TITLE XIII.

Regulation of Industry.

CHAPTER 101.

INDUSTRIAL COMMISSION.

101.01 Definitions of terms used. The following terms as used in sections 101.01 to 101.29 of the statutes, shall be construed as follows:

(1) The phrase "place of employment" shall mean and include every place, whether indoors or out or underground and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is, directly or indirectly, employed by another for direct or indirect gain or profit, but shall not include any place where persons are employed in (a) private domestic service which does not involve the use of mechanical power or (b) farm labor when the employer is the farmer operating the farm and the labor is such as is customarily performed as a part of farming, and including the transportation of farm products immediately and directly from the farm, and of materials, supplies or equipment directly to the farm for use thereon.

(2) The term "employment" shall mean and include any trade, occupation or process of manufacture, or any method of carrying on such trade, occupation or process of manufacture in which any person may be engaged, except in such private domestic service as does not involve the use of mechanical power and in farm labor as used in subsection (1).

(3) The term "employer" shall mean and include every person, firm, corporation, state, county, town, city, village, school district, sewer district, drainage district and other public or quasi-public corporations as well as any agent, manager, representative or other person having control or custody of any employment, place of employment or of any employe.

(4) The term "employe" shall mean and include every person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go or work or be at any time in any place of employment.

(5) The term "frequenter" shall mean and include every person, other than an employe, who may go in or be in a place of employment or public building under circumstances which render him other than a trespasser.

(6) The term "deputy" shall mean and include any person employed by the industrial commission designated as such deputy by the commission, who shall possess special, technical, scientific, managerial or personal abilities or qualities in matters within the jurisdic-

tion of the industrial commission, and who may be engaged in the performance of duties under the direction of the commission, calling for the exercise of such abilities or qualities.

(7) The term "order" shall mean and include any decision, rule, regulation, direction, requirement or standard of the commission, or any other determination arrived at or decision made by such commission.

(8) The term "general order" shall mean and include such order as applies generally throughout the state to all persons, employments, places of employment or public buildings, or all persons, employments, or places of employment or public buildings of a class under the jurisdiction of the commission. All other orders of the commission shall be considered special orders.

(9) The term "local order" shall mean and include any ordinance, order, rule or determination of any common council, board of aldermen, board of trustees, or the village board, of any village or city, or the board of health of any municipality, or an order or direction of any official of such municipality, upon any matter over which the industrial commission has jurisdiction.

(10) The term "welfare" shall mean and include comfort, decency and moral well-being.

(11) The term "safe" or "safety" as applied to an employment or a place of employment or a public building, shall mean such freedom from danger to the life, health, safety or welfare of employes or frequenters, or the public, or tenants, or firemen, and such reasonable means of notification, egress and escape in case of fire, and such freedom from danger to adjacent buildings or other property, as the nature of the employment, place of employment, or public building, will reasonably permit.

(12) The term "public building" as used in sections 101.01 to 101.29 shall mean and include any structure used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public, or by three or more tenants.

(13) The term "owner" shall mean and include every person, firm, corporation, state, county, town, city, village, school district, sewer district, drainage district and other public or quasi-public corporations as well as any manager, representative, officer, or other person having ownership, control or custody of any place of employment or public building, or of the construction, repair or maintenance of any place of employment or public building, or who prepares plans for the construction of any place of employment or public building. Said sections 101.01 to 101.29, inclusive, shall apply, so far as consistent, to all architects and builders. [*1931 c. 161; 1941 c. 273*]

Note: Subsection (12) does not require a landlord whose apartment building is so constructed that no part is used in common to keep a rail or outside barrier in repairs. Bewley v. Kipp, 202 W 411, 233 NW 71.

A temporary wooden bleacher erected for use at games of professional football was a "public building," within (12). In an action for personal injuries sustained by a pay spectator at a football game through a fall from the top of the temporary wooden bleacher, the bleacher being a public building within the safe-place statute, and the spectator occupying a bleacher seat as a member of the general public even though he had a right to occupy the particular seat and to exclude others from it, the doctrine of assumption of risk on his part was inapplicable. Bent v. Jonet, 213 W 635, 252 NW 290.

Where the only thing required to render a place safe is the turning on or continuous maintenance of an electric light, and the premises are occupied by a tenant whose business therein makes the place a public building within the safe-place statute, the performance of such duty rests upon the tenant, and the tenant alone was liable for injuries to a customer caused by failure to have an electric light turned on. Kinney v. Luebkeman, 214 W 1, 252 NW 282.

An employe of a lessee of part of a warehouse, whose work required him to use also the unleased part of the warehouse, and which use was known to the owner of the warehouse, was a "frequenter" of the unleased part, within the safe-place statute, so as to render the owner liable for an injury received by such employe when he struck his head against a bracket or shelf supporting a fire extinguisher fastened to a steel beam five feet six and a quarter inches above the floor of the warehouse; the evidence supporting a finding that the owner had not made the place where such employe was injured as safe as the nature thereof reasonably permitted, and the terms of the lease in no way affecting the statutory duty or liability of the owner to such employe. Tomlin v. Chicago, M., St. P. & P. R. Co., 220 W 325, 265 NW 72.

Where a paving machine obstructed a sidewalk on a street under construction but not closed to traffic, and projected onto abutting property being used by the contractor with the permission of the owner, a pedestrian who, in walking around the machine, entered the abutting property and was hit by the descending skip of the machine was a "frequenter," not a "trespasser," within the safe-place statute. Powers v. Cherney Construction Co., 223 W 586, 270 NW 41.

"Tenant," as used in provisions of statute requiring "public buildings" to be safe, does not mean simply "tenant" as used in phrase "landlord and tenant," but has the more general meaning of one in possession of premises, whether as owner or otherwise. Skrzypczak v. Konieczka, 224 W 455, 272 NW 659.

The safe-place statutes are just as mandatory in relation to frequenters as to employes, and their purpose is to provide the same protection to frequenters as to employes. Sweitzer v. Fox, 226 W 26, 275 NW 546.

An eleemosynary institution is not liable for negligence, and the rooms where it conducts its activities is not a place of employment within the safe-place statute. Waldman v. Y. M. C. A., 227 W 43, 277 NW 632.

The safe-place doctrine applied in a pedestrian's action against a paving company which was paving a street to recover for injuries sustained when a plank leading from the car tracks to the curb broke under the pedestrian's weight. Dierkes v. White Paving Co., 229 W 660, 283 NW 446.

Bleachers erected on city school grounds by a photographer and his servants, pursuant to an agreement made by a representative of the high school senior class with the photographer, for the sole purpose of

taking a class picture, did not, as against the city, constitute a "public building" within the safe-place statute, 101.01 (12), defining the term as including any structure used as a place of resort, assemblage, occupancy or use by the public. (Bent v. Jonet, 213 W 635, distinguished.) Connor v. Meuer, 232 W 656, 288 NW 272.

Under 101.01, Stats. 1939, devices involving the use of mechanical power must be so constructed and so guarded as to make the employment and place of employment as safe as its nature will reasonably permit, and a farmer, who purchases in the open market a commonly sold and used farm implement involving the use of mechanical power and furnished with safety devices and equipment devised by the manufacturer, has not thereby, as a matter of law, discharged his duty under the statute of furnishing a safe employment or place of employment, and a jury, despite these facts, may under some circumstances find that the safety devices are not reasonably adequate to render the employment or place of employment safe. Tiemann v. May, 235 W 100, 292 NW 612.

By the safe-place statute the state has not made itself liable for personal injuries sustained by a frequenter of its buildings and has not consented to be sued therefor under 285.01, since the safe-place statute does not create a cause of action in favor of or against anyone but merely lays down a standard of care, the violation of which constitutes negligence, and there is no language used in such statute which indicates any intention on the part of the legislature to change the rule with respect to nonliability of the state for the negligent acts of its officers and agents. Holzworth v. State, 238 W 63, 298 NW 163.

Under a written agreement whereby the owner of a barn sold it for a consideration paid on execution of the agreement, and the buyer agreed to completely remove the barn from the seller's farm within 2 weeks and to assume complete charge and control of the razing and removing, title to the barn passed to the buyer as of the date of the agreement, the buyer was not an employe of the seller and the seller had no right of control over the buyer or the work in relation to razing and removing the barn, and the seller was not an "employer" nor was he an "owner" in control of a place of employment, within the safe-place statute, 101.01 (3), (13). Mahar v. Uihlein, 240 W 469, 3 NW (2d) 683.

See note to 101.10, citing Robert A. Johnston Co. v. Industrial Comm., 242 W 299, 7 NW (2d) 854.

In view of the definition of "owner" in subsection (13), part of the safe-place statute, a county may be liable under the statute for injuries sustained by a person in a public building of which the county is the owner. [Heiden v. Milwaukee, 226 W 92, applied; Holzworth v. State, 238 W 63, distinguished.] Flynn v. Chippewa County, 244 W 455, 12 NW (2d) 683.

A platform, furnished by a businessmen's association for the use of a professional entertainer engaged by the association to perform acrobatic acts at a harvest fair conducted by the association for advertising purposes, was a "place of employment," within the safe-place statute, so that the association was liable thereunder to the entertainer for injuries sustained by the entertainer because the platform was not as "safe" as required by 101.01 (11) and 101.06. [Waldman v. YMCA, 227 W 43, distinguished.] Mennetti v. West Side Businessmen's Asso., 246 W 586, 18 NW (2d) 487.

Caboose of freight train is "place of employment" within meaning of this chapter. Industrial commission may regulate "working" condtions therein unless such regulation constitutes interference with interstate commerce. 24 Atty. Gen. 418.

Jurisdiction of industrial commission under chapter 101, relating to safety regulations in public buildings, extends to rough stone stairway in privately owned park to which public is invited. 26 Atty. Gen. 397.

101.01 (12), which defines term "public building" for purposes of state building code promulgated by industrial commission, applies to building owned by religious order and occupied by three or more sisters of that order who teach in parochial school. 31 Atty. Gen. 91.

