

TITLE VIII.

Functions and Government of Municipalities.

CHAPTER 59.

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59.001 Definitions. In this chapter, unless the context clearly indicates to the contrary:

- (1) "Board" means the county board of supervisors.
- (2) "Clerk" means the county clerk.
- (3) "Municipality" includes cities, villages and towns.
- (4) "Treasurer" means the county treasurer.

History: 1955 c. 651.

59.01 Municipal corporation. (1) **STATUS.** Each county in this state is a body corporate, empowered to sue and be sued, to acquire and hold, lease or rent real and personal estate for public uses or purposes, including lands sold for taxes, to sell, lease and convey the same, including the authority to enter into leases or contracts with the state for a period of years for the uses and purposes specified in s. 23.09 (7) (d), to make such contracts and to do such other acts as are necessary and proper to the exercise of the powers and privileges granted and the performance of the legal duties charged upon it.

History: 1955 c. 651.

59.02 Powers, how exercised; quorum. (1) The powers of a county as a body corporate can only be exercised by the board thereof, or in pursuance of a resolution or ordinance adopted by it.

(2) Ordinances and resolutions may be adopted by a majority vote of a quorum or by such larger vote as may be required by law. Ordinances shall commence as follows: "The county board of supervisors of the county of . . . do ordain as follows."

(3) A majority of the supervisors entitled to a seat on the board shall constitute a quorum. All questions shall be determined by a majority of the supervisors present unless otherwise provided.

History: 1955 c. 651.

Action of a county board in merely adopting a recommendation of a committee of the board rather than a resolution of the same effect, is valid. If it is clear that the county board by adopting a resolution intends that a former resolution be rescinded, that intention will control and the former resolution need not be specifically rescinded. 44 Atty. Gen. 205.

59.03 Boards; composition; election; terms; substitutes; compensation; compatibility. The boards of the several counties classified according to population shall be composed of representatives from within the county elected and compensated as follows:

(1) **MILWAUKEE COUNTY.** In each county having a population of at least 500,000:

(a) *Composition.* A supervisor from each assembly district therein elected by the electors of said district.

(b) *Election; term.* Supervisors shall be elected for terms of 4 years at the election to be held on the first Tuesday in April next preceding the expiration of their respective terms.

(c) *Compensation.* Each supervisor shall be paid by the county \$2,400 per annum, except the chairman of the board who shall be paid \$2,700, but the compensation of the supervisors and the chairman may be increased by ordinance not to exceed \$1,200 per annum, and such ordinance shall apply to present and future incumbents.

(2) **OTHER COUNTIES.** In counties containing less than 500,000 population:

(a) *Composition.* The chairmen of the town boards.

(b) *Same.* A supervisor from each city ward or part of city ward in the county, but each city with a population of not over 800 shall have only one supervisor unless the city is in more than one county, in which case it shall be entitled to one supervisor in each county.

(c) *Same.* A supervisor from every village or part of a village in the county.

(d) *Election; terms.* A supervisor from a city or village shall be elected at the time that other city or village officers are elected.

(e) *Substitutes.* If any town chairman is unable to attend any meeting of the county board, either of the other members of the town board, to be designated by themselves (and if they disagree they shall decide by lot), shall attend the meeting as a member of

the county board, but he shall not so act until the town clerk certifies to the county clerk that he was so designated. In cities and villages a substitute for any supervisor may be appointed in such case by the mayor or village president, and the city or village clerk shall certify the designation to the county clerk; or the mayor or village president may attend the meeting and act as a member of the county board with certification.

(f) *Compensation.* Each supervisor shall be paid \$4 per day by the county for each day he attends a meeting of the board. However, any board may, at its annual meeting, by two-thirds vote of all the members, fix the compensation of the board members to be next elected at any sum not to exceed \$16 per day. Any board may, in like manner, provide additional compensation for the chairman.

(g) *Mileage.* Each supervisor shall, for each day he attends a meeting of the board, receive mileage for each mile traveled in going to and returning from the meetings by the most usual traveled route at the rate established by the board pursuant to s. 59.15 as the standard mileage allowance for all county employes and officers.

(h) *Limitation on compensation.* Except for services as a member of a committee as provided in s. 59.06 no supervisor shall be paid for more days' attendance on the board in any year than is set out in this schedule: In counties having a population of 20,000 or less, 20 days; more than 20,000 but less than 100,000, 25 days; more than 100,000 but less than 500,000, 30 days.

(i) *Alternative compensation.* As an alternative method of compensation, in counties having a population of more than 25,000 the board may at its annual meeting, by a two-thirds vote of the members entitled to a seat, fix the compensation of the supervisors to be next elected at an annual salary not to exceed \$900 for all services for the county including all committee services, except the per diem allowance for services in acquiring highway rights of way set forth in s. 84.09 (4). The board may, in like manner, allow additional salary for the members of the highway committee and for the chairman of the board. In addition to the salary, the supervisors shall receive mileage as provided in par. (g) for each day's attendance at board or committee meetings.

(j) *Supplementary compensation.* The county board, in establishing an annual salary, may provide by ordinance for a per diem for all committee meetings attended in excess of 40 committee and board meetings.

(3) **COMPATIBILITY.** No county officer or his deputy, or undersheriff is eligible to the office of supervisor, but a supervisor may also be a member of the common council of his city or of the board of trustees of his village.

History: 1951 c. 43; 1955 c. 651; 1957 c. 47, 103, 445.

Cross Reference: For county highway committee, see 83.015.

The offices of member of the county board and weed commissioner of a city are not incompatible and can be held by the same person. 39 Atty. Gen. 90.

Resolution changing the county board from per diem to salary basis was invalid because it was not passed by a two-thirds vote as prescribed by (2) (i). Further payment of salaries under this resolution is not authorized. District attorney has no duty to sue to recover such salaries without county board authorization. 39 Atty. Gen. 286.

Membership on a county board is not incompatible with employment by a village owned electric utility plant in a capacity which would not involve any relations or dealing with the county. 40 Atty. Gen. 133.

59.03 (2) (i) casts such doubt upon the question of whether county board members receiving an annual salary thereunder are entitled to additional compensation for service on county board of public welfare under 46.31, the county rural planning committee under 27.015, or the county school commit-

tee under 40.303, that the county treasurer cannot safely make the additional payments. 40 Atty. Gen. 224.

See note to 83.015, citing 42 Atty. Gen. 84.

See note to 59.06, citing 42 Atty. Gen. 326.

County board member may be employed by district attorney as investigator in proper case, as no question of incompatibility of offices arises, provided the compensation does not exceed \$1,000 in any one year. 44 Atty. Gen. 159.

See note to 66.195, citing 45 Atty. Gen. 116.

Under 59.03 (2), mileage of county board member is in addition to salary and is not affected by the compensation limitations provided by 59.03 (2) (f). Mileage of other county officers is considered to be a part of salary and can therefore be changed by virtue of authority granted by 66.195. 45 Atty. Gen. 256.

Position of attorney for town is not incompatible with membership on board of supervisors of county in which such town is located. 45 Atty. Gen. 285.

59.04 Meetings; adjournment; absentees. (1) (a) Every board shall hold an annual meeting on the Tuesday after the second Monday of November in each year at the county seat for the purpose of transacting business. When that day falls on November 11 the annual meeting shall be held the next succeeding day. Any board may by its rules establish an earlier date during October or November for such annual meeting and may by rule establish regular meeting dates throughout the year at which to transact general business.

(b) The annual meeting may be adjourned by the clerk, upon the written request of a majority of the supervisors, to a day designated in the request, but not less than one week nor more than 3 weeks from the Tuesday after the second Monday of November. Upon such adjournment being made, the clerk shall give each supervisor written notice of the time to which the annual meeting has been adjourned.

(c) The board, except in counties having a population of 500,000 or more, shall meet on the third Tuesday of each April to organize and transact business. At this meeting the board may transact any business permitted at the annual meeting. The meeting may be adjourned in the same manner as the annual meeting.

(2) A special meeting of any board shall be held:

(a) Upon a written request of a majority of the supervisors delivered to the clerk, specifying the time and place of meeting. The time shall not be less than one week from the delivery of the request, except that in counties having a population of 500,000 or more the time shall not be less than 48 hours from such delivery. Upon receiving the request the clerk shall forthwith mail to each supervisor notice of the time and place of the meeting. Any special meeting may be adjourned from time to time by a vote of a majority of all the supervisors.

(b) For the purposes and in the manner prescribed in s. 31.06, with the right to adjourn the special meeting from time to time by a vote of a majority of all the supervisors entitled to a seat. The clerk shall mail written notice of the special meeting, specifying the time, place and purpose thereof, to each supervisor not less than 2 weeks before the day set for such meeting.

