921 s. 62.22 (4).

The adoption of a resolution by a city council declaring the necessity for condemnation of designated lands is a condition precedent to institution of court proceedings. In re Condemnation of Lands in Beaver Dam, 205 W 599, 237 NW 119.

Vacation of platted alley or estoppel as resorted to the grantor the right to rework the building on the land and to purchase the salvage, the grantor could not recover from the city because of the false representations, since the land purchased by the city was not acquired for any of the purposes specified in 62.22 (1). Stats. 1937, and hence the transactions were void and afforded no basis for an action for fraud against the city. Waisman v. Wagner, 227 W 193, 278 NW 416.

A city may condemn and acquire lands for the use of a public library which is a private corporation, such acquisition being for a public purpose, and it being immaterial that the city has no control over the library and no voice in the election of the officers of the library. The maintenance and operation of a library by a nonprofit corporation for the use of the public is a public purpose, and the use of lands on which public library buildings are to be constructed and operated is a use for the benefit of the public and therefore a public use. Bohms v. La Crosse, 240 W 618, 4 NW (2d) 125.

Although a city under its administrative powers may have the right to deprive the owner of the use of crypts in a mausoleum in a public cemetery operated by the city, if the city exercises such right in an unlawful manner, and authorizes the wrongful act and adopts the result, the city may be held liable for the damage done. Speth v. Madison, 248 W 402, 23 NW (2d) 201.

A city, unless so required by statute, is not required to lease city-owned property by the competitive-bid method. Municipalities, unless restricted by statute, have the same right to convey property as they have to acquire property, and such matters are within the reasonable discretion of the proper municipal authorities. Kranjec v. West Allis, 307 W 430, 66 NW (2d) 178.

Before a court will void the sale of municipal property authorized by a vote of the city council, a plaintiff-taxpayer must establish, (1) illegality, (2) fraud, or (3) a clear abuse of discretion on the part of such governing body. Herrmann v. Lake Mills, 275 W 337, 22 NW (2d) 187; Newell v. Kenosha, 7 W (2d) 516, 90 NW (2d) 845.

See note to 62.22 (5), citing Scanlon v. Menasha, 16 W (2d) 457, 114 NW (2d) 791.

A city may not be authorized to maintain a businesswoman’s club room, yet a devise to it for the establishment and maintenance of such a room is not void, the city not being the intention to make the library the important element of the trust. Burchasi v. Cole, 94 W 617, 69 NW 866.

A city having express authority under its charter to grade and pave streets and to purchase and hold all real estate necessary or convenient for its use, has, by implication therefrom, authority to use all reasonable methods of executing the same, including that of purchasing a stone quarry within or without its corporate limits for the purpose of obtaining therefrom raw material from which to manufacture crushed rock. Schneider v. Menasha, 118 W 296, 95 NW 94.

A city, unless prohibited by charter, may accept a gift of land for a street. Hathaway v. Milwaukee, 132 W 246, 111 NW 570, 115 NW 455.

Where the mayor and a real estate agent who held an option of purchase of land from the city made false representations inducing the city’s grantor to execute to the city a release from the conditions in a deed which
The right to erect a garage at a particular place in a city having been lawfully acquired, the subsequent amendment of the ordinance under which the right was acquired cannot impair that right. A garage in a local business district does not necessarily constitute a nuisance, and its erection will not be enjoined unless it clearly appears that a nuisance will necessarily result. A provision in an ordinance delegating to the property owners the power to determine whether a garage should be built in a particular place was void as an unlawful delegation of legislative power. Wasielewski v. Biedrzycki, 180 W 633, 192 NW 988.

The zoning of cities for the purpose of excluding business structures from established residence sections may be a valid exercise of the police power. But the extent of the restriction and the reasonableness of the means are subject to judicial review. State ex rel. Carter v. Harper, 182 W 148, 196 NW 451.

A violation of a zoning ordinance by the erection of a store building in a residence district may be redressed by the city by an action at law. Private individuals may have injunction to prevent the erection if it will cause them special and irreparable damage or injury. Holzbauer v. Ritter, 194 W 35, 196 NW 852.

Equity may restrain the violation of a municipal zoning law, even though an act violating the ordinance is not a nuisance per se. Bouchard v. Zetley, 166 W 635, 226 NW 290.

