

64.36 History: 1909 c. 448; 1911 c. 387 s. 3; 1911 c. 664 s. 60; Stats. 1911 s. 925m—317; 1917 c. 493; 1919 c. 226 s. 14; Stats. 1919 s. 63.12; 1959 c. 228 s. 58; Stats. 1959 s. 64.36; 1965 c. 666 s. 22 (26).

The adoption of this chapter by a city prior to its amendment by ch. 387, Laws 1911, abolished an existing fire and police commission. The later act had the effect of creating or restoring such a commission which had been so abolished, but did not reinstate in office the former members of the commission. State ex rel. Bloomer v. Canavan, 155 W 398, 145 NW 44.

64.37 History: 1909 c. 448; 1911 c. 387; 1911 c. 664 s. 60; Stats. 1911 s. 925m—318; 1917 c. 358; 1919 c. 38, 66; 1919 c. 226 s. 15; Stats. 1919 s. 63.13; 1927 c. 368; 1929 c. 482 s. 3; 1943 c. 6; 1959 c. 228 s. 58; 1959 c. 659 s. 61; Stats. 1959 s. 64.37; 1965 c. 273.

While there may be doubt as to the validity of the provision allowing a city, by vote of its electors, to abandon the commission form, such invalidity, if finally adjudged, will not impair the validity of the other provisions of the chapter. State ex rel. Bloomer v. Canavan, 155 W 398, 145 NW 44.

64.38 History: 1919 c. 226 s. 17; Stats. 1919 s. 63.14; 1959 c. 228 s. 58; Stats. 1959 s. 64.38.

64.39 History: 1917 c. 481; Stats. 1917 s. 925m—320; 1919 c. 157; 1919 c. 226 s. 18; 1919 c. 671 s. 14; Stats. 1919 s. 63.15; 1931 c. 149; 1933 c. 93; 1935 c. 18; 1941 c. 60; 1959 c. 228 s. 58; 1959 c. 659 s. 62; Stats. 1959 s. 64.39.

An option law is one which, although a full and complete law in itself, becomes of force and effect in a given municipality only upon the assent of the municipality. Under this section, upon the filing of a petition with the city clerk, it was the duty of the mayor of the city, which had been operating under the commission form of government, to submit to the electors the question whether the council should be increased to include one councilman from each ward. State ex rel. Sleeman v. Baxter, 195 W 437, 219 NW 858.

64.40 History: 1921 c. 543; Stats. 1921 s. 63.155; 1929 c. 482 s. 4; 1959 c. 228 s. 58; Stats. 1959 s. 64.40.

CHAPTER 65.

Municipal Budget Systems.

65.01 History: 1921 c. 33 s. 2; Stats. 1921 s. 65.01; 1943 c. 490.

65.02 History: 1921 c. 33 s. 2; 1921 c. 581 s. 1; Stats. 1921 s. 65.02; 1943 c. 280; 1959 c. 476; 1967 c. 92 s. 22; 1969 c. 276 s. 616.

65.03 History: 1921 c. 33 s. 2; 1921 c. 581 s. 1; Stats. 1921 s. 65.03; 1943 c. 280; 1955 c. 450; 1959 c. 476.

65.04 History: 1921 c. 33 s. 2; 1921 c. 581 s. 1; Stats. 1921 s. 65.04; 1943 c. 280; 1943 c. 552 s. 12; 1955 c. 450; 1959 c. 476; 1965 c. 252.

65.05 History: 1921 c. 33 s. 2; 1921 c. 581 s. 1; Stats. 1921 s. 65.05; 1943 c. 280; 1955 c. 450.

65.06 History: 1921 c. 33 s. 2; 1921 c. 271; 1921 c. 581 s. 1; Stats. 1921 s. 65.06; 1939 c. 513 s. 20; 1943 c. 280; 1959 c. 476; 1969 c. 276 s. 599.