(4) The board shall sit with open doors, and all persons conducting themselves in an orderly manner may attend. If any supervisor absents himself from any meeting of the board without good cause or without being first excused by the board, the chairman may issue a warrant requiring the sheriff or some constable forthwith to arrest him and bring him before the board. The expenses of the arrest shall be deducted from the pay of the member unless otherwise directed by the board. The board may punish its members for infraction of its rules by imposing the penalty provided therein.

History: 1953 c. 627; 1955 c. 651.

See note to 83.015, citing 40 Atty. Gen. 158. under (1) (c), and any adjourned sessions thereof, may be held only at the county seat. 41 Atty. Gen. 280.

59.05 Chairman; vice chairmen; powers and duties. (1) The board, at the first meeting after each regular election at which members are elected for full terms, shall elect a member chairman. He shall perform all duties required of the chairman until the board elects his successor. He may administer oaths to persons required to be sworn concerning any matter submitted to the board or a committee thereof or connected with their powers or duties. He shall countersign all ordinances of the board, and shall preside at meetings when present. When directed by ordinance he shall countersign all county orders, transact all necessary board business with local and county officers, expedite all measures resolved upon by the board and shall take care that all federal, state and local laws, rules and regulations pertaining to county government are enforced.

(2) The board at the time of the election of chairman shall also elect a member vice chairman for the same term, who, in case of the absence or disability of the chairman shall perform his duties.

(2m) The board at the time of the election of chairman may also elect a member second vice chairman for the same term, who, in case of the absence or disability of the vice chairman, shall perform his duties.

(3) In case of the absence of a chairman for any meeting the members present shall choose a temporary chairman.

History: 1955 c. 651.

59.06 Committees; appointment; compensation. (1) The board may, by resolution designating the purposes and prescribing the duties thereof and manner of reporting, authorize their chairman to appoint before June 1 in any year committees from the members of the board, and the committees so appointed shall perform the duties and report as prescribed in such resolution.

(2) Committeemen shall receive such compensation for their services as the board allows, not exceeding the per diem and mileage allowed to members of the board and such committee members shall receive such compensation, mileage and reimbursement for other expenses as the board allows for their attendance at any school, institute or meeting which the board directs them to attend. No supervisor shall be allowed pay for committee service while the board is in session, nor for mileage except in connection with services performed within the time herein limited. The number of days for which compensation and mileage may be paid a committee member in any year, except members of committees appointed to have charge of the erection of any county building, and except as otherwise provided by law, are limited as follows:

(a) In counties containing less than 25,000 population, to 20 days, not more than 10 of which shall be for services on any one committee, except that the board may increase

the number of committee meetings as provided in par. (b) and similarly fix the compensation of the members for the additional meetings.

(b) In other counties, to 30 days for services on committees, except that the board may, by a two-thirds vote of the members present, increase the number of days for which compensation and mileage may be paid in any year and fix the compensation for each additional day.

(3) The board shall annually appropriate a sum sufficient to provide for the actual and necessary expenses of the county school committee incident to its duties and functions and of its secretary incident to his duties.

History: 1955 c. 651; 1957 c. 536.

County board member has no right by virtue of his board membership to attend executive sessions of committees of which he is not a member. 38 Atty. Gen. 580.

Where a county fair is conducted by a county board through a fair committee which is not a county agricultural society organized or existing under 94.03, all receipts and disbursements must be handled through the county treasurer as provided in 59.73 and 59.20. 40 Atty. Gen. 228.

A county board member is limited to one per diem each day even though he meets as a member of the county board or as a member of one committee in the afternoon and as a member of a different committee in the evening. He receives mileage in either event for one round trip only from home to the place of meeting each day, even though he goes home between afternoon and evening sessions. 42 Atty. Gen. 326.

59.07 General powers of board. The board of each county may exercise the following powers, which shall be broadly and liberally construed and limited only by express language:

(1) **PROPERTY.** (a) *How acquired; purposes.* Take and hold land sold for taxes and acquire, lease or rent property, real and personal, for public uses or purposes of any nature, including without limitation acquisitions for county buildings, airports, parks, recreation, highways, dam sites in parks, parkways and playgrounds, flowages, sewage and waste disposal for county institutions, lime pits for operation under s. 59.873, equipment for clearing and draining land and controlling weeds for operation under s. 59.874, ambulances and for transfer to the state for state parks and for the uses and purposes specified in s. 23.09 (7) (d).

(b) *Control; actions.* Make all orders concerning county property and may commence and maintain actions to protect the interests of the county.

(c) *Transfers.* Direct the clerk to lease, sell or convey or contract to sell or convey any county property, not donated and required to be held for a special purpose, on such terms as the board approves. In addition any county property may, by gift or otherwise, be leased, rented or transferred to the United States, the state, any other county within the state or any municipality or school district within the county. Oil, gas and mineral rights may be reserved and leased or transferred separately.

(d) *Buildings; maintenance.* Construct, maintain and operate all county buildings and structures including without limitation swimming pools, stadiums, golf courses and other recreational facilities, dams in county lands and sewage disposal plants at county institutions, and if the buildings are insufficient, provide suitable rooms for county purposes.

(e) *Leases to conservation commission.* Lease lands owned by the county to the state conservation commission for game management purposes. Lands so leased shall not be eligible for entry under ch. 77. Of the rental paid by the state to the county for lands so leased 60 per cent shall be retained by the county and 40 per cent shall be paid by the county to the town in which said lands are located and of the amount received by the town, 50 per cent shall be paid by the town to the school district in which said lands are located. The amount so paid by a town to a joint school district shall be credited against the amount of taxes certified for assessment in that town by the clerk of the joint school district under s. 40.35 (8), and the assessment shall be reduced by such amount. In case any leased land is located in more than one town or school district the amounts paid to them shall be apportioned on the basis of area. This paragraph shall not affect the distribution of rental moneys received on leases executed before June 22, 1955.

(1m) **PARKING AREAS.** Enact ordinances providing for establishing areas for parking of vehicles on lands owned or leased by the county; for regulating, permitting, prohibiting, restricting or limiting parking of vehicles on such areas or parts of such areas, including, without limitation by reason of enumeration, provision for parking in such areas or parts thereof for only certain purposes or by only certain personnel; for penalties for violations thereof, but not to exceed the sum of \$50 for each offense; and for the enforcement of such ordinances.

(2) **INSURANCE.** (a) *Liability and property damage.* Provide public liability and property damage insurance, either in commercial companies or by self-insurance created by setting up an annual fund for such purpose or by a combination thereof, covering without exclusion because of enumeration, motor vehicles, malfeasance of professional em-

ployes, maintenance and operation of county highways, parks, parkways and airports and any other county activities involving the possibility of damage to the general public.

(b) *Fire and casualty.* Provide fire and casualty insurance for all county property.

(c) *Employee insurance.* Provide for hospital, surgical and group insurance for county officers and employes and for payment of premiums therefor.

(3) ACCOUNTS; SETTLEMENT. Examine and settle all accounts of the county and all claims, demands or causes of action against the county and issue county orders therefor. The board may delegate its power in regard to current accounts against the county to a standing committee where the amount does not exceed \$1,000.

(4) RETIREMENT; DISABILITY. In any county having a population of less than 500,000, by the affirmative vote of a majority of all supervisors entitled to a seat, elect:

(b) To provide that s. 66.191 (1) shall apply to such deputy sheriffs, undersheriffs or traffic policemen as the board designates.

(5) GENERAL AUTHORITY. Represent the county, have the management of the business and concerns of the county in all cases where no other provision is made, apportion and levy taxes and appropriate money to carry into effect any of its powers and duties.

(6) PUBLIC RECORDS. Prescribe the form and manner of keeping the records in any county office and the accounts of county officers.

(7) PURCHASING AGENT. Appoint a person or committee as county purchasing agent, and provide compensation for their services. Any county officer or supervisor may be the agent or a committee member. The purchasing agent shall provide all supplies and equipment for the various county offices and the board chairman shall promptly sign orders in payment therefor. The board may require that all purchases be made in the manner determined by it.

(8) OFFICIAL SEALS. Provide an official seal for the county and the county officers required to have one; and for the circuit and county courts, with such inscription and devices as said courts respectively require.

(10) FEES, OFFICERS AND MAGISTRATES. Fix the fees or compensation of officers and magistrates for services performed in all prosecutions for vagrancy or under the laws concerning tramps, intoxication in a public place, indecent exposure of the person or disorderly conduct, except when the prosecution for any such offense is brought under a city or village ordinance; and no greater compensation than is so fixed shall be recovered.