A statute permitting oral proof in certiorari proceedings directed to the board of appeals did not extend to a writ directed to the city manager. State ex rel. Wasserman v. O'Brien, 201 W 556, 230 NW 59.

A board of appeals to review orders under a zoning ordinance had no jurisdiction of appeal from revocation of a permit under a building ordinance. State ex rel. Wasserman v. Cooper, 201 W 559, 230 NW 60.

The zoning power of a city must be reasonably exercised, but within the delegated field the acts of a city will not be disturbed by the courts unless there is a clear abuse of discretion. La Crosse v. Ellerton, 205 W 207, 237 NW 69.

Restrictions imposed by zoning ordinances or the laws of the state are not "incumbrances" which entitle a purchaser to declare a contract at an end. (Genske v. Jensen, 180 W 17, 205 NW 548, and Busch v. Wald, 302 W 462, 232 NW 879, distinguished.) Miller v. Milwaukee Odd Fellows Temple, Inc. 208 W 547, 240 NW 193.

Re zoning of premises after execution of a land contract did not authorize purchasers' cancellation of the land contract on ground of misrepresentations or violation of agreements. Kend v. Herbert P. Co. 210 W 239, 246 NW 311.

 Parties seeking to avoid the effect of a zoning ordinance because it is unreasonable must show that it is unreasonable in respect to their property, and cannot predicate and sustain their contention on the fact that the ordinance may be unreasonable or discriminatory as to the property of others. Rowland v. Racine, 223 W 456, 271 NW 36.

Where the owner of 3 adjoining lots had built apartments on the end lots, allocating parts of the middle lot for sideyard purposes to comply with a zoning ordinance,
and mortgaged the end lots to an association and the middle lot to K, who later became the owner thereof, the association was entitled to enjoin him from bringing any action which would affect the rights of the association to the use of the middle lot for sideyard purposes, since he took subject to the burden of the zoning ordinance, and had failed to appear from a decision of the board denying his application for a permit to build on all of the middle lot. Welfare B. & L. Ass'n v. Krieger, 228 W 105, 272 NW 691.

The policy of zoning is a matter within legislative discretion, and it is only when the bounds of the field of legislative discretion are clearly exceeded that the courts will deny validity to a zoning ordinance. Geisenfeld v. Shorewood, 235 W 410, 297 NW 683.

Where it is fairly debatable whether the determination of a municipal legislative body zoning property within a particular restricted district was an arbitrary or unreasonable exercise of power, the courts will not substitute their judgment for that of the legislative body charged with the primary duty and responsibility of determining the question. State ex rel. Normal Hall, Inc. v. Gurd, 234 W 290, 291 NW 350.

Under 62.23 (5) (c), Stats. 1939, the council has power to amend an original zoning ordinance, at least unless the amendment frustrates or destroys the purpose and effect of the original zoning ordinance as a whole. An amending ordinance, which created a 2-acre public utility district so as to permit the erection of a railroad passenger depot therein in a first class single residence district of the original zoning ordinance, did not frustrate or destroy the purpose and effect of the original ordinance as a whole. Highbee v. Chicago, B. & Q. R. R. Co., 235 W 91, 291 NW 330.

In certiorari to review the action of a board of zoning appeals, the provision that the court may take further evidence and may consider the same in reaching its determination, may warrant the court's overruling the board's findings of fact if the additional evidence received shows them to be erroneous, but incompetent additional evidence can be given no effect. State ex rel. Morehouse v. Hunt, 235 W 358, 291 NW 745.

Although owners of property who build private dwellings in a district restricted to single-family residences under the original zoning ordinance of a city may suffer an annoyance from the council's amendment of the ordinance by rezoning so as to permit the building of apartment houses in a certain area within such district, they have no legal protection against such rezoning merely because of their reliance on the original zoning ordinance, since property is always held subject to the police power, and rights granted by legislative action under the police power, as in the case of a zoning ordinance, can be taken away when in the valid exercise of its discretion the legislative body sees fit. Eiggebeen v. Sonnenberg, 239 W 213, 1 NW (2d) 94.

Provisions in statutes and ordinances authorizing slight variations in the application of zoning laws are generally upheld as against contentions that such provisions are unlawful delegation of legislative power. Thalhofer v. Patri, 240 W 494, 3 NW (2d) 761.

