

No. 445, S.]

Published July 3, 1917.

## CHAPTER 553

AN ACT to repeal sections 683, 684, 685 and 925—60; to amend sections 678 and 682, subdivision (2) of section 821, and sections 824, 925—58, 925—59, 925—134, 933a, and 4242; and to create sections 683, 925—60 and 926—181 of the statutes, relating to appeals from auditing boards and commencement of actions on claims required to be presented to auditing boards.

*The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Sections 683, 684, 685 and 925—60 of the statutes are repealed.

SECTION 2. Sections 678 and 682, subdivision (2) of section 821, and sections 824, 925—58, 925—59, 925—134, 43.30 and 4242 of the statutes are amended to read: Section 678. The county clerk shall, on the first day of any meeting of the county board, lay before said board all such claims, statements of which have been filed in his office since the last meeting of such board, with a schedule of the same showing the amount thereof and the order in which the same were filed; and the county board shall act upon all such claims before the adjournment of the next annual session of such board after such statements were filed with the clerk, and shall examine and allow or disallow the same in whole or in part unless withdrawn by leave of the board; and in case of the disallowance of a part of an account or other claim composed of separate items the board shall designate particularly each item disallowed; and when the amount allowed for any claim shall have been accepted and received by the claimant, and no \* \* \* *action* shall be \* \* \* *brought to recover* the remainder thereof, no further sum shall thereafter be allowed or paid thereon by the county board. The county board, or a committee thereof, for the purpose of ascertaining the facts in relation to any claim presented for their examination and allowance, may take such testimony as they may deem necessary.

Section 682. The decision of the county board of any county disallowing in whole or in part any claim of any person shall be final and a bar to any action founded thereon, except as provided in section 676, unless an \* \* \* *action* be \* \* \* *brought to recover against the county within six months after such disallowance.* *Failure to allow a claim before*

*the adjournment of the next annual session of the board after the claim is filed shall be deemed a disallowance.*

(Section 821) (2) To examine and audit every account, or demand for which a money judgment only is demandable, presented against the town, and to indorse thereon the amount allowed and disallowed, stating the items; and no allowance shall be made on any account which does not specifically state each item, with the date, amount and nature thereof separately. Such statement shall be verified by the affidavit of the claimant, his agent or attorney and filed with the town clerk; and no such claim against any town shall be acted upon or considered by any town board unless such statement shall have been so made and filed.

Section 824. No action upon any claim or cause of action for which a money judgment only is demandable, except upon town orders, bonds, coupons or written promises to pay any sum of money, shall be maintained against any town unless a statement or bill of such claim shall have been filed with the town clerk to be laid before the town board of audit, nor until \* \* \* *five days after the adjournment of the next \* \* \* regular meeting of the board of audit thereafter.* No action shall be brought upon any town order until the expiration of thirty days after a demand for the payment of the same shall have been made; and if an action is brought contrary to this provision and the defendant does not appear and proof of such demand be not made, judgment shall not be entered thereon, and if it is entered it shall be absolutely void.

Section 925—58. No action shall be maintained by any person against any city organized under the provisions of this chapter upon any claim or demand of any kind or character whatsoever, until he shall have first presented his claim or demand to the council for allowance and the same shall have been disallowed in whole or in part; provided, that the failure to pass upon such claim or demand within sixty days after its presentation shall be deemed a disallowance thereof. \* \* \*

Section 925—59. The determination of the council disallowing in whole or in part any claim shall be final and conclusive and a bar to any action in any court founded on such claim, unless an \* \* \* *action to recover on such claim be brought within six months after such disallowance.*

Section 925—134. All claims and demands against the city shall be itemized, verified by the oath of the claimant or some one in his behalf, and filed with the clerk, who shall

deliver the same to the comptroller for examination, who shall within thirty days thereafter examine such claim or demand and return the same to the clerk with his report thereon in writing, who shall place the same before the council for action at its next meeting. \* \* \*

Section 43.30. Any person having any claim for money due on account of any contract between him and the library board of any city, village or town shall file with such board a written statement of his claim, and in case such claim or any part thereof be disallowed, the claimant may \* \* \* *bring an action in court* in the same manner that an \* \* \* *action may be brought after* the disallowance of a claim by the common council of cities under the general charter. \* \* \* Upon the filing of any such claim it shall be the duty of such boards to reserve an amount sufficient to pay the same from the funds in their possession, and in case such claim is allowed or judgment is rendered against said board \* \* \* it shall be the duty of the said board to pay to the claimant the amount so allowed or so adjudged to be due.

Section 4242. The presentation of any claim, in cases where by law such presentment is required, \* \* \* to the county court shall be deemed the commencement of an action within the meaning of any law limiting the time for the commencement of an action thereon.

SECTION 3. Three new sections are added to the statutes to read: Section 683. The claimant may accept payment of any portion of his claim allowed without waiving his right to recover the portion disallowed. The plaintiff, if he recover any sum in excess of the amount allowed, if any, by the board, shall have costs irrespective of the amount so recovered; otherwise the defendant shall recover costs. No interest shall be recovered upon any sum allowed by the county board for which an order shall have been duly drawn, after the order shall be available to the plaintiff. The court may examine all the items of the claim presented to the board and, if it appear that the plaintiff has been allowed as great a sum on the whole claim as he is entitled to, he shall recover no greater sum and the defendant shall have costs.

SECTION 925—60. Any claimant may accept payment of any portion of his claim allowed without waiving his right to recover the balance. In case in any action the plaintiff shall not recover any greater sum on his whole claim than the amount allowed by the council, the defendant shall recover costs. No

interest shall be recovered by a plaintiff on any portion of his claim allowed by the council for which a city order is drawn. after the date when such order was available to claimant.

926—181. All such portions of each and every charter of cities incorporated by special act which provides for the taking of appeals to any court from the disallowance by the common council or other authorized auditing board, of any claim or demand of any nature whatsoever presented against the city, are hereby repealed, and civil actions against such cities shall be begun by the service of summons as provided by the general statutes. The disallowance by the common council or other authorized auditing board of any such city of any claim or demand required to be presented for allowance, shall be a bar to the maintenance of any action against the city thereon unless such action be begun within six months after such disallowance but shall not otherwise operate as such bar.

SECTION 4. This act shall take effect upon passage and publication.

Approved June 30, 1917.

No. 551, S.]

[Published July 3, 1917.

## CHAPTER 554

AN ACT to amend section 925—23 of the statutes, relating to officers of cities of the second, third and fourth classes.

*The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Section 925—23 of the statutes is amended to read: Section 925—23. The officers of cities of the second, third and fourth classes shall be a mayor, treasurer, clerk, comptroller, attorney, assessor or one or more assessors, \* \* \* *three* or more justices of the peace, *one or more constables* as the common council may determine by ordinance, a physician, street commissioner, chief of the fire department, a board of public works, a board of school commissioners, one or more policemen, two aldermen and one supervisor from each ward, and such other officers or boards as the common council may deem necessary; provided, that the council, by a two-thirds vote, may dispense with the offices of street commissioner, engineer, comptroller and board of public works, and provide that the duties thereof be performed by other officers or boards, by the council or a committee thereof. *In case the whole number of justices of the peace provided for by this act shall not have*