(11) JOINT CO-OPERATION. Join with the state, other counties or municipalities in a co-operative arrangement as provided by s. 66.30.

(12) TRANSCRIPTS. Procure transcripts or abstracts of the records of any other county affecting the title to real estate in such county, and such transcripts or abstracts shall be prima facie evidence of title except as provided in s. 235.47.

(13) PAYMENTS IN LIEU OF TAX. (a) *Institutions, state farms, airports.* Appropriate each year to any municipality and school district in which a county farm, hospital, charitable or penal institution or state hospital, charitable or penal institution or state-owned lands used for agricultural purposes or county or municipally-owned airport is located, an amount of money equal to the amount which would have been paid in municipal and school tax upon the lands without buildings, if such land were privately owned. The valuation of such lands (without buildings) and computation of the tax shall be made by the board. In making such computation lands on which courthouse or jail are located and unimproved county lands shall not be included.

(b) *County veterans' housing.* If a county has acquired land and erected thereon housing facilities for rent by honorably discharged United States veterans of any war and the land and housing facilities are exempt from general taxation, the board may appropriate money and pay to any school district or joint school district wherein the land and housing facilities are located a sum of money which shall be computed by obtaining the product of the following factors:

1. The tax rate for school district purposes of the school years for which payment is made.

2. The ratio of the assessed valuation to the equalized valuation of the municipality in which the school district lies, multiplied by the actual cost incurred by the county for the acquisition of the land and improvements thereon used for such purposes.

In case of a joint school district, computation shall be made on the basis of the valuation of the several municipalities in which such school district lies. If school buildings are inadequate to accommodate the additional school population resulting from the county veterans' housing program, and the school district cannot legally finance the necessary increased facilities, the board may appropriate money and grant assistance to the school district but the assistance shall be used solely to finance the purchase of land and the erection and equipment of the necessary additional facilities.

(14) GRAVE MARKERS; VETERANS. (a) Furnish upon the petition of 5 freeholders of any municipality in their county an appropriate metal marker for the grave of each soldier, sailor or marine who served with honor in the forces of the United States, buried within the municipality.

(b) The petitioners shall state in the petition the names of soldiers, sailors or marines buried in the municipality.

(15) SHERIFF'S FAMILY PENSION. Appropriate money to the family of any sheriff or his deputies killed while in the discharge of his official duties.

(16) ZONING, BUILDING INSPECTOR. For the enforcement of all laws, ordinances, rules and regulations enacted pursuant to s. 59.97, appoint a building inspector, define his duties and fix his term of office and compensation.

(16m) Zoning; filing fees. To enact ordinances establishing schedules of reasonable filing fees for the filing of petitions to amend county zoning ordinances and notices of appeal to the board of adjustment from determinations of county zoning authorities and providing for the charging and collection of such filing fees; such fees to be used to partially defray the expenses of holding hearings and giving notices of hearings prescribed in ss. 59.97 and 59.99.

(17) DONATIONS, GIFTS AND GRANTS. Accept donations, gifts or grants for any public governmental purpose within the powers of the county.

(18) AMUSEMENTS, REGULATION. (a) Exercise outside of cities and villages all the powers conferred on cities to regulate dance halls, roadhouses and other places of amusement.

(b) Enact ordinances to regulate, control, prohibit and license dance halls and pavilions, amusement parks, carnivals, street fairs, bathing beaches and other like places of amusement. Such ordinances shall provide for such license fees as shall yield as nearly as possible sufficient revenues for administering their provisions. Upon the passage of such an ordinance the board shall select a sufficient number of persons whose duty it shall be to supervise public dances according to assignments to be made by the board. Such persons while engaged in supervising public dances or places of amusement shall have the powers of deputy sheriffs, and shall make reports in writing of each dance visited to the clerk, and shall receive such compensation as the board determines. Their reports shall be filed by the clerk and embodied by him in a report to the board at each meeting thereof. The board shall immediately revoke the license of any dance hall proprietor or manager if there is allowed at any such dance presence of intoxicated persons, or of children of 17 years of age or under unaccompanied by their parent or lawful guardian, or if any of the ordinances are violated, and the board may enact an ordinance requiring the revocation of such dance hall license if the use of intoxicating liquor is permitted on the premises during the holding of a public dance. The chairman of the board, when the board is not in session, is authorized to issue licenses or to suspend the license of any person violating this law or any regulation adopted by the board; such issuance of licenses or the suspension of such license to be acted on by the board at its next meeting.

(c) Enact ordinances providing for a specified closing hour for places where soft drinks are sold.

(d) Ordinances enacted by a board under par. (b) or (c) shall not apply to any city or village which by ordinance regulates and controls such places.

(19) CELEBRATIONS AND CONVENTIONS. Appropriate money to defray the expense of municipal commemorative or patriotic celebrations or observance, state or national conventions of war veterans, national conventions of fraternal associations, group entertainment for children on Halloween by county or municipal agencies within the county or of state or national conventions of county officers or employes or associations thereof or of bringing any of such conventions to the county.

(20) CIVIL SERVICE SYSTEM. Establish a civil service system of selection, tenure and status, and the system may be made applicable to all county personnel, except the members of the board, constitutional officers, members of boards and commissions and judges. The system may include also uniform provisions in respect to classification of positions and salary ranges, pay roll certification, attendance, vacations, sick leave, competitive examinations, hours of work, tours of duty or assignments according to earned seniority, employe grievance procedure, disciplinary actions, layoffs and separations for cause subject to approval of a civil service commission or the board. The board may request the assistance of the state bureau of personnel and pay therefor, pursuant to s. 16.055.

(21) COMMON SCHOOL TAX. (a) At or before the November meeting each year levy a tax upon the equalized valuation of the county for the aid of the elementary schools of each school district of the county which has levied and placed on the tax rolls of the district for the previous year for the operation and maintenance of schools a tax of not less

than 3 mills on the equalized valuation of the district for the year previous to the year of levy for elementary school purposes except where the district operates both elementary and secondary schools the minimum levy shall be 5 mills for both elementary and high school purposes. The county levy shall be sufficient to pay county aids to districts which qualify in an amount not less than \$350 per teacher unit operating in the county during the preceding year.

(b) If a school district lies in more than one county, then the county in which such elementary teachers during the preceding year are employed shall be reimbursed by any other county in which the school district lies for its share of such \$350 for the number of elementary teachers in the whole district in the ratio which the full valuation of the property of the school district lying in the other county bears to the full valuation of all the property in the district; the county superintendent of schools of the county paying the whole amount in the first instance, or the city superintendent of schools not under the jurisdiction of the county superintendent shall compute the number, including a fraction of a number, that will be derived from applying to the whole number of teachers the same ratio as the full valuation of the property of the school district lying in any other such county bears to the full valuation of all the property of the school district; he shall then multiply the same by 350 and certify the results in dollars, at the time of the other certification, as the amount to be reimbursed by the other county; the clerk of the county receiving such certification shall certify to the clerk of the other county the amount required to be reimbursed and the board of the other county shall levy a tax in such amount in the same manner and by the same method as the tax levied under par. (a); when the tax is collected it shall be remitted by the treasurer of such other county to the treasurer of the county entitled thereto. The term "full valuation" as used in this paragraph means the full valuation prescribed in s. 40.35 (8). Section 40.71 (5) relating to aid shall apply to any such other county which does not comply with this paragraph.

(22) TOWNS, ORGANIZATION, BOUNDARIES. Organize, name, vacate and change the boundaries and names of the towns in their respective counties, fix the time and place of holding the first town meeting, and make orders for the preservation of the records and papers of any vacated town. No town shall be vacated unless a majority of all the members of the board so decide. No board, except in the counties of Ashland, Barron, Bayfield, Burnett, Douglas, Juneau, Marathon, Oconto, Polk and Shawano, and except as provided in s. 60.05, shall organize any town that at the time of being organized does not contain at least 125 inhabitants, at least 25 of whom shall have been actual electors of this state and resident within the proposed new town for 6 months prior to the time the organization takes effect.

(23) WAR RECORDS. Appropriate money for the collection, publication or distribution of war records.

(24) FISH AND GAME. Establish, maintain and operate fish hatcheries and facilities for raising game birds.