Where an unzoned parcel of land, owned by a railroad company adjacent to its right of way and leased to a wholesale fruit company, was surrounded to such an extent by properties used for industrial, commercial and railroad purposes as to render such parcel largely valueless for residential purposes, and was separated by the railroad right of way from property classified by the city zoning ordinance as "C" residential and was not within a mile of any "A" residential, the attempted application to such parcel of an ordinance provision classifying property, not specifically included within a district or zone, as "A" residential, was arbitrary, unreasonable and unjustifiably discriminatory and hence, there being no other zoning classification applicable to such parcel, the ordinance furnished no ground for a refusal to issue a permit to build on such parcel an addition to the warehouse of the fruit company. State ex rel. Scandrett v. Nelson, 240 W 438, 3 NW (2d) 783.

If the apartment house was being occupied by 3 families at the time of adoption of the zoning ordinance, the mere fact that it may have been occupied thereafter by more than 3 families would not defeat the right to continue to use it for occupancy by 3 families. State ex rel. Robet v. Board of Appeals, 241 W 188, 5 NW (2d) 783.

The petition for a writ of certiorari to review a decision of the zoning board of appeals having been presented within the 30-day period, the petition was properly before the court. The quashing of the first writ issued did not disrupt the action, the motion to quash being in effect a demurrer for insufficiency of facts stated. Such being the case, the court, on quashing the first writ and although after the 30-day period, could properly permit the petition to be amended to incorporate the names of the members of the board, where the court was of opinion that this was necessary to the bringing up of the board's record. An aggrieved property owner's petition, naming the city building inspector and the zoning board of appeals, was sufficient, and a writ of certiorari issued thereon to review a decision of the board addressed in the name of the state and directed to the inspector by name and to the board merely as such, was not misdirected. Although the original writ of certiorari to review a decision of the zoning board of appeals was superseded by an order of the court, the petition remained and, being sufficient in itself to support the original writ, it was also sufficient to support the second writ, the petition having been timely presented to the court. In the absence of express statutory provision, service of a writ of certiorari, directed to the zoning board of appeals, on the chairman of the board, was sufficient to cause return of the board's record in the matter to be reviewed. State ex rel. Robet v. Board of Appeals, 241 W 188, 5 NW (2d) 783.

A lot owner objecting to a decision of the zoning board of appeals, directing the city building inspector to issue building permits allowing a variance from ordinance requirements, should have followed the method of
obtaining a review of such decision specified by (7) (e) 10 and 11, and could not, instead, obtain a review by bringing an action to enjoin the holder of the building permits from proceeding therewith. Ferch v. Schroedel, 241 W 457, 6 NW (2d) 178.

In considering the validity of the application of a zoning ordinance to particular facts and circumstances, each case must be decided on its own facts. Chrome Plating Co. v. Milwaukee, 246 W 526, 17 NW (2d) 785.

A second application for a building permit in this case was not an application for review of a ruling made by the zoning board of appeals on a first application, but was a new and separate proceeding based on new evidence, and so designated by the board, so that the applicant was not barred from obtaining a review by the circuit court of the decision of the board on the second application by reason of the fact that he had sought no court review of the decision of the board on the first application, and that the time for obtaining a court review of that decision had expired under 62.23 (7) (e) 10. State ex rel. Schleck v. Board of Appeals, 284 W 102, 35 NW (2d) 312.

Under 62.23 (7) (f) 2, (8), a city was authorized to bring an action to enjoin the erection of a building, which allegedly would violate provisions of the city zoning ordinance, and to compel the surrender of a building permit, and the city was not required first to exhaust certain administrative remedies provided by the ordinance. (Ferch v. Schroedel, 241 W 457, distinguished.) Lake Mills v. Veldhuisen, 263 W 48, 56 NW (2d) 491.