101.02 Commission created; appointments. There is hereby created a board which shall be known as the "Industrial Commission of Wisconsin." The governor, by and with the advice and consent of the senate, shall appoint a member who shall serve two years, another who shall serve four years, and another who shall serve six years. Thereafter each member shall be appointed and confirmed for terms of six years each. Each member of the board shall take and file the official oath. A majority of the board shall constitute a quorum for the exercise of the powers or authority conferred upon it. In case of a vacancy the remaining two members of the board shall exercise all the powers and authority of the board until such vacancy is filled. This board shall supersede and perform all of the duties of the industrial accident board provided in chapter 102 [secs. 2394-1 to 2394-40, Stats. 1911]. [*1933 c. 159 s. 20*]

101.03 Quorum; joint powers. A majority of said commissioners shall constitute a quorum to transact business. No vacancy shall impair the right of the remaining commissioners to exercise all the powers of the commission. [*1933 c. 159 s. 21*]

Note: On a petition for commission review of the findings and order of an examiner under 102.18 (3), the commission as a body is required to take action and to make a decision, and no effective decision comes into existence until at least two of the three members of the commission have reached a common conclusion on the matter to be decided, so that where there is a vacancy and the two sitting members cannot agree, the petition to review is still before the commission awaiting its action, and so long as this situation continues there can be no final findings and order or decision on which a court review can be had. State v. Industrial Comm. 233 W 461, 289 NW 769.

101.04 Office at capitol; supplies; extramural sessions. The commission shall keep its office at the capitol and shall be provided by the director of purchases with suitable rooms, necessary furniture, stationery, books, periodicals, maps, instruments and other necessary supplies. The commission may, however, hold sessions at any place other than the capitol when the convenience of the commission and the parties interested so requires. [*1931 c. 45 s. 1*]

101.05 Legal status; seal. The commission shall be known collectively as the "Industrial Commission of Wisconsin" and in that name may sue and be sued. It shall have a seal for the authentication of its orders and proceedings, upon which shall be inscribed the words "Industrial Commission—Wisconsin—Seal."

101.06 Employer's duty to furnish safe employment and place. Every employer shall furnish employment which shall be safe for the employes therein and shall furnish a place of employment which shall be safe for employes therein and for frequenters thereof and shall furnish and use safety devices and safeguards, and shall adopt and use methods and processes reasonably adequate to render such employment and places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employes and frequenters. Every employer and every owner of a place of employment or a public building now or hereafter constructed shall so construct, repair or maintain such place of employment or public building, and every architect shall so prepare the plans for the construction of such place of employment or public building, as to render the same safe.

Note: Ladder and stairway distinguished. The lack of railing on a storage platform could be considered with lack of stairway railing in determining whether the safe-place statute was violated. In this case the question was for the jury. A frequenter is entitled to the benefit of the safe-place statute to the same extent as an employe, and does not assume the risk. Contributory negligence was a jury question. Washburn v. Skogg, 204 W 29, 233 NW 764, 235 NW 437.

An allegation that a place is unsafe is a conclusion of law. A complaint which alleges that the plaintiff was injured when struck by a speeding automobile while changing a street car trolley at a terminal, does not charge a violation of the safe-place statute. A street car company has no right to place obstruction in a street to protect a motorman when changing a trolley. Baker v. Janesville T. Co., 204 W 452, 234 NW 912.

The safe-place statute imposes a duty on owners of public buildings beyond that imposed by the common law, in that a place must be as free from danger as the nature of the place will reasonably permit. In an action for injuries sustained in stumbling over a step in a toilet room of a theater, the stalls of which were in line on different levels, the evidence is held to sustain the verdict finding that the safe-place statute had been violated. Bunce v. Grand & Sixth Building, Inc., 206 W 100, 238 NW 867.

The safe-place statute requiring the employer to furnish safety devices in public buildings for the protection of the public, imposes a duty beyond that obtaining at common law. Submitting the issue as to whether defendant was negligent in failing to maintain the place in a reasonably safe condition, instead of whether the defendant had complied with the safe-place statute, is prejudicially erroneous to plaintiff. Expert testimony as to whether defendant had provided reasonably adequate safety devices and had complied with safety regulations of the industrial commission is competent, although relating to ultimate issues for the jury. Misrepresentations regarding matters of law by one professing knowledge thereof, thereby obtaining unconscionable advantage over one not in position to become informed, entitle the injured party to relief to the same extent as if the misrepresentations had concerned a matter of fact. Allison v. Wm. Doerflinger Co., 208 W 206, 242 NW 558.

Employer not protecting rope of hanging scaffold from splashing acid used by employes cleaning brick, failed to furnish "safe place of employment" hence employe's death from fall when rope broke was compensable. Builders' M. C. Co. v. Industrial Commission, 210 W 311, 246 NW 313.

Error in submission of question of defendant's negligence in action under safe-place statute, held to require reversal of judgment for defendant, notwithstanding jury's finding that plaintiff's negligence was one hundred per cent. Mullen v. Larson-Morgan Co., 212 W 52, 249 NW 67.

When the industrial commission, pursuant to 101.09, makes a lawful order for the safety of employes and frequenters of a public building, and the order is complied with, the safety of the place involved is conclusively established, at least so far as the subject matter of the order is concerned; and when such an order of the commission is claimed to be applicable, the sole question is whether the structure conforms to the order. Where there is no proper evidence of an order of the commission applicable to the situation, the question whether a building was a safe place within the safe-place statute is for the jury, and unless the matter is one involving skill and science, opinion evidence is not admissible. Bent v. Jonet, 213 W 635, 252 NW 290.

Under the safe-place statute the power company owed a duty to warn the deceased of the danger of electrocution from overhead wires, even though the deceased were merely frequenters of the premises and not employes of the company. The safe-place statute makes no distinction between employes and frequenters as respects the duty of an employer to furnish a safe place of employment. Sandeen v. Willow River P. Co., 214 W 166, 252 NW 706.

The employe of an independent contractor doing work upon the premises of another are "frequenters," within the safe-place statute, requiring an employer to furnish a place of employment safe for employes and "frequenters," and to do every other thing reasonably necessary to protect their life, health, safety and welfare. Neitzke v. Kraft-Phenix Dairies, Inc., 214 W 441, 253 NW 579.

An owner of a building is not liable under the safe-place statute for a condition of maintenance that renders a place of work unsafe, unless he has actual or constructive notice of such condition. The owners of the building under construction in this case were not liable under the safe-place statute or on common-law grounds to the employe of the electric company for the injuries sustained by him in using the elevator because of improper connections made by the elevator company in installing it, since the defect was latent and one of maintenance, the owners had no knowledge thereof, and sufficient time had not elapsed or events occurred to support a finding of constructive notice. Kaczmarski v. F. Rosenberg E. Co., 216 W 553, 257 NW 598.

Statute imposes upon owner same duty and liability to maintain building safe for its tenants and frequenters as it imposes on employers to render place of employment safe to employes. Duty of owner of public building to maintain building in safe condition extends only to such parts as are used by public or by tenants in common. Grossenbach v. Devonshire Realty Co., 218 W 633, 261 NW 742.

A religious corporation, owning a church building, was not liable under the safe-place statute for injuries sustained by a hostess of the ladies' aid society when a pile of folding chairs in the building fell as she was removing one, since the defective piling of the chairs had nothing to do with the structure, either by way of construction or maintenance. Jaeger v. Evangelical L. H. G. Cong., 219 W 209, 262 NW 585.

Lessor of machine for conveying concrete leased to sewer contractor held under no duty to warn employes of contractor of danger to those who were in sewer tunnel ahead of conveyor pipe during cleaning operation by which "go-devil" was forced through pipe under air pressure, where contractor was informed of danger, notwithstanding lessor's operators had charge of machine, and hence lessor was not liable when "go-devil" shot out of conveyor pipe, broke deflector, and caused injury to contractor's employe. American M. L. Ins. Co. v. Chain Belt Co., 224 W 155, 271 NW 828.

Failure to light a building or part of a building subject to the safe-place statute is

a failure to maintain the building in a safe condition, and consequently a violation of such statute regarding maintenance. Heiden v. Milwaukee, 226 W 92, 275 NW 922.

Where the rubber mat placed at the slightly sloping tile entrance to prevent slipperiness, was in good condition and repair and extended only one third of an inch above the surface of the tile the storekeeper was not liable for the injury to a customer who stubbed her toe on the end of the mat and fell. Erbe v. Maes, 226 W 484, 277 NW 111.

Where a foundry company had on its premises a quantity of scrap iron and another company as an accommodation sent its employes with the necessary apparatus for breaking the scrap, the foundry company, whose superintendent knew that the breaking was a dangerous operation, furnished the place of employment and had the duty of seeing that the place was reasonably safe. Kuske v. Miller Brothers Co., 227 W 300, 277 NW 619.

The mere fact that an accident happened does not prove that the place was not safe. To render the owner of premises liable under the safe-place statute the injury sustained must have been caused by something other than a structural defect. Heckel v. Standard Gateway Theatre, 229 W 80, 281 NW 640.

When the commission has provided the necessary elements of safety applicable to a particular place it is not for the court or the jury to establish others. Waterman v. Heinemann Bros. Co., 229 W 209, 282 NW 29.

A public highway is not a "place of employment" within the safe-place statute. Herrick v. Luberts, 230 W 387, 284 NW 27.

A toboggan slide maintained on a hillside is not a public building. Cegelski v. Green Bay, 231 W 89, 285 NW 343.

A slide for the entertainment of children in a public park maintained by a city was not a "public building" within the safe-place statute, so as to render the city subject to liability for injuries sustained by a child in using the slide. (Bent v. Jonet, 213 W 635, distinguished.) Where city employes partially dismantled a slide in a city park in the morning and removed the slide a short distance where they placed it upside down, in which position it was not dangerous and could not be used as a slide and in which position it was left awaiting repairs, and the employes failed to keep watch of it so as to prevent its being right side up at 4 o'clock in the afternoon, when a child found it right side up and was injured while attempting to use it as a slide, there was no creation or maintenance of a "nuisance," which would have rendered the city liable for the child's injuries, but at most there was only negligence on the part of the city employes, for which the city, since it was performing a governmental function in maintaining the park, was not liable. Grinde v. Watertown, 232 W 551, 288 NW 196.