(26) RECREATION. Create, promote and conduct and assist in creating, promoting and conducting recreational activities in the county which are conducive to the general health and welfare, and elect persons for such terms and salaries as may be determined, who shall exercise the powers and perform the duties given by the board. The board may provide for what purpose and in what manner moneys appropriated pursuant to this subsection may be expended. Such persons may be designated "County Recreation Committee". At the annual meeting next after making the appropriation the board shall determine in what municipalities such activities were held and what other municipalities received benefits therefrom and determine the amount expended from the appropriation to make the programs or activities or benefits derived therefrom possible in each municipality and levy a tax upon the property of each municipality in accordance with such apportionment to reimburse the county for its expenditures, but no expenditure shall be made nor improvement ordered without the consent of the governing body of the municipality.

(27) COUNTY BOARDS' ASSOCIATION. By a two-thirds vote, purchase membership in an association of county boards for the protection of county interests and the furtherance of better county government.

(28) PURCHASE OF PUBLICATIONS. Purchase publications dealing with governmental problems and furnish copies thereof to supervisors, officers and employes.

(29) SERVICE OFFICER. Appropriate funds for the execution of the duties of the county veterans' service officer and the county veterans' service commission.

(30) ADVERTISE COUNTY. Appropriate not to exceed \$5,000 in any year to advertise the advantages, attractions and resources of the county and to conserve, develop and improve the same. The county may co-operate with any private agency in this work.

(31) HISTORICAL SOCIETIES. Appropriate money to any local historical society incorporated under s. 44.03 located in the county for the purpose of collecting and preserving the records of the early pioneers, the life of the Indians, the experience of military men, and the salient historical features of the county.

(32) COUNTY HISTORIAN. Create the position of county historian. The historian shall collect and preserve the records of the Indians and the early pioneers, the experiences of military men and women and the records of their service; mark and compile data concerning places of historical interest in the county; and perform such other duties relating to the collection, preservation, compilation and publication of historical data as the board prescribes. The board may provide the historian with a fireproof safe or vault in which to keep papers and documents, with clerical assistance and such other needs as will enable him to adequately perform his duties. The board may require reports.

(33) PUBLIC MUSEUMS. In counties having a population of less than 500,000, appropriate money toward the maintenance of public museums in the county.

(34) HIGHWAY SAFETY. Appropriate money to citizens' safety committees or to county safety commissions or councils for highway safety and patrol.

(35) DRAINAGE DISTRICT BONDS. Purchase drainage district bonds at market value or at a discount to salvage the equity of the county in the lands affected and to secure resumption of tax payments thereon and so permit the dissolution of the district.

(36) FIRE PROTECTION. Establish a fire department or, upon petition of two-thirds of the residents of any contiguous locality, pursuant to s. 60.29 (20) insofar as applicable, provide fire department service and protection for such residents as are otherwise unable to obtain service from a municipality as provided by s. 60.29 (20). The board shall determine the fee schedule to reimburse the fire departments and make rules and regulations for maintenance of service and equipment. An inspector may be appointed to inspect each fire department at least twice each year for proper maintenance. The contract may be terminated by either party upon giving a 90-day written notice thereof. The board may levy a tax upon all the real and personal property in the contiguous locality to reimburse the county for the fees and costs expended.

(37) SURPLUS COMMODITY PLANS. Adopt and participate in any surplus commodity absorption plan in connection with furnishing relief to needy persons within any municipality in the county and appropriate money to carry out such plan.

(38) SECONDHAND CAR DEALERS, JUNKING CARS. License and regulate dealers in secondhand motor vehicles, wreckers of motor vehicles, or the conduct of motor vehicle junking. Such regulation shall not apply to any municipality which adopts an ordinance governing the same subject.

(39) NURSING ASSOCIATIONS. Appropriate money toward the support of organized and bona fide nursing associations in the county, such associations to have at least one qualified nurse.

(40) VOCATIONAL AND ADULT EDUCATION SCHOOLS. Appropriate money to local boards of vocational and adult education which render services to residents of the county. Supervisors from any city or village maintaining a school pursuant to s. 41.15 shall have no part in any determination under this subsection and no part of any expense incurred shall be levied against any property within the city or village.

(41) AMBULANCES, purchase, equip, operate and maintain ambulances and contract for ambulance service for conveyance of the sick or injured and make reasonable charges for the use thereof.

(42) RESCUE EQUIPMENT. Appropriate money for the purchase of boats and other equipment necessary for the rescue of human beings and the recovery of human bodies from waters of which the county has jurisdiction under s. 2.04.

(43) COUNTY PARK COMMISSION. Except in counties of a population of 500,000 or more, fix the compensation of members of the county park commission for attendance at meetings at a rate not to exceed the compensation permitted supervisors.

(44) CORPORATION COUNSEL. In counties not containing a city of the first class, employ a corporation counsel, and fix his salary. His employment may be terminated at any time by a majority vote of all the members of the board. The duties of the corporation counsel shall be limited to civil matters and shall include giving legal opinions to the board and its committees and interpreting the powers and duties of the board and county officers. Whenever any of the powers and duties conferred upon the corporation counsel are concurrent with similar powers or duties conferred by law upon the district attorney, the district attorney's powers or duties shall cease to the extent that they are so conferred upon the corporation counsel and the district attorney shall be relieved of the responsibility for performing such powers or duties. Opinions of the corporation counsel

on all such matters shall have the same force and effect as opinions of the district attorney. The corporation counsel may request the attorney general to consult and advise with him in the same manner as district attorneys as provided by s. 14.53 (3).

(45) **POSTWAR PROJECTS.** (a) Appropriate money for postwar projects generally, without specific designation thereof. Any money raised under this subsection shall be placed in a separate account and used only for projects as provided in this subsection.

(b) No expenditure except for plans and specifications for proposed projects shall be made from such account except after:

1. Determination by a vote of the board that unemployment in existence in the county may be relieved by expenditures from the account, specifying the purpose and the amount necessary therefor;

2. Public hearings thereon under s. 65.90 or 59.84; and

3. Final approval by a two-thirds vote of all the board members after the hearings.

(c) Appropriations under this subsection shall not exceed in any calendar year a sum equal to the assessed valuation of the property of the county as determined by the department of taxation multiplied by one-half mill.

(d) All moneys raised by tax levy for the purposes of this subsection which are unappropriated for such purposes within 5 years after the termination of World War II as proclaimed by the Congress or President shall revert to the general fund of the county, unless the board acts to set a longer period, which shall not exceed an additional 5 years.

(46) **POLICE POWERS OVER CERTAIN U. S. LANDS AND STRUCTURES.** In counties wherein the United States has built a structure extending into a lake or river, the board may by ordinance regulate the use of such a structure by the public consistent with reasonable safety requirements, but nothing contained in the ordinance shall permit any interference with the operations of the United States, its agents, employes or representatives in connection with the structure, and provide that any person who violates the ordinance shall forfeit to the county not to exceed \$100 for each offense, plus costs, and in default of payment shall be imprisoned not more than 30 days. Arrests for violation of the ordinance may be made by the sheriff or by any peace officer of the municipality wherein the structure is located.

(47) **CONTRACT WITH U. S. FOR CUSTODY OF FEDERAL PRISONERS.** Empower the sheriff or superintendent of the house of correction to contract with the United States to keep in the county jail or house of correction any person legally committed under U. S. authority, but not for a term exceeding 18 months.

(49) **BILLBOARD REGULATION.** Regulate, by ordinance, the maintenance and construction of billboards and other similar structures on premises abutting on highways maintained by the county so as to promote the safety of public travel thereon. Such ordinances shall not apply within cities and villages which have adopted ordinances regulating the same subject matter.

(50) **RIDING HORSES, REGULATION.** Provide by ordinance for the regulation, control, prohibition and licensing of horses kept for the purpose of riding, whether by private owners for their own use or by commercial stables, riding academies or clubs for hire; for the licensing and regulation of owners of riding horses and the regulation, control, prohibition and licensing of commercial stables keeping horses for riding purposes for hire. The board may revoke the license of any owner of a horse kept for the purpose of riding for violation of such ordinance after the filing of charges and notice and hearing thereon. Such ordinance may provide that the chairman of the board, when the board is not in session, shall be authorized to issue such license or to suspend such license of any person violating such ordinance; such issuance of license or the suspension of such license to be acted on by the board at its next meeting. Such ordinance may impose a penalty of not to exceed \$100 for each violation or in default of payment thereof, imprisonment for not exceeding 30 days. Such ordinances shall not apply within cities and villages which have adopted ordinances regulating the same subject matter.

(51) **BUILDING AND SANITARY CODES.** Adopt building and sanitary codes, make necessary rules and regulations in relation thereto and provide for enforcement of such codes, rules and regulations by forfeiture or otherwise. Such codes, rules and regulations shall not apply within cities and villages which have adopted ordinances or codes concerning the same subject matter. The cost of administering and enforcing such codes, rules and regulations shall be paid only from fees charged for permits issued under this subsection.