Under 62.23 (7) (a) the term "general welfare" includes considerations of public convenience and general prosperity. The means adopted in a zoning ordinance to promote the health, safety, morals, or the general welfare of the community, must bear a reasonable relation to the declared purpose. A classification, to be valid, must rest on a difference which bears a fair, substantial, natural, reasonable, and just relation to the object, act, or persons in respect to which it is proposed. There is no unconstitutional or otherwise illegal discrimination in a city zoning ordinance by reason of its exclusion of private high schools from Class "A" residence zones while permitting public schools of the same rank in the immediate neighborhood, is not void as being grounded largely on aesthetic considerations; but even if it were grounded purely on aesthetic considerations, it is doubtful that it would be void for such reason. State ex rel. Saveland v. Milwaukee, 269 W 262, 69 NW (2d) 217.

A zoning ordinance requiring, as a condition precedent to the issuance of a building permit, a finding by the building board of the village that the exterior "architectural appeal" and functional plan of the proposed structure will not be so at variance with that of structures already constructed, or being constructed, "as to cause a substantial depreciation in the property values" in the immediate neighborhood, is not void as being grounded on such purpose is but one of several legitimate objectives. State ex rel. Saveland v. Milwaukee, 269 W 262, 69 NW (2d) 217.

A zoning ordinance requiring, as a condition precedent to the issuance of a building permit, a finding by the building board of the village that the exterior "architectural appeal" and functional plan of the proposed structure will not be so at variance with that of structures already constructed, or being constructed, "as to cause a substantial depreciation in the property values" in the immediate neighborhood, is not void as being grounded on such purpose is but one of several legitimate objectives. State ex rel. Saveland v. Milwaukee, 269 W 262, 69 NW (2d) 217.

The purpose of a provision in such zoning ordinance, requiring a public hearing prior to the board of appeals' decision on land use permissible in an agricultural district, is to give interested parties an opportunity to express their opinions, but the ordinance does not make such opinions binding on the board, and such provision does not render the ordinance invalid as requiring a "plebiscite" of the neighborhood. Smith v. Brookfield, 272 W 1, 74 NW (2d) 770.

A city zoning ordinance, so far as providing that lands in an agricultural district shall be used only for certain enumerated uses, including gravel pits, and only if the "location and plan of operation" has been submitted to and approved by the board of appeals, considered in connection with the purposes set forth in the preamble of the ordinance is not invalid as failing to furnish sufficient standards or guides for the board in exercising the discretion vested in it. Smith v. Brookfield, 272 W 1, 74 NW (2d) 770.

A city zoning ordinance cannot prevent a county from constructing a jail as required by 62.23 (7) (e) 10. Green County v. Monroe, 3 W (2d) 196, 67 NW (2d) 827.

A zoning ordinance providing that a proposed amendment or change, disapproved by the plan commission, shall not be passed except by "three-fourths vote" of the full membership of the council, is not in conflict with "majority vote" provision in 64.07 (3), nor with other statutes, including 62.23 (7), granting zoning powers to cities, and such "three-fourths vote" requirement is valid. Vaicelu v. Fechner, 7 W (2d) 14, 85 NW (2d) 766.

Where premises are devoted to a single non-conforming use carried on in several buildings integral to the use, total loss of one building by fire does not bar its restoration if the value of the lost building before the fire was not more than 50 per cent of the value of all lawfully constructed buildings then on the premises. "Building" is construed to be plural under authority of 980.001 (1). Where property is exempt from taxation the valuations are to be based on fair market value. State ex rel. Covenant H. Bible Camp v. Steinko, 7 W (2d) 275, 96 NW (2d) 356.

A city board of zoning appeals, constituted pursuant to 62.23 (7) (c), may revoke a building permit issued by the city building inspector. State ex rel. Cities S. O. Co. v. Board of Appeals, 21 W (2d) 516, 124 NW (2d) 699.

Insurers are "persons aggrieved" for purposes of appeal where the insured owner refused to start proceedings to review an adverse ruling of the zoning board of appeals.
An ordinance is invalid which prohibits repair of a building if damaged more than 50 percent of appraised value where the appraisal is substantially below market value. State ex rel. Home Ins. Co. v. Burt, 23 W (2d) 281, 127 NW (2d) 270.

See note to 62.18, on town board acting as village board, citing State ex rel. Humble Oil & Ref. Co. v. Wahner, 25 W (3d) 1, 130 NW (2d) 394.