A flagstaff located on the school grounds but entirely apart from the school building, did not constitute a "public building" within the safe-place statute, so as to render the school district liable for injuries sustained by a frequenter of the premises when a portion of the flagstaff fell. Lawver v. Joint District, 232 W 608, 288 NW 192.

A company operating a store in a building of which it was the owner was not liable under the safe-place statute for injuries sustained by the plaintiff in falling when her foot came in contact with a lecture platform while she was attending a lecture given in the store, where the platform, four and one-half feet square and rising some eight inches above the floor, was in a well-lighted room and plainly visible, and was set apart from the other furniture and articles displayed, none of which were placed nearer to the platform than four feet, and the plaintiff during the lecture was seated not more than ten feet from the platform; there being no violation of the safe-place statute by the company in the circumstances stated. Prehn v. C. Niss & Sons, Inc. 233 W 155, 288 NW 736.

The owner of the premises, continuing in possession and control thereof while a building was being constructed for it thereon, could not delegate, either to the general contractor or to a subcontractor, so as to absolve itself therefrom, its duty and obligation to furnish for employes and frequenters the safe place of employment required. Criswell v. Seaman Body Corp. 233 W 606, 290 NW 177.

A "place of employment" within the safe-place statute means a place where active work, either temporary or permanent, is being conducted in connection with a business for profit; where some process or operation related to such industry, trade or business is carried on, and where any person is directly or indirectly employed by another. A village street, being used merely as a place of travel, is not a "place of employment" within the safe-place statute so as to subject the village to liability thereunder for injuries sustained by a pedestrian. Padley v. Lodi, 233 W 661, 290 NW 136.

Where a stairway leading to the basement in the defendant's store, and the areaway off which the stairway opened, located in a rear corner, were separated from the store premises proper by a wooden partition, and the only way of getting to the stairway was by going through the doorway in the partition and passing the door, on which there was a conspicuous sign "Employes only," and the plaintiff, without notice to or knowledge on the part of a clerk, walked over to and into the areaway and fell down the stairs, the plaintiff was not a "frequenter" but a "trespasser," to whom the defendant owed no duty to maintain a safe place, and for whose injuries the defendant therefore was not liable, under the safe-place statute. Newell v. Schultz Brothers Co. 239 W 415, 1 NW (2d) 769.

The scrubbing or mopping of the hallways in a public building is an indispensable act in the maintenance of the building, and the mere temporary wetting of the floor in the process of scrubbing or mopping, even though such a wet condition may tend to make the floor slippery for the time being, cannot be made the basis of liability against the owner of the building under the safe-place statutes. Cronce v. Schuetz, 239 W 425, 1 NW (2d) 789.

The obligation of an owner of a public building as "owner," to furnish a safe place under the safe-place statute is limited to structural defects. A coin-operated electric washing machine, installed and maintained in the laundry room of an apartment building by the owner of the machine and attached to the building only by a cord plugged in a wall socket, was not a fixture and was not structurally a part of the building so as to render the owner of the building liable, under the safe-place statute, as an "owner" of a building, for injuries sustained by a tenant as a result of using the machine when it was in a defective condition. Gokey v. Electric Household Utilities Corp. 241 W 385, 6 NW (2d) 189.

Under a complaint showing merely that the plaintiff, while in the defendant's tavern as a patron and customer, was injured when his hand came into contact with the blades of an electric fan located on the top of a cupboard 7⅔ feet from the floor, and not alleging any reason or excuse for coming into contact with a fan so located, the plaintiff was, with reference to the fan, a "trespasser," to whom the defendant owed no duty to maintain a safe place, and for whose injuries the defendant therefore was not liable, under the safe-place statute. Ryan v. O'Hara, 241 W 389, 6 NW (2d) 209.

A shuffleboard, on summer resort premises, made with a smooth surface and located flush with the surface of the ground, was not, by reason of being so made and located "structurally defective," and a slippery condition of the surface of the shuffleboard from leaves and dirt naturally collected on it was not a "structural defect," so as to render the owner-lessor of the premises liable, under the safe-place statute as "owner," for injuries sustained by a cottage guest when she slipped on the shuffleboard while using it as a sidewalk. Kuhlman v. Vandercook, 241 W 418, 6 NW (2d) 235.

To facilitate the usual, proper use of a ballroom floor for dancing it is necessary and customary to have the floor slippery by waxing it, and the facts merely that a ballroom floor was waxed and slippery, when a frequenter fell thereon and sustained injuries, did not constitute a violation of the safe-place statute. Brown v. Appleton Masonic Temple Asso., 243 W 147, 9 NW (2d) 637.

The growing of hybrid seed corn and preparing it on the farm for market without changing either its form or its nature, although somewhat of a new development and done at present on only a small percentage of farms in Wisconsin, is "farm labor such as is customarily performed as a part of farming," within the provision in 101.01 (1) (b) that the phrase "place of employment" as used in the safe-place statute shall not include farm labor when the employer is the farmer operating the farm and the labor is such as is customarily performed as a part of farming. Vandre v. Trachte, 244 W 233, 12 NW (2d) 48.

The duty of an owner of a public building, under the safe-place statute, to maintain the building in a safe condition, extends only to such portions of the building as are used by the public or by tenants in common, and only such portions constitute a "public building," hence a county is not liable thereunder, as the owner of a public building, for injuries sustained by a prisoner in the county jail in falling down a stairway in a furnace room, not maintained for the use of the public nor even for the use of prisoners. Flynn v. Chippewa County, 244 W 455, 12 NW (2d) 683.

An owner was not liable, under the safe-place statute, for injuries sustained by a tenant's husband in slipping on ice formed on an outdoor stairway platform from water falling from the eaves, even if the owner did not maintain an adequate eave trough over the doorway and should have known of the icy condition in time to have remedied it before the accident occurred. Kezar v. Northern States Power Co., 246 W 19, 16 NW (2d) 364.

A bowling alley proprietor is not liable under safe-place statute for injuries to bowler as result of catching his foot in two-inch space between floor of alley and bottom of return trough when he slipped and fell on alley, as such proprietor is not insurer of bowler's safety, and mere fact that such accident happened does not prove that place was not safe. Sykes v. Bensinger Recreation Corporation, 117 F. (2d) 964.

Where county has title to 20 acres of county fairgrounds and fair association, nonprofit corporation, has title to remaining 6 acres and also custody and control of entire fairgrounds, county board having no connection therewith except to make annual appropriation for maintenance under 59.86, county would not be liable for injuries to members of public, employes of lessees or other frequenters of fairgrounds during either annual fair or rest of year, caused by defects of repair or maintenance of fair buildings. Neither would county be liable for injuries caused by defective original construction of such buildings on 6 acres belonging to fair association nor of buildings belonging to fair association although standing on county's 20 acres, latter buildings being in nature of trade fixtures under 59.69 (2). But as to buildings owned by county and standing on its own 20 acres, it may well be that county would be liable for injuries caused by defects of original construction. 32 Atty. Gen. 35.

101.07 Same; employes not to meddle with safeguards. (1) No employer shall require, permit or suffer any employe to go or be in any employment or place of employment which is not safe, and no such employers shall fail to furnish, provide and use safety devices and safeguards, or fail to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and no such employer shall fail or neglect to do every other thing reasonably necessary to protect the life, health, safety or welfare of such employes and frequenters; and no employer or owner, or other person shall hereafter construct or occupy or maintain any place of employment, or public building, that is not safe, nor prepare plans which shall fail to provide for making the same safe.

(2) No employe shall remove, displace, damage, destroy or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, nor interfere in any way with the use thereof by any other person, nor shall any such employe interfere with the use of any method or process adopted for the protection of any employe in such employment or place of employment or frequenter of such place of employment, nor fail or neglect to do every other thing reasonably necessary to protect the life, health, safety or welfare of such employes or frequenters.

Note: Where operations of a defendant railway company in switching freight cars on a dock were under control of the dock company an employe of the dock company who was injured in course of switching operations could not rely upon the safe-place statutes to justify a recovery against the railway company. Sikora v. Great Northern Ry. Co., 230 W 283, 282 NW 588.

101.08 Employers to furnish information; statistics; inspection by commission. (1) Every employer and every owner shall furnish to the commission all information required by it to carry into effect the provisions of sections 101.01 to 101.29, inclusive, and shall make specific answers to all questions submitted by the commission relative thereto.

(2) Any employer receiving from the commission any blanks calling for information required by it to carry into effect the provisions of sections 101.01 to 101.29, inclusive, with directions to fill the same, shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, and in case he is unable to answer any question, he shall give a good and sufficient reason for such failure, and said answer shall be verified under oath by the employer, or by the president, secretary or other managing officer of the corporation, if the employer is a corporation, and returned to the commission at its office within the period fixed by the commission.

(3) Any commissioner or deputy of the commission may enter any place of employment or public building, for the purpose of collecting facts and statistics, examining the provisions made for the health, safety and welfare of the employes, frequenters, the public or tenants therein and bringing to the attention of every employer or owner any law,

or any order of the commission, and any failure on the part of such employer or owner to comply therewith. No employer or owner shall refuse to admit any commissioner or deputy of the commission to his place of employment or public building.

101.09 Supervisory jurisdiction and powers of commission over employments and places of employment. The industrial commission is vested with the power and jurisdiction to have such supervision of every employment, place of employment and public building in this state as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment, place of employment or public building to be safe, and requiring the protection of the life, health, safety and welfare of every employe in such employment or place of employment and every frequenter of such place of employment, and the safety of the public or tenants in any such public building; provided, however, that the provisions of this section shall not apply to rural school buildings.

101.10 Other powers, duties and jurisdiction of commission. It shall also be the duty of the industrial commission, and it shall have power, jurisdiction and authority:

(1) To employ, promote and remove deputies, clerks and other assistants as needed, to fix their compensation, and to assign to them their duties; and to appoint advisors who shall, without compensation, assist the industrial commission in the execution of its duties.