(52) **MILWAUKEE COUNTY; SEWAGE, WASTE, REFUSE.** In any county having a population of 500,000 or more:

(a) Provide for the transmission and disposal of sewage from any of the county buildings, and for such purpose may pay to the municipality in which said buildings are situated for the transmission and disposal of sewage, such proportion of the expense thereof,

as certified under s. 59.96, to any such municipality; such proportionate expense to be determined by the ratio which the amount of sewage contributed by any such buildings may bear to the total amount of sewage contributed by any such municipality to such system; and such counties may provide and furnish meters to determine the amount of sewage so contributed.

(b) Engage in the function of the destruction or disposal of waste by providing dumpage facilities; acquire lands by purchase, lease, donation or right of eminent domain within such county and use the lands as dumpage sites for depositing, salvaging, processing, burning or otherwise disposing of the waste, and acquire land by purchase, lease or donation outside such county for said purposes where state and local regulations permit; construct and equip incinerators and other structures to be used for disposal of waste; maintain, control and operate dumpage sites; maintain, control and operate incinerators for burning such materials; utilize or dispose of by sale or otherwise heat or power reclaimed from incinerator facilities; sell all salvageable waste materials and by-products; levy a tax to create a working capital fund to maintain and operate dumpage facilities; construct, equip and operate incinerators and other structures for disposal of wastes; charge or assess reasonable fees to persons making use of such sites, incinerators or other structures for the disposal of waste; make charges approximately commensurate with the cost of services rendered to any municipality using the county waste disposal facilities; authorize payment to any municipality, in which county waste disposal facilities, including incinerators, are located, to cover the reasonable cost of fire fighting services rendered to such county when the occasion demands such service; contract with private collectors and municipalities and transporters to receive and dispose of waste other than garbage at dumpage and incinerator sites; levy taxes to provide funds to acquire sites and to construct and equip incinerators and other structures for disposal of wastes; adopt and enforce ordinances, rules and regulations necessary for the orderly conduct of providing such dumpage facilities and services and provide forfeitures for the violation thereof. The charges for waste disposal services shall be determined by the board and shall include a reasonable charge for depreciation. In the determination of the charges the board shall give full consideration to any fees directly collected for the service. Waste disposal charges shall be apportioned pursuant to s. 70.63 to the respective municipalities receiving the service. The depreciation charges shall create a reserve for future capital outlays for waste disposal facilities. Before acquiring in such county any site to be used for dumping or the erection of an incinerator or other structure for the disposal of waste, a public hearing shall be held following notice of hearing by publication at least once each week for 3 successive weeks in the official newspaper of the county, or if there be none, a newspaper of general circulation in the county. The term "waste" as used in this paragraph includes, without restriction because of enumeration, garbage, ashes, municipal, domestic, industrial and commercial rubbish, waste or refuse material. The powers conferred by this paragraph are declared to be necessary to the preservation of the public health, welfare and convenience of the county.

(53) MILWAUKEE COUNTY; AIR POLLUTION REGULATION. In any county having a population of 500,000 or more, regulate by ordinance within the territorial limits of such county the ejection, discharge or emission into the open air of smoke, and solids, liquids, gases, fumes, acids, burning embers, sparks, cinders, soot, particulate wastes or dusts, including their radioactive fractions or counterparts, from any chimney, smokestack, vent, fuel-burning equipment, open fire, apparatus, device, mechanism, substance, material or premises; prescribe the maximum volatile matter content or other constituents of fuels used within the county in hand-fired or other fuel-burning equipment; prescribe fees for the examination of plans, inspections, tests, issuance of permits, and certificates of operation; prescribe rules and standards in aid of such regulations; provide in such ordinance for an appeal board and an advisory board and prescribe the powers of each; prescribe penalties for violating such ordinance; provide for commencing actions to enjoin acts, threats of acts and the procuring or suffering of acts to be done in violation of such ordinance; and provide for a county department of air pollution regulation with necessary officers and assistants to perform any and all functions relating to enforcing such ordinance. Whenever the board enacts an ordinance pursuant to authority granted by this subsection, such ordinance shall supersede and nullify any municipal ordinance then in effect, as to all matters included within such county ordinance and such municipalities shall thereafter and while such county ordinance remains in effect have no power to enact ordinances as to the subject matter included within such county ordinance. Matters treated in this subsection are declared to be of state-wide concern.

(54) MILWAUKEE COUNTY; CITY-COUNTY CRIME COMMISSION. The board of any county having a population of 500,000 or more or the common council of any city of the first class however organized in such county, may appropriate money to defray in whole or in part

the expenses of a city-county crime commission organized and functioning to determine methods of crime prevention in such county. All items of expense paid out of such appropriation shall be presented and paid on board vouchers as are claims against counties.

(55) HOUSING FACILITIES, MILWAUKEE COUNTY. In counties having a population of 500,000 or more, build, furnish and rent housing facilities to persons who have resided in such county continuously for more than 2 years and whose income is insufficient to meet the standard for such person's family as determined in the budget adopted by the board for the administration of public assistance in such county. Such counties may borrow money or accept grants from the federal government for or in aid of any project to build, furnish and rent such housing facilities, to take over any federal lands and to such ends enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require. It is the intent of this subsection to authorize such counties to do anything necessary to secure the financial aid and the co-operation of the federal government in any undertaking by the county authorized by this subsection.

(56) TRANSPORTATION OF HANDICAPPED CHILDREN; MILWAUKEE COUNTY. Authorize transportation of handicapped children by the county superintendent of schools under s. 39.105.

(57) INTERGOVERNMENTAL COMMITTEES; APPROPRIATION. In counties having a population of 500,000 or more, appropriate money to defray the expenses of any intergovernmental committee organized in the county with participation by the county board to study county-wide governmental problems, and make recommendations thereon. All items of expense paid out of the appropriations shall be presented on vouchers signed by the chairman and secretary of the intergovernmental committee.

(60) WATERSHED PROTECTION AREAS. Appropriate money to assist in creating and developing watershed protection areas or projects beneficial to the county, which would include or benefit all or a portion of such county, and to pay all or part of said money to any agency of the federal or state government or to a soil conservation district, to be expended for such purposes.

(61) UNIVERSITY EXTENSION CENTERS. Appropriate money for the construction, remodeling, expansion, acquisition or equipping of land, buildings and facilities for a University of Wisconsin extension center if the operation of it has been approved by the board of regents.

(62) PRINTING IN LOCAL TAX ROLLS, ETC. Provide for the printing in field books, assessment rolls and tax rolls for local municipal officials, the descriptions of properties and the names of the owners thereof, but no town, city or village shall be subject to any tax levied to effect these functions where such town, city or village provides its own printing for said functions.

(63) RADIO SERVICE FOR FIRE PROTECTION. Appropriate money for the purpose of providing radio service for fire protection in the county, in the manner prescribed by the county board.

(64) PEACE AND ORDER. Enact ordinances to preserve the public peace and good order within the county.

(65) RURAL NUMBERING SYSTEM. Establish a rural numbering system in towns for the purpose of aiding in fire protection, emergency services, and civil defense, and appropriate and expend money therefor, under which:

(a) Each rural road and each home, business, farm or other establishment, may be assigned a name or number.

(b) Such names or numbers may be displayed on uniform signs posted on rural roads and intersections, and at each home, business, farm or other establishment.

(c) This subsection may be carried out in co-operation with any town or towns in the county.

(66) IMPROVEMENT OF ARTIFICIAL LAKES. Appropriate money for the purpose of maintaining, dredging and improving any artificial lake existing on July 1, 1955, all or a portion of which is adjacent to or within a county park, and for the acquisition of land required in connection therewith, without regard to the limitation imposed by s. 27.06.

(67) PUBLIC CONSTRUCTION REFERENDUM. By a three-fourths vote of the members elect, authorize a referendum to be voted on by the electors of the county at any general, primary or municipal election held in said county and to appropriate money to defray the expense of the same on public construction questions, concerning which the board desires to be advised by the electors of the county. Such referendums shall be conducted only in respect to matters properly coming within the jurisdiction of the board, and the effect thereof shall be advisory only.

(68) FEES FOR ZONING APPEALS. Establish a schedule of fees to be charged for the filing of petitions for amendment and notices of appeal under ss. 59.97 and 59.99, relating to zoning ordinances.

(69) DOGS RUNNING AT LARGE. Enact ordinances regulating the keeping, apprehension, impounding and destruction of dogs outside the corporate limits of any city or village, but such ordinances shall not conflict with ss. 174.01 and 174.10.

(70) COUNTY LIBRARY COMMITTEE. The county board may create a county library committee, as provided in s. 43.255, in any county not having a county library board.