The hardship which justifies a board of appeals in granting a variance must be one which originates in the zoning ordinance, and when the claimed hardship arises because of the actions of the applicant, the board is without power to grant a variance. Self-created hardship which bars the granting of a variance may consist of affirmative action in ignorance of existing zoning restrictions or upon a misinterpretation thereof. State ex rel. Markdale Corp. v. Board of Appeals, 27 W (2d) 128, 183 NW (2d) 790.

One occupying promises under an occupancy permit contrary to zoning restrictions and in violation of a city ordinance prohibiting illegal nonconforming use of property who before entering into occupancy obtained from the city a certificate purporting to permit the illegal nonconforming use, could not, in an action by the city to revoke the permit, successfully defend on the ground that the city was estopped in that some years prior to his acquisition of title illegal nonconforming use of the property had been permitted and that he in reliance on the illegal permit expended a considerable sum of money to ready the building for his occupancy. Milwaukee v. Leavitt, 31 W (2d) 473, 127 NW (2d) 493.

A protest filed by adjacent landowners against an initial city zoning ordinance purporting to create a new zoning district, which ordinance was not acted upon by the common council but ordered filed, was not operative against or applicable to a second ordinance where the proposed change is to be made (or landowners adjacent to the land are to be considered in determining whether the 20% requirement under 62.23 (7) (d) is met) Freecher v. Wauwatonic, 34 W (3d) 421, 149 NW (2d) 541.

Rezoning a single parcel of land in the city limits, from a classification restricting land use to single-family dwellings to one permitting business use, so as to enable the owners to operate a dental office, exceeded the bounds of legislative discretion, where under the evidence it was established that the rezoned parcel was not unfit for residential use, the surrounding area was principally residential, the ordinance adversely affected the value of such properties, bore no relation to the comprehensive city-wide planning, and did not promote health, safety, morals, or the general welfare of the community. Cushman v. Racine, 38 W (2d) 305, 150 NW (2d) 67.

The former doctrine that mere cessation of nonconforming use under the terms of a zoning ordinance did not destroy the right to continue it or prevent its resumption was rejected by the legislature in enacting 62.23 (7) (d).

A city ordinance modeled on the enabling legislation implemented the accepted doctrine of sound zoning law, i.e., restricting rather than increasing a nonconforming use, and eliminating such uses as speedily as possible. State ex rel. Peterson v. Burt, 42 W (2d) 294, 166 NW (2d) 307.

A zoning restriction adopted under 62.23 (7) (d), Stats. 1947, is not a charter ordinance. It may be enacted by a majority vote unless a city council has adopted a rule to the contrary, or unless a petition is filed by property owners as described in the said statute. 36 Atty. Gen. 519.

The council of a city which has in existence a valid zoning ordinance has statutory authority to repeal and recreate such ordinance without following the procedure for amendment prescribed by 62.23 (7) (d), Stats. 1947. 38 Atty. Gen. 12.


Regulations excluding churches from residential districts. 1963 WLR 358.


62.23 (7a) History: 1963 c. 241; Stats. 1963 s. 62.23 (7a); 1965 c. 352.

An ordinance enacted pursuant to 62.23 (7a), by which the common council of a city declared that there should be prepared a comprehensive zoning ordinance for all of its extraterritorial zoning jurisdiction and ordered that its existing zoning uses in such extraterritorial zoning jurisdiction should be preserved in force and effect for 2 years thereafter while the comprehensive zoning plan was being prepared, was not invalid because of the restrictions of 62.23 (2), Walworth County v. Etchorn, 27 W (3d) 36, 133 NW (2d) 257.

62.23 (8) History: 1941 c. 203; Stats. 1941 s. 62.23 (9).

An ordinance enacted pursuant to 62.23 (9) requires upon a city court finding that the garage denied plaintiff full use of light and air and blocked their view. The fact that defendant had been issued a building permit is not a bar, nor is the fact that there were many nonconforming uses in the area. Jelninski v. Eagles, 34 W (2d) 85, 146 NW (2d) 750.

62.23 (9) History: 1941 c. 203; Stats. 1941 s. 62.23 (9); 1965 c. 252; 1969 c. 134.

Where a city ordered demolition of a building under a fire ordinance as a nuisance without giving the insurer threfood an opportunity to be heard, the insurer was entitled to a hearing in the courts. New Hampshire Fire Ins. Co. v. Murray, 105 P (2d) 212.

62.23 (9a) History: 1941 c. 203; Stats. 1941 s. 62.23 (9a).