(1a) The commission, or any member thereof, or any examiner appointed thereby, may hold hearings and take testimony.

(2) To administer and enforce, so far as not otherwise provided for in the statutes, the laws relating to child labor, laundries, stores, employment of females, licensed occupations, school attendance, bakeries, employment offices, intelligence offices and bureaus, manufacture of cigars, sweatshops, corn shredders, wood-sawing machines, fire escapes and means of egress from buildings, scaffolds, hoists, ladders and other matters relating to the erection, repair, alteration or painting of buildings and structures, and all other laws protecting the life, health, safety and welfare of employes in employments and places of employment and frequenters of places of employment.

(3) To investigate, ascertain, declare and prescribe what safety devices, safeguards or other means or methods of protection are best adapted to render the employes of every employment and place of employment and frequenters of every place of employment safe, and to protect their welfare as required by law or lawful orders, and to establish and maintain museums of safety and hygiene in which shall be exhibited safety devices, safeguards and other means and methods for the protection of life, health, safety and welfare of employes.

(4) To ascertain and fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption of safety devices, safeguards and other means or methods of protection to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life, health, safety and welfare of employes in employments and places of employment or frequenters of places of employment.

(5) To ascertain, fix and order such reasonable standards, rules or regulations for the construction, repair and maintenance of places of employment and public buildings, as shall render them safe.

(5a) To make reasonable orders for the repair or removal of any building or other structure which for want of repair or by reason of age or dilapidated condition or for any other cause is especially liable to fire, and which is so situated as to endanger other buildings or property and for the repair or removal of any combustible or explosive material or inflammable conditions, dangerous to the safety of any building or premises or the occupants thereof or endangering or hindering firemen in case of fire.

(5b) The industrial commission and its deputies shall have the right at all reasonable hours to enter into and upon all buildings, premises and public thoroughfares excepting only the interior of private dwellings, for the purpose of ascertaining and causing to be corrected any condition liable to cause fire, or any violation of any law or order relating to the fire hazard or to the prevention of fire. Any employe of the department of the state fire marshal who may be on July 1, 1917, engaged in fire prevention inspection shall be eligible to appointment as a deputy for similar work by the industrial commission.

(5c) The industrial commission is hereby empowered and directed to provide the form of a course of study in fire prevention for use in the public schools, dealing with the protection of lives and property against loss or damage as a result of preventable fires, and transmit the same by the first day of August in each year to the state superintendent of public instruction.

(6) To investigate, ascertain and determine such reasonable classifications of persons, employments, places of employment and public buildings, as shall be necessary to carry out the purposes of sections 101.01 to 101.29, inclusive.

(7) To adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings; such rules and regulations shall not be effective until ten days after their publication. A copy of such rules and regulations shall be delivered to every citizen making application therefor, and a copy delivered with every notice of hearing.

(8) To do all in its power to promote the voluntary arbitration, mediation and conciliation of disputes between employers and employes, and to avoid the necessity of resorting to lockouts, boycotts, blacklists, discriminations and legal proceedings in matters of employment. In pursuance of this duty it may appoint temporary boards of arbitration, provide necessary expenses of such boards, order reasonable compensation not exceeding five dollars per day for each member engaged in such arbitration, prescribe rules of procedure for such arbitration boards, conduct investigations and hearings, publish reports and advertisements, and may do all other things convenient and necessary to accomplish the purposes directed in sections 101.01 to 101.29, inclusive. The commission shall designate a deputy to be known as chief mediator and may detail other deputies from time to time to act as his assistants, for the purpose of executing these provisions. Deputies may act on temporary boards without extra compensation.

(9) To establish and conduct free employment agencies, to license and supervise the work of private employment offices, to do all in its power to bring together employers seeking employes and working people seeking employment, to make known the opportunities for self-employment in this state, to aid in procuring employment for the blind adults of the state, to aid in inducing minors to undertake promising skilled employments, to provide industrial or agricultural training for vagrants and other persons unsuited for ordinary employments, and to encourage wage earners to insure themselves against distress from unemployment. It shall investigate the extent and causes of unemployment in the state of Wisconsin and the remedies therefor in this and other countries, and it shall devise and adopt the most efficient means within its power to avoid unemployment, to provide employment, and to prevent distress from involuntary idleness.

(9a) Any county, city, town or village may enter into an agreement with the Wisconsin industrial commission for such period of time as may be deemed desirable for the purpose of establishing and maintaining local free employment offices, and it shall be lawful for any county, city, town or village to appropriate and expend the necessary money and to permit the use of public property for the joint establishment and maintenance of such offices as may be agreed upon, or in counties containing two hundred fifty thousand inhabitants or more in any city, town or village therein to purchase a site and construct necessary buildings. Provided, that in any county, city, village or town therein (wherein there is a citizens' committee on unemployment, such committee shall have the power to rent, lease, purchase or construct necessary buildings for the joint establishment and maintenance of such free employment office, subject to the approval of such plans by the industrial commission. The industrial commission may establish such free employment offices as it may deem necessary to carry out the purposes of chapter 108. All expenses of such offices, or all expenses not defrayed by the county, city, town or village in which an office is located, shall be charged to the appropriation to the industrial commission provided in section 20.573.

(10) To collect, collate and publish statistical and other information relating to the work under its jurisdiction and to make public reports in its judgment necessary.

(11) To rent, furnish and equip, except as provided in subsection (9a) of this section, such offices as may be needed in cities for the conduct of its affairs. All payments arising under this section shall be charged against the proper appropriation for the industrial commission.

(12) To fix and collect fees for the inspection of boilers not exceeding two dollars for each external inspection and five dollars for each internal inspection, per annum, and to collect fees for the inspection of elevators not exceeding two dollars semiannually for inspection. The fees so fixed shall be paid by the owners of such boilers or elevators. The commission may accept inspections of boilers and elevators by qualified inspectors of insurance companies where such boilers or elevators are insured, in which case no fee shall be charged. The commission may also accept inspections by qualified inspectors of boilers or elevators in cities of the first, second and third classes, in which case the city may collect and retain such fee for inspection as may be fixed by the commission for its own inspections.

(13) To require the submission of proper plans and specifications for places of employment and public buildings, also for elevators, toilets, and other permanent equipment of such buildings. Where such plans and specifications are required by the commission, no local officer shall issue any permit or license for the construction or use of such building, until the plans and specifications therefor as to safety and sanitation shall have been

approved by the commission. But this requirement shall not apply in cities where plans are examined and building permits issued by a city building inspector in a manner approved by the commission.

(14) To investigate and attempt equitably to adjust controversies between employers and employes as to alleged wage claims and to enforce the provisions of section 103.39. In pursuance of this duty, it may take an assignment in trust for the assigning employe of any wage claim deemed to be valid in the opinion of the commission and not exceeding one hundred dollars, such assignment to run to the industrial commission. The commission may sue the employer on any wage claim so assigned and the provisions of subsection (3) of section 103.39 shall apply. The commission may join in a single proceeding any number of wage claims against the same employer, but the court may order separate trials or hearings. In such cases the taxable costs recovered shall be paid into the general fund.

(15) To conduct such investigations, hold such public meetings and attend or be represented at such meetings, conferences and conventions inside or outside of the state as may, in its judgment, tend to better the execution of its functions.

(16) To ascertain, fix and order such reasonable standards, rules or regulations for the erection, construction, repair and maintenance of electric fences as shall render them safe. [*1931 c. 262 s. 2; 1931 c. 403 s. 18a; Spl. S. 1931 c. 20 s. 5; 1935 c. 95; 1937 c. 322*]

Note: The commission's order requiring excavations to be "securely shored up" was an attempt at legislation beyond its powers. Before a penalty should be imposed for violation of commission's orders, employer should be reasonably informed regarding the safety devices or safeguards required in the order. Wenzel & Henoch C. Co. v. Industrial Commission, 202 W 595, 233 NW 777.

The powers of the commission are derived exclusively from the statutes, and no statute confers authority upon it to reform or cancel written instruments properly before it for consideration. Kelley v. Tomahawk M. Co., 206 W 568, 240 NW 141.

Commission may maintain checking account in its name as trustee pending payment to claimants under (14) and may authorize an employe to sign checks. 24 Atty. Gen. 481.

In collecting claims under (14), no reduction should be made because no services were performed on legal holiday when contract for labor was by week. 24 Atty. Gen. 637.

Subsection (16) authorizes industrial commission to regulate with respect to existing electric fences; and any reasonable regulation made pursuant thereto is constitutional. 27 Atty. Gen. 569.

Although the commission may adopt its own rules of administrative procedure, it cannot enact substantive law, and its rule that if the commission fails to take action within ten days on a petition to review an order of an examiner, the order shall be deemed that of the entire commission as a body, is ineffectual as contrary to the provisions of 102.18 (3), which expressly require the commission to take action. State v. Industrial Comm. 233 W 461, 289 NW 769.

A safety order providing that the floor or ground surrounding machines shall be reasonably even, kept in good repair, free from obstruction over which persons may trip, and means provided to insure secure footing so far as the nature of the work "will permit," instead of "will reasonably permit," is invalid and beyond the commission's powers as legislative in character for prescribing a "safe" standard beyond that prescribed or authorized by 101.01 (11) and 101.10. Robert A. Johnston Co. v. Industrial Comm., 242 W 299, 7 NW (2d) 854.

101.105 Liquefied petrolum gas. (1) The term "liquefied petroleum gas" as used in this section, shall mean and include any material which is composed predominantly of any of the following hydrocarbons or mixtures of the same: propane, propylene, butanes, normal butane or isobutane and butylenes.

(2) The industrial commission shall ascertain, fix and order such reasonable standards, rules or regulations for the design, construction, location, installation, operation, repair and maintenance of equipment for storage, handling, use, and transportation by tank truck or tank trailer, liquefied petroleum gases for fuel purposes, and for the odorization of said gases used therewith, as shall render such equipment safe. The promulgation, effect and review of standards, rules and regulations adopted under this section shall be controlled by the provisions of this chapter. The industrial commission shall appoint an advisory committee to assist in the promulgation of such standards.