History: 1951 c. 47, 84, 109, 217, 224; 1951 c. 247 s. 17, 18; 1951 c. 350, 374, 443, 524, 564, 617, 662; 1953 c. 53, 61, 205, 503, 506, 570; 1955 c. 169, 236, 259, 269, 291, 311, 390, 412, 482, 539, 579, 651, 695; 1957 c. 23, 60, 97, 129, 213, 256, 323, 340, 380, 422, 494, 610.

A subsequent county board's interpretation of action taken by a prior board is not binding, but subsequent action taken by the same board may be material in determining its intent with reference to prior action taken by it. *Bohn v. Sauk County*, 268 W 213, 67 NW (2d) 288.

A county board may not enact an ordinance prohibiting the sale or gift of beer to any person under the age of 21 years unless accompanied by parent or guardian, and prohibiting the purchase of beer by any person under the age of 21 years. *Maier v. Racine County*, 1 W (2d) 384, 84 NW (2d) 76.

Appropriation to employ private attorney to resist application by railroad before interstate commerce commission for permission to abandon branch running through county is within power of county board under 59.07 (6) and 59.08 (28) (Stats. 1953). 27 Atty. Gen. 162.

School districts, in order to obtain county aid for elementary schools, must levy for school purposes a tax of at least 5 mills on their equalized valuation. 38 Atty. Gen. 591.

Under (2) (c) (59.08 (14), Stats. 1951), a county may provide for and pay all or part of the premiums for group accident and health as well as hospitalization insurance for county employees. 39 Atty. Gen. 36.

County board cannot set up a system whereby employees reaching the age of 65 are retired upon payment of cash bonuses. The only county pension system authorized by law is that contemplated by (4) (a) (59.073, Stats. 1949) for counties of less than 500,000 population. 39 Atty. Gen. 314.

See note to 46.18, citing 39 Atty. Gen. 330.

County cannot build up unappropriated sinking fund. 39 Atty. Gen. 367.

See note to 85.48, citing 39 Atty. Gen. 446.

Compensation of county highway committee employees subject to civil service plan is to be determined under such plan and not by independent action of the highway committee, in absence of specific authority delegated by board. 39 Atty. Gen. 519.

County may not buy tires for resale to employees. 39 Atty. Gen. 572.

County board may not provide parking lot on county courthouse grounds or other property owned by the county, limited to the use of the county board members alone, since no express authority is granted by 59.07 and 59.63 (Stats. 1951), and such restriction does not appear to be in the interest of general public welfare or convenience. 40 Atty. Gen. 69.

See note to 59.23, citing 40 Atty. Gen. 140.

A county has no authority to appropriate funds to a nonprofit organization which has assumed the function of patrolling a lake within the limits of the county. 40 Atty. Gen. 378.

County has no power to lease lands registered under the forest crop law. 40 Atty. Gen. 481.

Where a county civil service system established pursuant to (20) (59.074, Stats. 1951) includes deputy register of deeds and a tenure provision thereof conflicts with the apparent right which 59.50 grants to the register of deeds to dismiss such deputy at pleasure, the tenure provision of said system controls. 41 Atty. Gen. 105.

The words "each year" used in (13) (a), relating to discretionary appropriations to local municipalities by the county board of an equivalent for taxes on certain county-owned property, mean annually, and but one appropriation may be made in any one cal-

endar year, even though appropriation for one town was omitted by mistake. 41 Atty. Gen. 117.

A county has no authority to maintain a county farm as a separate enterprise. 41 Atty. Gen. 162.

National forest income allotted to school districts under 59.20 (13) (59.07 (22), Stats. 1951) may not be used in substitution for the required minimum applicable 3 or 5 mill tax levy for county school aid under 59.075 or for state aid under 40.372. 41 Atty. Gen. 268.

A tax must be spent at the level at which it is raised, and a county providing ambulance service under (41) may not arbitrarily exclude any portion of the county from the area to be served. 42 Atty. Gen. 18.

Discussion of lease and operation of fairgrounds. See note to 59.69, citing 42 Atty. Gen. 169.

Under (1) a county board may insure its interest in property on which it has tax liens. 42 Atty. Gen. 225.

Under (1) (59.07 (2), Stats. 1953) only the county board has the authority to lease county-owned land. 43 Atty. Gen. 10.

The authority to contract and expend county funds for the construction of a county highway garage is solely within the powers of the county board under 59.07 (4) (a) and (c) (Stats. 1953). 43 Atty. Gen. 10.

Office of county dance supervisor under (18) cannot be held by sheriff by reason of art. VI, sec. 4. Offices of undersheriff and county dance supervisor are not incompatible. 43 Atty. Gen. 228.

Appropriations pursuant to (60) would be for a public purpose. 43 Atty. Gen. 329.

Depreciation of building and equipment used for the aged may be fixed by the county board. 43 Atty. Gen. 333.

Power of county board to regulate parking on courthouse grounds discussed. 44 Atty. Gen. 119.

Under (61) a county may not in any one 10-year period appropriate more than one-tenth of one per cent of the equalized valuation of taxable property in the county for construction, remodeling, etc., of facilities for University of Wisconsin extension center. This may be raised in any one or 2 years of the 10-year period and may be financed by bonds issued under authority of 67.04 (1) (a). 44 Atty. Gen. 315.

A county has power to establish and operate, through its county board, a parking lot or parking facility. It may pay the cost of such a facility only from its general funds or from revenue bonds. It may not use general obligation bonds or the proceeds of a bond issue raised for another purpose. No referendum is necessary for the issuance of revenue bonds by a county for the purpose of erecting a parking facility. 45 Atty. Gen. 204.

It is doubtful that counties have authority to establish rural numbering systems whereby farms are numbered and indicated on maps, and signs are posted at the farms and at road intersections. 45 Atty. Gen. 224.

(2) (c) does not extend to an assistant county agent employed jointly by the University of Wisconsin and the county, if such employe is not carried on the county pay roll but is paid entirely by the state and is compensated by the state for his traveling expenses. 45 Atty. Gen. 248.

County agricultural agent or representative employed pursuant to 59.37 may serve as member of county park commission and

be compensated under 59.07 (43). 45 Atty. Gen. 253.

(64) probably enables a county to enact ordinances prohibiting drunkenness and disorderly conduct. 46 Atty. Gen. 12.

Powers of counties to regulate the erection and location of billboards under 59.07 (49) and 59.97 discussed. 46 Atty. Gen. 148. See note to 27.015, citing 46 Atty. Gen. 168.

59.075 Metropolitan study commission. (1) **CREATION OF COMMITTEE.** There is created in every county having a population of 500,000 or more a commission to be known as the metropolitan study commission, herein called the "commission" consisting of 15 members called commissioners, each a resident of such county appointed by the governor. The commission shall be composed of 12 citizens at large and 3 officials either elective or appointive, one from a city of the first class, one from a city other than a city of the first class, and one from a village or town. The citizens at large members shall hold no other appointive or elective public office but shall have demonstrated an interest in the problems of local government and knowledge thereof. Vacancies shall be filled in the same manner that the original appointments are made. A vacancy shall exist when any member fails to meet the requirements necessary to qualify for an original appointment. The chairman of the commission shall be designated by the governor. The commission may elect a vice chairman and secretary from among its members and may adopt rules of procedure. No compensation shall be paid the commissioners, but they shall be entitled to reimbursement for travel and other expenses necessary in the performance of their official duties. The commission may employ a research director, clerical personnel and such professional assistants and consultants as may be required. It may conduct its work through committees appointed by the chairman subject to confirmation by a majority of the commission. The chairman of each committee shall be a member of the commission, but the other members of the committee need not be commissioners. The existence of the commission shall terminate on July 1, 1961, or upon completion of its studies if prior to that date.

(2) **DUTIES.** (a) The commission shall investigate the character, extent, adequacy, cost and efficiency of the principal services provided by governmental units for residents of the county, including without limitation because of enumeration, property tax assessments, traffic, water supply, sewerage and storm water disposal, planning, civil defense and other services relating to the life, property and general welfare of the residents of the county.

(b) The commission shall also investigate the extent to which co-operative agreements or procedures have been established among units of government in such county in respect to any of the services aforesaid. The commission shall study the experience of other metropolitan areas throughout the United States in providing services in the categories above defined.

(c) In conducting its studies the commission shall give consideration to specific problems pertaining to the functions and services of local governments in said county suggested to it by the board of supervisors of the county or by the governing body of any municipality within the county.

(d) The commission shall determine which of the governmental services in the categories above defined in its opinion could be rendered most adequately and efficiently 1. on a local basis or 2. on a county-wide basis and shall state its conclusions and recommendations in that regard.