65.07 History: 1921 c. 33 s. 2; 1921 c. 581 s. 1, 2; Stats. 1921 s. 65.07, 65.08 (6) to (9), (15), (16); 1937 c. 19; Spl. S. 1937 c. 13; 1941 c. 146; 1941 c. 213 s. 35; 1943 c. 280, 574; Stats. 1943 s. 65.07; 1945 c. 202; 1947 c. 212, 396; 1953 c. 58; 1955 c. 6, 450; 1959 c. 134, 357, 476; 1959 c. 660 s. 45, 46; 1963 c. 85, 363; 1965 c. 627; 1967 c. 92 s. 22; 1967 c. 108, 209, 313; 1969 c. 45, 154.

An amount segregated from funds of a city by action of its common council appropriating the same to a city-county nonlapsing building reserve fund, under 65.07 (1) (c) and 67.04 (2) (w), thereby ceased to be an unallocated surplus required by 65.90 to be applied to budgeted expenses and to reduce the amount to be raised by taxation; it was immaterial that the appropriation resolution, adopted at the meeting at which the budget hearing was held, was not adopted until after the budget was adopted. Fiore v. Madison, 264 W 482, 59 NW (2d) 460.

65.10 History: 1921 c. 33 s. 2; Stats. 1921 s. 65.10.

65.90 History: 1941 c. 221; Stats. 1941 s. 65.90; 1943 c. 137, 213; 1943 c. 275 s. 27; 1943 c. 280; 1943 c. 490 s. 13; 1945 c. 88, 366, 418, 586; 1949 c. 262; 1951 c. 220; 1953 c. 61, 486; 1959 c. 446, 496; 1961 c. 222; 1963 c. 38; 1965 c. 252; 1965 c. 659 s. 23 (2); 1967 c. 226; 1969 c. 55.

A so-called "special sinking fund," not earmarked for any specific purpose, and later carried on the county records as "new courthouse fund," pursuant to a resolution of the county board to that effect and merely reciting that it was the desire of the board to set aside funds for future use in building a new courthouse, without any effective commitment to incur any binding obligation for the building of a new courthouse, or the actual appropriation of such sinking fund for that purpose, constituted and was available as "funds on hand," within the meaning of 65.90 (1), so that the amount thereof should have been deducted from the proposed levy of a county tax to finance the county budget for the ensuing year. Unexpected amounts remaining in the county road and bridge fund, lawfully accumulated under 83.065 and 83.04 (5), constituted trust funds dedicated to the purpose for which they were appropriated, and did not constitute "funds on hand," within the meaning of 65.90 (1), which would be free and available for use for some other purpose. Im-mega v. Elkhorn, 253 W 282, 34 NW (2d) 101.

A city surplus unallocated "funds on hand" must be applied to finance the budget, but the funds must be in cash or in so liquid a form as to be the equivalent of cash in order to be classed as such surplus unallocated funds, and ordinary business principles, which a city government is neither required by law nor expected to disregard, permit the retention of reasonable working cash balances in the city treasury without their being classed as such surplus unallocated funds. Fiore v. Madison, 264 W 482, 59 NW (2d) 460.

65.90 (5) (a), so far as authorizing the di-

version of municipal funds to some use other than that set forth in the tax budget, is applicable only to the general funds of a municipality, and the governing body has no power thereunder to divert to other uses moneys impressed with a trust, such as those of the rubbish-removal fund and the utility-district fund. *Bayside v. Milwaukee*, 267 W 448, 66 NW (2d) 129.

For a discussion of procedure under 65.90 see 30 Atty. Gen. 304.

This section does not require separate treatment in a county budget of county advancements or reimbursable expenditures in re state-county administration of highway laws with respect to construction, maintenance and acquisition of rights of way. 30 Atty. Gen. 356.

Machinery and equipment operations account so kept as to result in machinery and equipment fund sustained by rentals received, state aids, labor and other items, need not be set forth with particularity in a county budget prepared to conform to 65.90 (2), Stats. 1941, if the budget elsewhere reflects with particularity estimated receipts to and disbursements from said fund. 30 Atty. Gen. 367.