(3) No person, firm or corporation, except the owner thereof and those duly authorized by the owner so to do, shall fill, refill or use in any manner a liquefied petroleum gas container or receptacle for any purpose whatsoever.

(4) Every person, firm, association or corporation actually performing the work of installing, on and after the effective date of regulations promulgated by the industrial commission pursuant to this section, equipment utilizing liquefied petroleum gas for fuel purposes, shall furnish the customer or user of said equipment, a statement, the form of which shall be prescribed by the industrial commission, showing that the design, construction, location and installation of said equipment conforms with the rules and regulations adopted by the industrial commission pursuant to this section.

(5) Any person, firm, association or corporation violating any of the provisions of this section, or any standard, rule or regulation adopted by the industrial commission pursuant to the provisions of this section, or issuing a false statement under subsection (4), shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than $25 nor more than $100, or by imprisonment in the county jail not less than 30 days nor more than 6 months.

(6) The provisions of this section shall not apply to railroads engaged in interstate commerce or to equipment used by them. [*1941 c. 235*]

101.11 Complaints and investigation as to safety of employments; hearing and order. (1) Upon petition, after January 1, 1912, by any person that any employment or place of employment or public building is not safe, the commission shall proceed with or without notice, to make such investigation as may be necessary to determine the matter complained of.

(2) After such hearing as may be necessary, the commission may enter such order relative thereto as may be necessary to render such employment or place of employment or public building safe.

(3) Whenever the commission shall learn that any employment or place of employment or public building is not safe it may of its own motion, summarily investigate the same, with or without notice, and enter such order as may be necessary relative thereto.

101.12 Commission succeeds commissioner. (1) All duties, liabilities, authority, powers and privileges heretofore or hereafter conferred and imposed by law upon the commissioner of labor and industrial statistics, deputy commissioner of labor and industrial statistics, factory inspector, woman factory inspector and assistant factory inspectors, are hereby imposed and conferred upon the industrial commission and its deputies.

(2) All laws relating or referring to the commissioner of labor and industrial statistics, and the deputy commissioner of labor and industrial statistics, except those laws relating or referring to their appointment and qualification and to their membership or service on the industrial accident board, and all laws relating or referring to the factory inspector, the woman factory inspector and assistant factory inspectors, shall apply to and be deemed to relate and refer to the industrial commission, so far as the said laws are applicable.

101.13 Orders of commission declared lawful. All orders of the industrial commission in conformity with law shall be in force, and shall be prima facie lawful; and all such orders shall be valid and in force, and prima facie reasonable and lawful until they are found otherwise upon judicial review thereof pursuant to chapter 227 or until altered or revoked by the commission. [*1943 c. 375 s. 32; 1945 c. 511*]

Note: Only such safety orders of the industrial commission as are "in conformity with law" are prima facie reasonable and lawful "until found otherwise in an action brought for that purpose." (Stats. 1941) Robert A. Johnston Co. v. Industrial Comm., 242 W 299, 7 NW (2d) 854.

101.14 Publication of orders; when effective. (1) All general orders shall take effect within thirty days after their publication in the official state papers. Special orders shall take effect as therein directed.

(2) The commission shall, upon application of any employer or owner, grant such time as may be reasonably necessary for compliance with any order.

(3) Any person may petition the commission for an extension of time, which the commission shall grant if it finds such an extension of time necessary.

101.15 Petition and hearing on reasonableness of orders. (1) Any employer or other person interested either because of ownership in or occupation of any property affected by any such order, or otherwise, may petition for a hearing on the reasonableness of any order of the commission in the manner provided in sections 101.01 to 101.29, inclusive.

(2) Such petition for hearing shall be by verified petition filed with the commission, setting out specifically and in full detail the order upon which a hearing is desired and every reason why such order is unreasonable, and every issue to be considered by the commission on the hearing. The petitioner shall be deemed to have finally waived all objections to any irregularities and illegalities in the order upon which a hearing is sought other than those set forth in the petition. All hearings of the commission shall be open to the public.

(3) Upon receipt of such petition, if the issues raised in such petition have theretofore been adequately considered, the commission shall determine the same by confirming without hearing its previous determination, or if such hearing is necessary to determine the issues raised, the commission shall order a hearing thereon and consider and determine the matter or matters in question at such times as shall be prescribed. Notice of the time and place of such hearing shall be given to the petitioner and to such other persons as the commission may find directly interested in such decision.

(4) Upon such investigation, if it shall be found that the order complained of is unjust or unreasonable the commission shall substitute therefor such other order as shall be just and reasonable.

(5) Whenever at the time of the final determination upon such hearing it shall be found that further time is reasonably necessary for compliance with the order of the com-

mission, the commission shall grant such time as may be reasonably necessary for such compliance.

101.16 General orders; local orders. (1) Nothing contained in sections 101.01 to 101.29, inclusive, shall be construed to deprive the common council, the board of aldermen, the board of trustees or the village board of any village or city, or the board of health of any municipality of any power or jurisdiction over or relative to any place of employment or public building, provided that, whenever the industrial commission shall, by an order, fix a standard of safety or any hygienic condition for employments or places of employment or public buildings, such order shall, upon the filing by the commission of a copy thereof with the clerk of the village or city to which it may apply, be held to amend or modify any similar conflicting local order in any particular matters governed by said order. Thereafter no local officer shall make or enforce any order contrary thereto.

(2) Any person affected by any local order in conflict with an order of the commission, may in the manner provided in section 101.15 of the statutes, petition the industrial commission for a hearing on the ground that such local order is unreasonable and in conflict with the order of the commission. The petition for such hearing shall conform to the requirements set forth for a petition in said section 101.15 of the statutes.

(3) Upon receipt of such petition the commission shall order a hearing thereon, to consider and determine the issues raised by such appeal, such hearing to be held in the village, city or municipality where the local order appealed from was made. Notice of the time and place of such hearing shall be given to the petitioner and such other persons as the commission may find directly interested in such decision, including the clerk of the municipality or town from which such appeal comes. If upon such investigation it shall be found that the local order appealed from is unreasonable and in conflict with the order of the commission, the commission may modify its order and shall substitute for the local order appealed from such order as shall be reasonable and legal in the premises, and thereafter the said local order shall, in such particulars, be void and of no effect.

101.17 Condition precedent to action to review order. (1) No action, proceeding or suit to set aside, vacate or amend any order of the commission or to enjoin the enforcement thereof, shall be brought unless the plaintiff shall have applied to the commission for a hearing thereon at the time and as provided in section 101.15 of the statutes, and in the petition therefor shall have raised every issue raised in such action.

(2) Every order of the commission shall, in every prosecution for violation thereof, be conclusively presumed to be just, reasonable and lawful, unless prior to the institution of prosecution for such violation a proceeding for judicial review of such order shall have been instituted, as provided in chapter 227. [*1943 c. 375 s. 33; 1945 c. 511*]

101.18 Per diem unit of violations. Every day during which any person, persons, corporation or any officer, agent or employe thereof, shall fail to observe and comply with any order of the commission or to perform any duty enjoined by sections 101.01 to 101.29, inclusive, shall constitute a separate and distinct violation of such order, or of said sections as the case may be.

101.185 Noncompliance with orders a defense to action on contract. Proof by any person, firm or corporation employing a contractor to construct, repair, alter or improve any building or structure, that such contractor in performing such work has failed to comply with any applicable order or regulation of the industrial commission promulgated under the provisions of section 101.10 shall constitute a defense to any action for payment by such contractor to the extent that it shall bar recovery for any part of the work which fails to comply. Advancements paid to the contractor for work which fails to comply as well as any reasonable amount expended to effectuate compliance with any applicable order or regulation may be recovered from such contractor by way of counterclaim or in a separate action. The provisions of this section shall not apply where plans or specifications were prepared by an architect or engineer licensed to do business in this state and the contract performed in accordance therewith. [*1943 c. 411*]

101.19 Testimonial powers of commission. Each of the commissioners shall have power to certify to official acts, and take testimony.

101.20 Witness fees. Each witness who shall appear before the commission by its order shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in courts of record, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the chairman of the commission, and charged to the proper appropriation for the industrial commission. But no witness subpœnaed at the instance of parties other than the commission shall be entitled to compensation from the state for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated.

101.21 Depositions. The commission or any party may in any investigation cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in circuit courts. The expense incurred by the state in the taking of such depositions shall be charged against the proper appropriations for the industrial commission.

101.22 Record of proceedings. A full and complete record shall be kept of all proceedings had before the commission on any investigation and all testimony shall be taken down by the stenographer appointed by the commission.

101.23 Special agents; delegation of inquisitorial powers. (1) For the purpose of making any investigation with regard to any employment or place of employment or public building, the commission shall have power to appoint, by an order in writing, any member of the commission, any deputy who is a citizen of the state, or any other competent person as an agent whose duties shall be prescribed in such order.

(2) In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted in this act to the commission, and the same powers as a court commissioner with regard to the taking of depositions; and all powers granted by law to a court commissioner relative to depositions are hereby granted to such agent.

(3) The commission may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agent the taking of all testimony bearing upon any investigation or hearing. The decision of the commission shall be based upon its examination of all testimony and records. The recommendations made by such agents shall be advisory only and shall not preclude the taking of further testimony if the commission so order nor further investigation.

101.24 Attorney-general, district attorney, special prosecutor. (1) The commission shall have authority to direct any deputy who is a citizen to act as special prosecutor in any action, proceeding, investigation, hearing or trial relating to the matters within its jurisdiction.

(2) Upon the request of the commission, the attorney-general or district attorney of the county in which any investigation, hearing or trial had under the provisions of sections 101.01 to 101.29, inclusive, is pending, shall aid therein and prosecute under the supervision of the commission, all necessary actions or proceedings for the enforcement of said sections and all other laws of this state relating to the protection of life, health, safety and welfare, and for the punishment of all violations thereof.