(e) There shall be included in the report of the commission:

1. An analysis of the basic causes of the difficulties experienced by town, county, village and city governments in the metropolitan area of the county in providing adequate and efficient governmental services for their residents.

2. An outline of suggested measures for overcoming these difficulties under existing co-operative agreements between units of government or otherwise.

3. An outline of suggested changes in existing laws, to overcome the difficulties now confronting local units of government in providing the services required by their residents.

(3) **HEARINGS.** The commission or any committee thereof may hold public hearing and shall have power to subpoena witnesses and require the production of documents, books and records relevant to the subject of its inquiry.

(4) **REPORTS.** (a) The commission shall annually submit to the Governor, on or before October 15, a written report covering the results of its studies containing findings, conclusions and recommendations. A copy of such report shall be mailed to the chairman of the board of supervisors of the county, the mayor of each city, the president of each village and the chairman of each town board in such county, and upon request to each member of any intergovernmental committee established in such county to consider county-wide problems relating to governmental services. The commission may also publish and circulate bulletins containing information relating to its studies whenever such publication is deemed to be in the public interest.

(b) The commission shall submit to the legislature on the first day of each session a written report covering the results of its studies, containing findings, conclusions and recommendations which shall be advisory only.

(5) GIFTS AND GRANTS. The commission may accept the services of any nonprofit organization devoted to the improvement of local government and may accept gifts, grants and contributions of money to be expended in carrying out this section. The county board of supervisors of such county may appropriate funds to defray the costs of the commission's studies and shall provide adequate quarters for its use in the county courthouse.

History: 1957 c. 421.

59.08 Public work, how done; public emergencies. (1) All public work, including any contract for the construction, repair, remodeling or improvement of any public work, building, or furnishing of supplies or material of any kind where the estimated cost of such work will exceed \$1,000 shall be let by contract to the lowest responsible bidder. The contract shall be let and entered into pursuant to s. 66.29, except that the board may by a three-fourths vote of all the members entitled to a seat provide that any class of public work or any part thereof may be done directly by the county without submitting the same for bids. This section shall not apply to highway contracts which the county highway committee is authorized by law to let or make.

(2) When the public health or welfare of a county is threatened as a consequence of an attack, aerial bombardment, epidemic, destruction of public facilities of such county or act of God, and the county highway committee determines that as a result a public emergency exists, the county highway committee may in its discretion by resolution declare a public emergency to exist in the county and take such measures as it deems necessary to eliminate such threat to the public health and welfare of the county. Such measures may include procurement of materials, services, supplies and repair and reconstruction of public facilities as may be under the jurisdiction of the county. Said procurement shall be under the direction of the county highway committee. The county highway committee shall promptly report to the county board such determination of a public emergency and the county board, in regular or special meeting upon the facts recited in the committee's report of its determination, may in its discretion, by ordinance, declare an emergency to exist. Where a public emergency is declared to exist and until the county board terminates such emergency sub. (1) shall not apply to contracts for such procurement, repair or reconstruction. Whenever a county highway committee or county board of supervisors determines or declares that a public emergency caused by a natural or man-made disaster exists, the state office of civil defense may utilize its existing facilities and man power to co-operate with such county and to co-ordinate the activities of 2 or more municipalities or counties or both, in the same manner as they are authorized to do for enemy attack under s. 21.02. In the event a county civil defense committee exists in any county then the authority granted by this subsection shall be conferred on the civil defense committee instead of the highway committee. "Public emergency" as used in this subsection means an unforeseen circumstance or combination of circumstances, including without limitation by reason of enumeration, an enemy attack, epidemic, breakdown in public facilities or act of God, by reason or as a result of which a public facility or service essential for the health, welfare or convenience of the public is materially damaged, inoperative or destroyed, to the extent that it seriously and adversely affects or threatens the public health, welfare or convenience.

History: Stats. 1953 s. 59.07 (4) (c); 1955 c. 651; 1957 c. 539, 680.

Under 59.07 (4) (c) (Stats. 1951), the county may not accept a combination bid, covering both the heating and the plumbing on a county-building project, when the county has invited the submission of bids on the heating and plumbing separately, even though such combination bid is lower than the aggregate amount of the lowest separate bid for the heating plus the lowest separate bid for the plumbing. Statutory requirements for the letting of public work to the lowest responsible bidder imply a common standard by which to measure the respective bids, and that any change in the bidding terms shall be made known to all bidders alike, and that no such change shall be made known to but one bidder or effected after the bids have been received and opened in order to qualify a bid which otherwise would have been ineligible. The purpose of statutory requirements for the letting of public work to the lowest responsible bidder is to prevent fraud, favoritism, imposition and improvidence. State ex rel. Grosvold v. Board of Supervisors, 263 W 518, 58 NW (2d) 70.

Additional work on county asylum building which will add about \$60,000 to the cost of about \$65,500 covered by original contract must be let by contract to lowest responsible bidder under 59.07 (4) (c) (Stats. 1951). This subsection does not apply to purchase of equipment such as mattresses, chair and dressers. 40 Atty. Gen. 22.

Construction of new boiler room and installation of boiler furnace is an improvement and not within authorization to county highway committee to use machinery rental fund for general maintenance of county highway garage. County board action and compliance with 59.07 (4) (c) (Stats. 1951) is necessary. 40 Atty. Gen. 81.

A county cannot avoid the provisions of 59.07 (4) (c) (Stats. 1951) by splitting a job into smaller units, each costing less than \$1,000. A county board may by a three-fourths vote authorize the direct construction of a county-owned building. To ac-

comply with such purpose the county may hire the necessary tradesmen and supervisory employes on a temporary basis. 40 Atty. Gen. 489.

This section does not apply to the purchase of such equipment as furniture. 46 Atty. Gen. 9.

59.083 Milwaukee county, consolidation of municipal services, home rule, metropolitan district. (1) Except as elsewhere specifically provided in these statutes, the county board of any county with a population of two hundred fifty thousand or more, is hereby vested with all powers of a local, legislative and administrative character, including without limitation or restriction because of enumeration, the subject matter of water, sewers, streets and highways, fire, police, and health, and to carry out these powers in districts which it may create for different purposes, or throughout the county, and for such purposes to levy county taxes to issue bonds, assessment certificates and improvement bonds, or any other evidence of indebtedness. The powers hereby conferred may be exercised by the county board in any town, city or village, or part thereof located in such county upon the request of any such town, city or village, evidenced by a resolution adopted by a majority vote of the members-elect of its governing body, designating the particular function, duty or act, and the terms, if any, upon which the same shall be exercised by the county board or by a similar resolution adopted by direct legislation in such town, city or village in the manner provided in section 10.43. Such resolution shall further provide whether the authority or function is to be exercised exclusively by the county or jointly by the county and the town, city or village, and shall also find that the exercise of such power by the county would be in the public interest. Upon the receipt of the resolution, the county board may, by a resolution adopted by a majority vote of its membership, elect to assume the exercise of such function, upon the terms and conditions set forth in the resolution presented by the town, city or village.

(2) The county board of any such county may, by a resolution adopted by a majority of its membership, propose to the towns, cities and villages located in such county, or any of them, that it offers to exercise such powers and functions therein in order to consolidate municipal services and functions in said county. Such resolution shall designate the particular function, duty or act and the terms and conditions, if any, upon which the county board will perform the same. The powers conferred in subsection (1) and designated in such resolution may thereafter be exercised by the county board in each such town, city or village which shall accept such proposal by the adoption of a resolution by a majority vote of the members-elect of its governing body or by direct legislation in the manner provided in section 10.43 of the statutes.

(3) Whenever the request under subsection (1) or acceptance under subsection (2) of a town, city or village shall be by resolution of its governing board, such request or acceptance shall not go into effect until the expiration of sixty days from the adoption of the resolution. If a petition pursuant to section 10.43 for direct legislation on such request or acceptance shall be filed before the expiration of said sixty days, the resolution of the governing board shall be of no effect but the request or acceptance of such town, city or village shall be determined by such direct legislation.

(4) After and upon the adoption of resolutions by the county board and subject to the provisions of subsection (3) by one or more towns, cities or villages either as provided in subsection (1) or in subsection (2) the county board shall have full power to legislate upon and administer the entire subject matter committed to it, and among other things, to determine, where not otherwise provided by law, the manner of exercising the power thus assumed.