Appropriation of moneys in a county contingent fund for a purpose that is not within other budget items or accounts is not a budgetary change so as to be subject to publication requirements of 65.90 (5). 32 Atty. Gen. 301.

A resolution adopted by a county board granting general authority to the county highway committee to transfer moneys from one appropriation for highway purposes to other appropriations for such purposes is contrary to 65.90 (5). 33 Atty. Gen. 34.

A county operating on an annual budget under this section may not authorize acceptance of deposits for perpetual care of burial lots under ch. 157 without making provision for payment of interest. 34 Atty. Gen. 247.

The property tax levied for any year must be in substantially the same amount as that shown in the budget to be required to meet proposed expenditures. It is not within a county's power to include in a budget an appropriation to create a surplus by the device of loose or false designation of purposes. 34 Atty. Gen. 345.

A county board may not transfer surplus money from the general fund to another fund or appropriate it for a different purpose without a two-thirds vote. 35 Atty. Gen. 259.

The municipal budget law does not prescribe procedure for setting up proposed county budget by the county board budget committee and such committee in reporting its recommended budget to the county board is not obliged to include rejected items as well as recommended items in the absence of specific directions on the matter from the county board. 35 Atty. Gen. 405.

A county budget formulated under this section may appropriate a lump sum for a given department without subdividing the amount as to purpose. 36 Atty. Gen. 512.

Where a budget adopted by a county board made no provision for fireproofing a county asylum, an appropriation of money from the general fund to be used for such fireproofing

is a change in the budget within 65.90 (5). 36 Atty. Gen. 646.

A budget adopted under 65.90 which sets aside specific amounts for specific objects, in and of itself constitutes an appropriation for purposes and in amounts stated, and no other or further action by the county board is necessary to constitute an appropriation. When a county budget adopted under this section sets aside a specified sum for county normal school repairs without specifying any particular building on which the repairs must be made, the money made available may be used to repair any existing building which is part of the school. The money set aside in said budget for repairs could not be used for construction of a new building or buildings without altering the budget as provided in 65.90 (5). 37 Atty. Gen. 243.

Accumulation of annual appropriations for use in building a county courthouse, unexpended funds in the county road and bridge fund raised by taxes pursuant to 83.065, reasonable amount of funds kept as a working balance, unexpended proceeds of taxes levied for park purposes under 27.06, and funds set aside as an insurance reserve under 59.07 (23), are not surplus funds on hand which a county must apply in reduction of tax levies. 37 Atty. Gen. 586.

Where steps are taken which will make valid the expenditure for which the tax was levied originally, the money may be spent accordingly where the county board in its budget for the next year authorizes the same and a two-thirds vote is not required. 38 Atty. Gen. 38.

65.90 (5) must be followed in transferring surplus appropriation from one item in a county highway department budget to another. 38 Atty. Gen. 556.

A county budget must be passed upon annually, and a budget for 1955 cannot include an appropriation for 1956 which will be beyond the power of the county board to change when it conducts budget hearings for 1956. 44 Atty. Gen. 8.

Where a county board by definite appropriation for a specific purpose creates a fund with the monies thereof derived from general property taxes and not "earmarked" by statute for some particular use, such fund cannot be considered as "funds on hand" within the meaning of that term as employed in 65.90 (1), Stats. 1965, nor can it be considered as part of the general fund of the county. 56 Atty. Gen. 152.

Transfer of funds from the contingent fund in excess of that permitted under 65.90 (5), Stats. 1967, requires a two-thirds vote of the entire membership of the county board. 57 Atty. Gen. 134.

CHAPTER 66.

General Municipality Law.

66.01 History: 1925 c. 198, 355; Stats. 1925 s. 66.001, 66.006; 1929 c. 262 s. 12; 1929 c. 267; Stats. 1929 s. 66.01; 1931 c. 211; 1935 c. 193, 248; 1945 c. 44; 1951 c. 261 s. 10; 1965 c. 252; 1965 c. 666 s. 22 (26), (27), (29), (30), (31), (32); 1967 c. 353; 1969 c. 55.

On legislative power generally see notes to