101.25 Technical omissions not fatal to orders. A substantial compliance with the requirements of sections 101.01 to 101.29, inclusive, shall be sufficient to give effect to the orders of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

101.26 Court review. Orders of the commission under sections 101.01 to 101.25 shall be subject to review in the manner provided in chapter 227. [*1943 c. 375 s. 34*]

Note: The action authorized by 101.26, Stats. 1941, to vacate an order of the industrial commission can be maintained, under the terms of (1), only on the grounds that the order is "unlawful" or "unreasonable," and hence, the only issues therein are virtually the same as in certiorari proceedings to review official action and are only issues of law, and hence nothing is involved therein but a review of the record to determine whether the commission acted lawfully, i. e., within the scope of powers granted, and reasonably, i. e., whether there was evidence to support its findings. Kuehnel v. Registration Board of Architects, 243 W 188, 9 NW (2d) 630.

101.27 [*Repealed by 1943 c. 375 s. 35*]

101.28 Penalty for violations. If any employer, employe, owner, or other person shall violate any provisions of sections 101.01 to 101.13, inclusive, of the statutes, or shall do any act prohibited in sections 101.01 to 101.29, inclusive, or shall fail or refuse to perform any duty lawfully enjoined, within the time prescribed by the commission, for which no penalty has been specifically provided, or shall fail, neglect or refuse to obey any lawful order given or made by the commission, or any judgment or decree made by any court in connection with the provisions of sections 101.01 to 101.29, inclusive, for each such violation, failure or refusal, such employer, employe, owner or other person shall forfeit and pay into the state treasury a sum not less than ten dollars nor more than one hundred dollars for each such offense. It shall be the duty of all officers of the state, the counties and municipalities, upon request of the industrial commission, to enforce in their respective departments, all lawful orders of the industrial commission, insofar as the same may be applicable and consistent with the general duties of such officers.

Note: Court will take judicial notice of building code adopted by the industrial commission, which has the force of criminal statutes in the sense that the violation of its provisions are penalized. Skrzypczak v. Konieczka, 224 W 455, 272 NW 659.

101.29 Fire inspection. (1) The chief of the fire department in every city, village or town, is hereby constituted a deputy of the industrial commission, subject to the right of the industrial commission to relieve any such chief of a fire department from his duties

as such deputy for cause, and upon such suspension to appoint some other person to perform the duty imposed upon such deputy of the industrial commission.

(2) Such chief of the fire department is required, by himself or by officers or members of his fire department designated by him for that purpose, to inspect all buildings, premises, and public thoroughfares, except the interiors of private dwellings, for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, or any violations of any law or ordinance relating to the fire hazard or to the prevention of fires.

(3) Such inspection shall be made at least once in six months in all of the territory served by such fire department, and not less than once in three months in such territory as the common council shall have designated or shall thereafter designate as within the fire limits or as a congested district subject to conflagration, and oftener as the chief of the fire department may order. Each six months' period shall begin on the first day of January and July, and each three months' period on the first day of January, April, July and October, of each year.

(4) The chiefs of fire departments in every city of the first, second and third classes shall designate a sufficient number of men as inspectors to carry out the provisions of this section.

(5) Written reports of inspection shall be made and kept on file in the office of the chief of the fire department in the manner and form required by the industrial commission.

(6) Such inspection shall be subject to the supervision and direction of the industrial commission, which shall upon examination certify to the commissioner of insurance after the expiration of each calendar year each such city, village or town where the inspections for such year have been made, and records thereof have been made and kept on file as required by law.

(7) A copy of any report showing a change in the hazard from the survey, or any violation of law or ordinance relating to the fire hazard upon any risk shall be given by the industrial commission to any inspection bureau making written request therefor.

101.30 Boiler inspection, penalties. No machine, mechanical device, or steam boiler shall be installed or used in this state which does not fully comply with the requirements of the laws of this state enacted for the safety of employes and frequenters in places of employment and public buildings and with the orders of the industrial commission adopted and published in conformity with sections 101.01 to 101.28, inclusive, of the statutes. Any person, firm, or corporation, violating the provisions of this act shall be subject to the forfeitures provided in sections 101.18 and 101.28 of the statutes.

101.31 Architects and professional engineers. (1) REGISTRATION, DEFINITIONS. Any person practicing or offering to practice the profession of architecture or the profession of professional engineering in this state shall be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or to offer to practice the profession of architecture or the profession of professional engineering in this state, or to use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is an architect or a professional engineer or to advertise to furnish architectural or professional engineering services, unless such person has been duly registered or exempted under the provisions of this section.

(a) The term "architect" as used in this section means a person who is legally qualified to practice the profession of architecture.

(b) The practice of architecture within the meaning and intent of this section includes any professional service, such as consultation, investigation, evaluation, planning, aesthetic and structural design, or responsible supervision of construction, in connection with the construction of any private or public buildings, structures, projects, or the equipment thereof, or addition to or alteration thereof, wherein the safeguarding of life, health or property is concerned or involved.

(c) The term "professional engineer" as used in this section means a person who by reason of his knowledge of mathematics, the physical sciences and the principles of engineering, acquired by professional education and practical experience, is qualified to engage in engineering practice as hereinafter defined.

(cm) The practice of professional engineering within the meaning and intent of this section includes any professional service, requiring the application of engineering principles and data, wherein the public welfare or the safeguarding of life, health or property is concerned and involved, such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction, alteration, or operation, in connection with any public or private utilities, structures, projects, bridges, industrial plants and buildings, machines, equipment, processes, works, and the structural members of other than industrial buildings.

(d) The term "board" as used in this section shall mean the state registration board of architects and professional engineers, as provided for by this section.

(2) REGISTRATION BOARD, MEMBERSHIP, TERM, ELIGIBILITY, PAY, REMOVALS, VACANCIES. (a) The board shall consist of 9 members: The state architect, the state engineer, the dean of the college of engineering of the state university, 3 architects and 3 professional engineers. The 3 architects and 3 professional engineer members of the board shall be appointed by the industrial commission from lists consisting of two or more names for each position to be filled, submitted by the architectural and engineering societies of the state. Every member of the board shall receive a certificate of his appointment from the industrial commission and before beginning his term of office shall file with the secretary of state his written oath for the faithful discharge of his official duty. On the expiration of the terms of architect and engineer members of the board, the industrial commission shall each year, from lists consisting of two or more names for each vacancy to be filled, appoint new members for a term of 3 years, as follows: One registered architect and one registered professional engineer, from the nominating lists to be submitted from the membership lists of registered architects and registered professional engineers by the architectural and engineering societies of the state. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified.

(b) Each member of the board shall be a citizen of the United States and shall have been a resident of this state for at least one year and shall have been engaged in the practice of the profession of architect or of professional engineer for at least ten years, and shall have been in responsible charge of architectural or professional engineering work for at least five years.

(c) No member of the board shall be entitled to any compensation for his or her services, but shall, however, be reimbursed for all actual traveling, incidental and clerical expenses necessarily incurred in carrying out the provisions of this section.

(d) The industrial commission may upon request of two-thirds of the membership of the interested division of the board remove any architect or professional engineer member of the board for misconduct, incompetency, neglect of duty, or for any other sufficient proven cause. Vacancies in the membership of the board shall be filled by appointment by the industrial commission for the unexpired term.

(3) BOARD SECTIONS; MEETINGS; JURISDICTIONS; RULES; SEAL; TESTIMONY. (a) The board in operation shall be divided into two divisions, one division shall consist of the dean of the college of engineering, the state architect and the architect members. The other division shall consist of the dean of the college of engineering, the state engineer and the engineering members.

(b) The board shall hold joint meetings within thirty days after its members are first appointed and thereafter shall hold at least one joint meeting each year. In addition, the architectural and engineering division shall each hold at least two regular meetings each year. Special meetings shall be held at such times as the by-laws of the board may provide. Notice of all meetings shall be given in such manner as the by-laws may provide. The board shall elect annually from its architectural members a chairman and a vice chairman for the architectural division and from its engineering members a chairman and a vice chairman for the engineering division.

(c) All matters pertaining to the passing upon the qualifications of applicants for and the granting or revocation of registration, also all other matters of interest to either the architectural or to the engineering division shall be acted upon solely by the interested division. All matters of joint interest shall be considered by joint meetings of both architectural and engineering divisions of the board. At such joint meetings the dean of the college of engineering shall preside as chairman and the state architect and the state engineer shall cast the vote of their respective divisions, and the dean of the college of engineering shall cast the deciding vote.

(d) The board may make all by-laws and rules, not inconsistent with the constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the regulations of the proceedings before it. The board shall adopt an official seal. In carrying into effect the provisions of this section, the board or its divisions may take testimony in any case involving the revocation of registration or practicing or offering to practice without registration. Any member of the board may administer oaths to witnesses.

(4) SECRETARY, BOND, SALARY, CLERKS; RECORDS, REPORTS, ROSTER. (a) The secretary of the board shall give a surety bond to this state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board. The secretary of the board may receive such salary as the board determines. The board may employ such other clerical help or assistants as are necessary for the proper

performances of its work, or may make expenditure of this fund for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties. Under no circumstances, however, shall the total amount of warrants issued by the state auditor in payment of the expenses of the board exceed the amount of the examination and registration fees collected and appropriated as herein provided.

(b) The board shall keep a record of its proceedings and a register of all applications for registration together with a record of all other information pertaining thereto as may be deemed necessary by the board. The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

(c) The board shall annually submit to the industrial commission a report of its transactions of the preceding year, and shall also transmit to the industrial commission a complete statement of the receipts and expenditures of the board, attested by affidavits of its chairman and its secretary.

(d) A roster showing the names and places of business of all registered architects and professional engineers shall be prepared annually by the secretary of the board. Copies of this roster shall be obtainable by each person so registered and a copy shall be placed on file with the secretary of state.

(5) REGISTRATION REQUIREMENTS. The following facts established in the application shall be recorded as evidence satisfactory to the board that the applicant is qualified as an architect or as a professional engineer, to wit:

(a) An applicant for registration as an "architect" shall submit satisfactory evidence to the board as follows:

1. That he or she has acquired a thorough knowledge of sound construction, building hygiene, architectural design and mathematics.