62.23 (10) History: 1917 c. 569; Stats. 1917 s. 959-35n; 1921 c. 942 s. 230; 1921 c. 960 s. 197; Stats. 1921 s. 62.23 (10); 1941 c. 203; 1961 c. 202.

62.23 (11) History: 1903 c. 46 s. 1; 1907 c. 618; Stats. 1911 s. 998-35m; 1917 c. 471; Stats. 1917 s. 925-52 sub. (76); 1909-35m;
A provision of a city charter (ch. 27, Laws 1889) that "no suit of any kind or any claim of any character shall be brought against" the city and that "the comptroller shall examine all claims presented against the city, whether founded on contract or otherwise," includes claims for torts. Koch v. Ashland, 83 W 561, 53 NW 674.

A claim presented for one cause of action cannot, after being rejected, and on appeal, be changed into a different cause; as where the claim was for damages resulting from the legal grading of a street under a valid ordinance and damages were recovered on appeal for an illegal and unauthorized grading thereof under a void ordinance. While it is not necessary that the claim filed with the clerk should have all the essentials of a formal pleading, it should intelligibly present the facts on which liability is claimed, to give the council an opportunity to act upon these facts in the first instance before the contention goes to any court. Smith v. Rau Claire, 83 W 456, 53 NW 744.

The claim filed was "for damage caused by change of grade, $1,500." It was disallowed without regard to its formality. Upon appeal a stipulation for formal pleadings recited the filing and disallowance of the claim and stated that damages were claimed for changing the grade of a street; and the complaint claimed damages by reason of an unlawful change of said grade. A judgment against the plaintiff, rendered on the theory that the claim filed was based on a lawful change of grade and therefore was insufficient to sustain the action, was reversed. (Smith v. Rau Claire, 83 W 455, 53 NW 744 distinguished, on the ground that in the latter the claim stated the facts in detail and clearly showed that the damage claimed was for a lawful change of grade.) Drummond v. Rau Claire, 85 W 356, 55 NW 1025.

Where a claim for a personal injury was presented (although this was unnecessary) and compromised between the claimant and council, and afterwards the city attempted to repudiate the compromise and the claimant brought an action on contract for the agreed sum, it was not necessary to again present the claim on the contract. Sharp v. Mauston, 93 W 629, 66 NW 890.

Where the city charter (ch. 151, Laws 1899) provides that no action in tort shall be maintained unless a claim be presented, an action to recover taxes will not lie unless the condition is complied with and the complaint alleges. Fleeth v. Wausau, 93 W 446, 67 NW 731.

Where a city council, acting under authority of the charter (ch. 27, Laws 1889), allowed claims based upon debts which the city had power to contract, but no orders for the payment thereof were issued because of a lack of funds, no action on such claims could be maintained. Gutta Percha & Rubber Mfg. Co. v. Ashland, 100 W 232, 75 NW 1007.

The requirement of the Ashland charter (ch. 27, Laws 1889) for an appeal within the time limited is jurisdictional and the question can be raised for the first time in the supreme court. Telford v. Ashland, 100 W 236, 75 NW 1006.

The city council cannot again consider the claim after the time for appeal has expired. Seeger v. Ashland, 101 W 516, 77 NW 880.

Allowing a claim after the limitation had run was ineffectual under the Ashland charter (ch. 27, Laws 1889). Ashland W. Co. v. Bordun, 103 W 297, 79 NW 326.

If the common council be guilty of an actionable tort in maliciously encouraging a prosecution for official misconduct, its members are individually liable, not the city. Kempster v. Milwaukee, 103 W 421, 79 NW 411.
Where a claim filed against a city is ambiguous, proof should be allowed in the trial court showing who the claimant in fact was as bearing upon the question whether the appeal was taken by the claimant. Hanna­han v. Janesville, 137 W 1, 118 NW 194.

Sec. 925-58, Stats. 1911, does not apply to an action for equitable relief, even though full relief would include money damages. Carthaw v. Platteville, 157 W 322, 147 NW 375.

The time does not begin to run until service of the notice of disallowance. Lyon v. Grand Rapids, 121 W 699, 98 NW 311.