2. Applicants shall also submit satisfactory evidence of at least five years' practical experience in the design and construction of buildings, or

3. A diploma of graduation or satisfactory certificate from a recognized architectural school or college together with at least three years' practical experience in the design and construction of buildings, but the three years' experience shall be counted only if beginning at the completion of the courses leading to the diploma or certificate.

(b) An applicant for registration as a "professional engineer" shall submit:

1. A specific record of seven or more years of active practice in engineering work of a character satisfactory to the board and indicating that the applicant is competent to be placed in responsible charge of such work; or,

2. A diploma of graduation in engineering or satisfactory certificate in engineering from a school or college approved by the board as of satisfactory standing, having a course in engineering of not less than four years, and a specific record of an additional three years of active practice in engineering work, of a character satisfactory to the board, and indicating that the applicant is competent to be placed in responsible charge of such work.

3. Graduation in engineering from a school of recognized standing shall be considered as equivalent to four years of active practice and the satisfactory completion of each year of work in such school without graduation shall be considered as equivalent to a half year of active practice. Graduation in a course other than engineering from a college or university of recognized standing shall be considered as equivalent to two years of active practice; provided, however, that no applicant shall receive credit for more than four years of active practice because of educational qualifications.

(c) No person shall be eligible for registration as an architect or professional engineer who is not of good character and repute. In considering the qualifications of applicants, responsible charge of architectural or engineering teaching may be construed as responsible charge of work.

(d) In cases where the evidence presented in the application does not appear to the board to be conclusive or to warrant the issuance of a certificate of registration, the applicant may be required to present further evidence for the consideration of the board, and may also be required to pass an oral or written examination, or both, as the board may determine.

(e) When oral or written examinations are required, the same shall be held at such time and place as the board shall determine. The scope of the examinations and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to design and supervise architectural or engineering work, which shall insure the safety of life, health and property. A candidate failing an examination shall, upon application and the payment of the regular fee, be examined again by the board.

(6) PARTNERSHIP OR CORPORATION. (a) A firm, or a copartnership, or a corporation, or a joint stock association may engage in the practice of architecture or professional en-

gineering in this state only provided such practice is carried on under the responsible direction of one or more registered architects or professional engineers. Any and all plans, sheets of design and specifications shall carry the signature of the registered architect or registered professional engineer who is in responsible charge.

(b) No such firm, or copartnership, corporation, or joint stock association shall offer to practice the profession of architecture or the profession of professional engineering in this state, or to use in connection with its name or otherwise assume, use or advertise any title or description tending to convey the impression that it is engaged in the practice of the profession of architecture or the profession of professional engineering, nor shall it advertise to furnish architectural or professional engineering services, unless firm members or copartners owning a majority of the capital interest in such firm or copartnership, or unless the executive director and the holders of the majority of stock of such corporation or joint stock association are duly registered under the provisions of this section.

(6m) CHANGE OF NAME. No person shall practice the profession of architecture or the profession of professional engineering in this state under any other Christian or given name or any other surname than that under which he was originally licensed or registered to practice in this or any other state, in any instance in which Wisconsin registration board of architects and professional engineers shall, after a hearing, find that practicing under such changed name operates to unfairly compete with another practitioner or to mislead the public as to identity or to otherwise result in detriment to the profession or the public. This subsection does not apply to a change of name resulting from marriage or divorce.

(7) EXEMPT PERSONS. The following persons shall be exempted from registration under the provisions of this section, to wit:

(a) A person not a resident of and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice herein the profession of architecture or of professional engineering if he shall have filed with the board an application for a certificate of registration and shall have paid the required fee. Such exemption shall continue only for such time as the board requires for the consideration of the application for registration; provided, that such a person is legally qualified to practice said profession in his or her own state or country.

(b) An employe of a person holding a certificate of registration in this state who is engaged in the practice of the profession of architecture or of professional engineering and an employe of a person temporarily exempted from registration; provided, such practice does not include responsible charge of architecture or professional engineering practice as defined in this section.

(c) Officers and employes of the government of the United States while engaged within this state in the practice of the profession of architecture or of professional engineering for said government.

(d) A person who practices the profession of professional engineering as a regular employe of a public service company by rendering to such company professional engineering services in connection with its facilities which are subject to regulation, supervision and control by a commission of the state of Wisconsin.

(e) Any person who practices the profession of architecture or professional engineering, exclusively as a regular employe of a private company or corporation, by rendering to such company architectural or professional engineering services in connection with its operations, so long as such person is thus actually and exclusively employed and no longer; provided, that such company shall have at least one architect or professional engineer, registered under the provisions of this section, in responsible charge of such company's architectural or professional engineering work in this state.

(f) Nothing contained in this section shall prevent persons from advertising and performing services such as consultation, investigation, evaluation, in connection with and making plans and specifications for, or supervising the erection, enlargement or alterations of any of the following buildings:

1. Dwellings for single families, and outbuildings in connection therewith, such as barns and private garages.
2. Apartment buildings used exclusively as the residence of not more than 2 families.
3. Buildings used exclusively for agricultural purposes.
4. Temporary buildings or sheds used exclusively for construction purposes, not exceeding 2 stories in height, and not used for living quarters.

(g) Nothing contained in this section shall prevent persons, firms or corporations, from making plans and specifications for, or supervising the erection, enlargement or alteration of any new building containing less than 50,000 cubic feet of usable space, or addition to a building which by reason of such addition results in a building containing not over 50,000 cubic feet of usable space or structural alteration to a building contain-

ing not over 50,000 cubic feet of usable space. Nor shall anything contained in this section prevent persons, firms or corporations, from making repairs or interior alterations to buildings, which do not affect health or safety.

(h) Any multiple family building having a common roof and party walls shall be deemed a single building for purposes of this section.

(i) This section shall not apply to inspection and service work done by employes of insurance rating bureaus, insurance service bureaus, insurance companies or insurance agents.

(8) CERTIFICATE OF REGISTRATION; RECIPROCITY PROVISIONS. (a) The board shall, upon application therefor, and the payment of the required fee, issue a certificate of registration as an architect or as a professional engineer to any person who holds an unexpired certificate of similar registration issued to him by the proper authority in any state or territory or possession of the United States or in any country in which the requirements for the registration of architects or of professional engineers are of a standard not lower than specified in this section; provided, however, that the registration boards of said states, territories, possessions or countries shall grant full and equal reciprocal registration rights and privileges to registrants of this state. Agreements for reciprocity with other states, territories, possessions or countries may be entered into by the board at its discretion.

(b) The board shall, upon application therefor and payment of the required fee, issue a certificate of registration as an architect or as a professional engineer to any person who holds an unrevoked card or certificate of national reciprocal registration, issued by any state, province or country in conformity with the regulations of the national council of state boards of architectural or engineering examiners, and who complies with the regulations of this board, except as to qualifications and registration fee.

(9) APPLICATIONS FOR REGISTRATION, FEES, CONTENTS OF CERTIFICATION, EXPIRATION. (a) Applications for registration shall be on forms prescribed and furnished by the board, shall contain statements made under oath showing the applicant's education and detail summary of his or her technical work, and shall contain not less than five references, of whom three or more shall have personal knowledge of his or her engineering or architectural experience.

(b) The registration fee for architects or for professional engineers shall be ten dollars, five dollars of which shall accompany application, the remaining five dollars to be paid upon issuance of certificate. Should the board deny the issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an examination fee.

(c) The registration fee for architects or for professional engineers who hold an unexpired certificate of similar registration issued by proper authority in any country, state or territory outside of this state with whom reciprocal relations are authorized by the board, shall be ten dollars to be paid upon issuance of certificate.

(d) The fee for the issuance of a new certificate to replace any certificate revoked, lost, destroyed or mutilated shall be three dollars.

(e) The board shall issue a certificate of registration upon payment of registration fee to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this section. The certificate shall authorize the practice of "architecture" or of "professional engineering." Certificates of registration shall show the full name of the registrant, shall have a serial number, and shall be signed by the chairman and the secretary of the board under seal of the board.

(f) The issuance of a certificate of registration by this board shall be evidence that the person named therein is entitled to all the rights and privileges of a registered architect or a registered professional engineer under the classification stated on his certificate, while said certificate remains unrevoked or unexpired.

(g) Certificates of registration shall expire on the last day of the month of July of the second year following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the board to notify every person registered under this section of the date of the expiration of his or her certificate and the amount of the fee that shall be required for its renewal for two years; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of July by the payment of a fee of five dollars. The failure on the part of any registrant to renew his certificate every second year in the month of July as required above, shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of July shall be increased ten per cent for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

(10) REVOCATION OF REGISTRATION. The board shall have the power to revoke the certificate of registration of any registrant who is found guilty of:

(a) The practice of any fraud or deceit in obtaining a certificate of registration;

(b) Any gross negligence, incompetency or misconduct in the practice of architecture or of professional engineering as a registered architect or as a registered professional engineer;

(c) Any person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against any registrant. Such charges shall be in writing, and shall be sworn to by the person making them and shall be filed with the secretary of the board. The board may also, on its own motion make such charges. All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the division of the board interested, within three months after the date on which they shall have been preferred.

(d) The time and place for said hearing shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of hearing shall be personally served on or mailed to the last known address of such registrant, at least thirty days before the date fixed for the hearing. At any hearing, the accused registrant shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him or her, and to produce evidence and witnesses in his own defense.

(e) If, after such hearing, four members of the division of the board holding the hearing vote in favor of finding the accused guilty, the board shall revoke the certificate of registration of such registered architect or registered engineer.

(f) The action of the board shall be subject to review in the manner provided in chapter 227.

(g) The board, for reasons the interested division may deem sufficient, may reissue a certificate of registration to any person whose certificate has been revoked, providing four members of the architectural division or four members of the engineering division of the board vote in favor of such reissuance. A new certificate of registration, to replace any certificate revoked, lost, destroyed or mutilated may be issued, subject to the rules of the board and the payment of the required fee.

(11) PENALTIES, LAW ENFORCEMENT, SEVERANCE CLAUSE. (a) Any person who shall practice, or offer to practice, architecture or the profession of professional engineering in this state, or who shall use the word "architect" or the term "professional engineer" as part of his business name or title or in any way represent himself as an architect or a professional engineer without being registered or exempted in accordance with this section, or any person presenting or attempting to use as his own the certificate of registration of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, or any person who shall falsely impersonate any other registrant of like or different name, or any person who shall attempt to use an expired or revoked certificate of registration, or shall violate any of the provisions of this section, shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than $100 nor more than $500, or by imprisonment for not more than 3 months, or both.

(b) It shall be the duty of all duly constituted officers of the law of this state, or any political subdivision thereof, to enforce the provisions of this section and to prosecute any persons violating same. The attorney-general of the state or his assistant shall act as legal advisor of the board and render such legal assistance as may be necessary in carrying out the provisions of this section.

(c) If any subsection or subsections of this section shall be declared unconstitutional or invalid, this shall not invalidate any other subsection of this section. [*1931 c. 486 s. 3; 1935 c. 437; 1943 c. 372; 1943 c. 375 s. 36; 1943 c. 387; 1945 c. 13, 33, 34*]

Note: The plaintiff who was not registered and who did not represent himself as an architect, but who drew plans for a dwelling for the defendant could recover for his services. Fischer v. Landish, 203 W 254, 234 NW 498.

An agreement of building contractors to furnish architectural services was not an agreement to perform such services, and the contractors did not thereby impliedly represent themselves to be architects, so as to preclude recovery for such services because they were not registered architects. [Hickey v. Sutton, 191 W 313, 210 NW 704, distinguished; Fischer v. Landisch, 203 W 254, 234 NW 498, followed.] Adams v. Feiges, 206 W 183, 239 NW 446.

This section, defining the practice of architecture as embracing "responsible supervision of the construction, enlargement or alteration of public or private buildings" for others and prohibiting such practice without an architect's license, refers to the sort of supervision which an architect ordinarily gives, and does not forbid all supervision except by a licensed architect; and the supervision necessary to performance is not the supervision that is ordinarily rendered by an architect. That the plaintiff may have violated the architect-licensing statute by holding himself out as an architect to others without possessing an architect's license constituted no defense against recovery for his services rendered to the defendants. Wahlstrom v. Hill, 213 W 533, 252 NW 339.

If the plaintiff only agreed to furnish architectural services, and handled the business end of the transaction while leaving the architectural part to a registered architect, and acted as a builder and the plans were actually prepared by a registered architect in his employ, and the defendant was sufficiently advised of the relation existing between all concerned, the plaintiff would not be precluded from recovering for the services because he was not a registered architect. Lytle v. Godfirnon, 241 W 533, 6 NW (2d) 652.

Evidence as to the nature of an architect's mistakes in plans for a building, and as to impractical and improper construction, delay in construction, failure to secure a

building permit, misplacement of the building in reference to the lot line, and as to his actions in securing the owner's indorsement of payment on certificates after he had knowledge of the misplacement of the building, warranted the registration board's finding that he was guilty of gross negligence, incompetency and misconduct in the practice of architecture. Kuehnel v. Registration Board of Architects, 243 W 188, 9 NW (2d) 630.

Five years' experience in designing and construction of buildings for others creates prima facie qualification for registration, but board may require evidence of competency of applicant to design and construct buildings not within exemption. Application must show experience in designing or construction for others in contractual relationship and not as employe of another. Term "engaged in" means employment occupying time, attention and labor of person. 21 Atty. Gen. 95.

Architectural services performed by the partner or by officer of corporation may be included as experience in designing and construction of buildings for others, under (5). 21 Atty. Gen. 590.

Word "corporation" as used in (6) and (7) does not include municipal corporations. 22 Atty. Gen. 126.

Supervision of construction of dam of considerable size constitutes practice of civil engineering within 101.31 (1) (c), Stats. 1933. 24 Atty. Gen. 12.

While person need not be registered professional engineer to hold office of city engineer, he must be so registered if his duties require him to do any of engineering work mentioned in (1) (cm). 25 Atty. Gen. 194.

Architect registered prior to 1931 who fails to renew his certificate within two years after July, 1931, must be considered new applicant. Foreign architect who applied in 1932 for registration but failed to complete his application until 1936 must be considered applicant for registration in 1936. Persons permitted to make plans and supervise erection of buildings used for private residences or farm purposes may use title "designer," "house designer," or "building designer." 25 Atty. Gen. 346.

Use of title "architractor" with intent to practice profession of architecture falls within (1). 26 Atty. Gen. 384.

Designing and constructing of grand stand or stadium on school grounds should be done by licensed architect. Such structure is not within exemption provided for by (7) (f). 26 Atty. Gen. 417.

The use of the title "professional engineering employe" for the purpose of classifying employes of professional engineers for collective bargaining purposes does not tend to convey the impression that the persons so classified are professional engineers, contrary to 101.31 (1). 33 Atty. Gen. 55.

101.32 Destruction of obsolete records. Whenever necessary to gain needed vault space, the industrial commission may turn over to the director of purchases, for destruction obsolete records in its possession, as follows:

(a) Correspondence, after five years;

(b) Inspection reports, after five years;

(c) Reports made to the industrial commission, after five years;

(d) Orders and findings of fact of the commission entered pursuant to chapter 102, after five years. [*1931 c. 324*]

101.33 Acceptance of federal emergency relief; validating executive acts. (1) The legislature hereby accepts the provisions of an act of congress, approved July 21, 1932, entitled "An act to relieve destitution, to broaden the lending powers of the Reconstruction Finance Corporation, and to create employment by providing for and expediting a public works program," cited as the "Emergency Relief and Construction Act of 1932."

(2) The legislature hereby approves, ratifies and confirms all past acts of the governor in accepting funds for the state pursuant to the provisions of said "Emergency Relief and Construction Act of 1932."

(3) The governor is authorized to accept for the state at all times when the legislature is not in session the provisions of any act of congress whereby funds are made available to the state for unemployment or other emergency relief or public works to be undertaken to relieve unemployment.

(4) All moneys and credits now in the hands of trustees appointed by the governor pursuant to the "Emergency Relief and Construction Act of 1932" shall upon the taking effect of this section be paid into the general fund of the state treasury and all moneys hereafter paid to the state by the federal government pursuant to this section shall immediately upon receipt be paid into the general fund. [*1933 c. 194*]

101.34 Acceptance of acts of congress for economic recovery. (1) The governor is authorized to accept for the state the provisions of any act of congress whereby funds or other benefits are made available to the state, its political subdivisions, or its citizens, so far as the governor may deem such provisions to be in the public interest; and to this end the governor may take or cause to be taken all necessary acts including (without limitation because of enumeration) the making of leases or other contracts with the federal government; the preparation, adoption and execution of plans, methods, and agreements, and the designation of state, municipal or other agencies to perform specific duties.

(2) The Wisconsin Rural Rehabilitation Corporation is authorized to waive, transfer, dispose, assign, convey or release to the Farm Security Administration, any and all property, real, personal and mixed of whatsoever kind, nature or character which the state of Wisconsin may have in the assets, property, real, personal or mixed, of the Wisconsin Rural Rehabilitation Corporation for the purpose of facilitating and expediting the execution and carrying out of the Federal Rural Rehabilitation and Resettlement Program pursuant to acts of congress. [*1933 c. 401; 1935 c. 459; 1937 c. 6 s. 16; 1945 c. 505*]

Note: State, under provisions of 20.02 (9), may set up insurance plan to protect workers on F. E. R. A. projects from disabilities and fatalities suffered on such projects. 23 Atty. Gen. 568.

Money appropriated for relief may be used by industrial commission upon direction of governor to pay indemnity to persons injured on work relief projects and in administering payment of such indemnities under provisions of this section and 20.02 (9), where such program is necessary to acquire benefit of federal funds. 23 Atty. Gen. 585, 623.

101.35 Power to convey or incumber state-owned lands. Any state board or agency having charge of any state-owned land is authorized, subject to the approval of the emergency board, to deed, mortgage, lease or otherwise encumber such lands to the federal government or to any of its agencies for the purpose of taking advantage of the provisions of the National Recovery Act (Public Act 67, 73d Congress) or any other act of the first session of the seventy-third congress. It is the intent of this section to make available to this state the benefits offered by the provisions of such federal acts relating, among others, to the erection of buildings and structures by the federal government, and to this end said state boards and agencies, subject to the approval of the emergency board, are authorized to take or cause to be taken all necessary acts, including (without limitation because of enumeration) the preparation, adoption and execution of plans, methods and agreements and the designation of state, municipal or other agencies to perform specific duties. [*1933 c. 434*]

101.36 Contracts and surety bonds to conform to federal requirements. In the construction of public works undertaken in this state from funds made available under the National Industrial Recovery Act or any other act of the seventy-third or seventy-fourth congress, the requirements as to bid guaranties, surety bonds and partial payments on contracts and other contract conditions shall conform to the requirements prescribed by the federal government, notwithstanding the provisions of any statute or law of this state or of any ordinance of any political subdivision of the state to the contrary. [*1933 c. 480; 1935 c. 501*]

101.37 Acceptance of federal act relating to public employment offices. (1) The legislature hereby accepts the provisions of an act of congress, approved June 6, 1933, entitled "An act to provide for the establishment of a national employment system and for co-operation with the states in the promotion of such system, and for other purposes."

(2) The industrial commission of Wisconsin is hereby authorized and directed to co-operate with the United States employment service in the administration of said act and in carrying out all agreements made thereunder.

(3) All funds made available to this state under said act shall, upon receipt thereof, be paid into the unemployment administration fund under section 20.573, and are appropriated therefrom to the industrial commission to be expended as required by the act of congress making such funds available and the rules and regulations issued thereunder. [*1933 c. 360; 1937 c. 95 s. 4*]

101.40 [*Repealed by 1941 c. 35*]