An action for money had and received may be brought by the state against a city to recover for the benefit of the school fund the fines collected within the city and not ac­counted for to the county or to the state, without first filing a claim therefor with the city clerk. State v. Milwaukee, 158 W 564, 149 NW 579.

The word "fail" in 62.25, Stats. 1928, means neglect or default after opportunity to act. Hence an action brought before the next meeting of the city council after the filing of the claim, is premature. This section and 74.73, Stats. 1928, are not applicable; and an action to recover an illegal tax fails to allege that a claim has been presented nor a cross-complaint for indem­nification nor a counterclaim for architect's fees, based on an architectural-service contract with the city of Madison, as a condition precedent to any arbitration proceeding pursuant to such contract, and the failure of the Foundation to file any claim under the statute was not fatal to its demand for arbitration under the contract. Madison v. Frank Lloyd Wright Foundation, 20 W (2d) 361, 122 NW (2d) 450.

A complaint in a tort action against a village or a city is demurrable when the complaint fails to allege that a claim has been presented to the board or council and has been dis­allowed. Foreway Express, Inc. v. Hilbert, 32 W (2d) 551, 145 NW (2d) 705.

The failure to file a claim under 62.25 does not prevent a railroad from impleading a city in an action for damages, where the railroad claims the city was responsible because of failure to trim a tree under 166.25 (6). Bosin v. M. St. F. & S. S. M. R. Co., 183 F Supp. 820.

"Nonresidents" does not include actual resi­dents who have resided in this state less than one year. 6 Atty. Gen. 440.

In the absence of statutory authority a city may not refund valid assessments paid by property owners for installation of water mains laid in streets fronting upon their prop­erty. 26 Atty. Gen. 207.

Failure of a superintendent of city schools, which are governed by 62.25, Stats. 1889, to comply with this section or 62.12 (4), Stats. 1889, is a bar to his action. Seifert v. School Dist. 286 W 498, 287 NW 286.

The fact that a claim is signed by a guardian ad litem before his appointment does not make it defective if it is presented after the appointment. Rogers v. Oconomowoc, 16 W (3d) 621, 115 NW (2d) 635.

The failure to file a claim against a city under 62.25 (1) does not bar an action for contrib­ution or a cross-complaint for indem­nification against a city. Hennington v. Valuch, 16 W (3d) 330, 129 NW (2d) 44.

Under 62.25 (1) (a), Stats. 1961, the Frank Lloyd Wright Foundation was not required to file its claim for architect's fees, based on an architectural-service contract with the city of Madison, as a condition precedent to any arbitration proceeding pursuant to such con­tract, and the failure of the Foundation to file any claim under the statute was not fatal to its demand for arbitration under the contract. Under 62.25 (1) (a), Stats. 1961, the Frank Lloyd Wright Foundation was not required to file its claim for architect's fees, based on an architectural-service contract with the city of Madison, as a condition precedent to any arbitration proceeding pursuant to such con­tract, and the failure of the Foundation to file any claim under the statute was not fatal to its demand for arbitration under the contract.
CHAPTER 63
County and City Civil Service.

63.01 History: 1917 c. 359; Stats. 1917 s. 772-1; 1918 c. 121; 1919 c. 365 s. 6, 7; 1921 c. 189 s. 16; Stats. 1919 s. 16.31; 1929 c. 228 s. 45, 72; 1959 s. 397; Stats. 1959 s. 63.01.

63.02 History: 1917 c. 359; Stats. 1917 s. 772-2; 1919 c. 365 s. 8; Stats. 1918 s. 16.32; 1949 c. 234; 1959 c. 229 s. 45, 72; Stats. 1959 s. 63.02.

Under 63.03 (1) the commission may adopt a rule requiring civil service employees to take a 60-day leave of absence before the election if they are candidates. The waiver of the rule in the case of another employee does not prove discrimination. State ex rel. Parks v. Gross, 229 W 12, 281 NW 653, and United States v. Milwaukee, 229 W 12, 281 NW 653, and United States v. Milwaukee, 229 W 12, 281 NW 653, and United States v. Milwaukee, 229 W 12, 281 NW 653, and United States v. Milwaukee, 229 W 12, 281 NW 653, and United States v. Milwaukee, 229 W 12, 281 NW 653, and United States v. Milwaukee, 229 W 12, 281 NW 653.