(5) The town, city or village concerned may enter into necessary contracts with the county, and appropriate money to pay to the county the reasonable expenses incurred by it in rendering the services assumed. Such expenses may be certified, returned and paid as are other county charges, and in the case of services performed pursuant to a proposal for the consolidation thereof initiated by the county board and made available to each town, city and village in the county on the same terms, the expenses thereof shall be certified, returned and paid as county charges; but in the event that each and every town, city and village in the county shall accept such proposal of the county board the expenses thereof shall be paid by county taxes to be levied and collected as are other taxes for county purposes. Said towns, cities and villages are vested with all necessary power to do the things herein required, and to do all things and to exercise or relinquish any of the powers herein provided or contemplated. The procedure herein provided for the request or acceptance of the exercise of the powers conferred on the county board in cities and villages is hereby prescribed as a special method of determining the local affairs and government of such cities and villages pursuant to section 3 of article XI of the constitution.

(6) The powers conferred by this section shall be in addition to all other grants of power and shall be limited only by express language.

59.09 Publication of ordinances and proceedings. (1) Whenever any county board passes any ordinance under the provisions of this chapter the county clerk shall immediately cause the same to be published in some newspaper published in such county, and if there is none, then in the paper which he determines has the most general circulation therein; and such clerk shall procure and distribute copies of such paper to the several town clerks, who shall file the same in their respective offices.

(2) Said board shall, by ordinance or resolution, provide for one publication of a certified copy of all its proceedings had at any meeting, regular or special, in one or more newspapers published and having a general circulation therein, said publication to be completed within sixty days after the adjournment of each session. If no such newspaper is published in the county, then such publication shall be made in some newspaper published in an adjoining county and having a general circulation in the county where such meeting was held; but the cost of any such publication under this subsection shall in no case exceed the rate per folio fixed by law for the publication of legal notices.

(3) Said board may at any meeting, regular or special, provide by resolution for the publication in pamphlet form by the lowest and best bidder therefor, of a sufficient and designated number of copies of its duly certified proceedings, for general distribution.

(4) Said board may order public notices relating to tax sales, redemption and other affairs of the county to be published in a newspaper printed in any other than the English language, to be designated in such order, whenever they shall deem it necessary for the better information of the inhabitants thereof, and it shall appear from the last previous census that one-fourth or more of the adult population of such county are of a nationality not speaking the English language, and that there shall have been a newspaper published therein continuously for one year or more in the language spoken by such nationality; but all such notices shall also be published in a newspaper published in the English language as provided by law. The compensation for all such publications shall be paid by the county ordering the same, and shall be the same as that prescribed by law for publication in the English language; and no extra charge shall be allowed for translation in any case. No irregularity, mistake or informality in any such publication shall affect the validity or regularity of any tax sales, redemptions or other legal proceedings.

(5) (a) In counties having a population of two hundred fifty thousand or more, the county board of supervisors, at its annual meeting shall direct the county clerk to invite proposals from the English newspapers published daily in said county, for the publication and printing of the proceedings of said board, and all other notices or advertisements as shall be authorized or required to be published or printed by the said board and all officers, boards and departments of said county, during the next ensuing year, which publications and advertising may be divided and classified if the said board shall so order.

(b) Such proposals shall name a price per folio, or shall name a price per folio per thousand of average daily circulation in such county for the period of six months next preceding the date of such proposals, as shown by the affidavit of an authorized officer or agent of such proponent, or shall name a price for such advertising space as may be required or ordered by said board at any time during the year for which awards shall be made, or, at the option of the proponent, shall include any or all of such separate proposals as aforesaid.

(c) The said board may by resolution suspend the publication of proceedings in newspapers and provide for the printing thereof in pamphlet form until the further action of the board in relation thereto. Separate bids may be called for if so ordered by said board, from printers in the county, for the printing of the proceedings of said county board in pamphlet form in such quantities as shall be determined by said board.

(d) Each bid shall be accompanied by a certificate of the county treasurer that the bidder has deposited with him a United States bond, corporate surety bond or certified check in the sum of five hundred dollars, or the cash deposit of a like amount, conditioned that said bidder will, if successful, enter into a contract as provided in the resolution of said board or invitation for such bids. The county clerk shall on the date named in said invitation for bids, in the presence of the committee on printing and stationery of said board, open all such proposals and enter upon his minutes a record thereof, all of which shall be reported to the board at its next meeting, together with the recommendations of said committee. The said board shall thereupon consider such proposals and by its resolution designate and award such advertising and printing to the lowest bidder or to the lower bidder based upon a rate per thousand of average daily circulation in such county, or said board may award such publication and printing to the lowest bidder and also to the lowest bidder per thousand of average daily circulation as aforesaid, or said board may award any division or classification of such publication and printing made under the provisions hereof, to the lowest bidder and award the remaining division or divisions, or classification, to the lowest bidder per thousand of circulation aforesaid. In the event that said board shall elect to print its proceedings in pamphlet form only, the invitation

for bids and the award may be made to the lowest responsible bidder, at a rate per folio, or per page, or such other basis as said board shall determine.

(e) Upon the award of the contract, or contracts, the deposits of unsuccessful bidders, and upon execution of proper contracts by successful bidders, the deposits shall severally be returned. The contract, or contracts, shall be accompanied by a good and sufficient bond in such amount as shall be fixed by said board conditional for the faithful performance of such contract.

(f) The said board of supervisors may, in lieu of the foregoing provisions, provide by ordinance, a method of printing and publication of its proceedings and notices, and the method of obtaining bids and contracts therefor.

(g) In any case where it shall be deemed advisable, the county board may provide for further or additional publication of notices in appropriate trade mediums.

(h) The rates provided by section 331.25 for legal notices, shall not apply to printing or publications hereunder.

59.10 Neglect of duty. Any supervisor who refuses or neglects to perform any of the duties which are required of him by law as a member of the county board of supervisors, without just cause therefor, shall for each such refusal or neglect forfeit a sum of not less than fifty nor more than two hundred dollars.

59.11 County seat; change. (1) The county seat shall be fixed and designated by the county board at the first regular meeting after the organization of any county; and no county seat shall be changed except as provided in this section.

(2) If two-fifths of the legal voters of any county, to be determined by the poll lists of the last previous general election held therein, the names of which voters shall appear on some one of the poll lists of said election, shall present to the county board a petition signed by them asking a change of the county seat to some other place designated in such petition, such board shall submit the question of removal of the county seat to a vote of the qualified voters of the county. Such election shall be held only on the day of the general election, notice thereof shall be given and the same shall be conducted as in the case of the election of officers on that day, and the votes shall be canvassed, certified and returned in the same manner as other votes at such election. The question to be submitted shall be "Shall the county seat of . . . county be removed to . . .," and the ballots on such question shall be deposited in a separate ballot box.

(3) If a majority of all the votes cast at such election on that subject are in favor of the proposed change, the chairman of the county board shall certify the same, with the attestation of the county clerk, to the governor, who thereupon shall issue his proclamation to that effect and cause the same to be published in the official state paper, and from the date of such publication the place so designated shall be the county seat of such county, and the county board shall not again submit the question of removal within five years.

(4) However, when a county seat has been established in one place for a period of fifteen years or more, and the county has there erected permanent buildings of the value of not less than ten thousand dollars, the county seat shall not be removed, nor shall any application for its removal be submitted to a vote of the electors of the county unless a petition signed by at least one-half of the resident freeholders of the county as evidenced by the recorded deeds in the office of the register of deeds of the county, in favor of such removal, shall first be presented to the county board and filed in the office of the county clerk; and no such election to change any county seat shall be held for a period of five years after the year in which a courthouse or other county building costing three thousand dollars or more was built at the county seat and occupied for county purposes.

59.12 County officers; terms. A county clerk, treasurer, sheriff, coroner, clerk of circuit court, district attorney, register of deeds and surveyor shall be elected in each county for full terms at the general election held in each even-numbered year. The regular term of office of each such officer shall commence on the first Monday of January next succeeding his election and shall continue two years and until his successor qualifies.

59.13 Official oaths and bonds. (1) Each county officer named in this chapter shall execute and file an official bond and take and file the official oath within twenty days after receiving official notice of his election or appointment, or if not officially notified, within twenty days after the commencement of the term for which he was elected or appointed. Every deputy appointed by any such officer shall take and file the official oath and if he neglects shall forfeit one hundred dollars. Such official bonds shall be in sums and with sureties, as follows:

(a) County clerk, not less than two thousand dollars.

(b) County treasurer, if the bond is furnished by individual sureties, not less than the amount nor exceeding twice the amount of all taxes directed by the county board to

be levied therein and to be received by the treasurer during the ensuing year, with 3 or more sureties; or, if the bond is furnished by a surety company in an amount not less than 10 per cent of all taxes directed by the county board to be levied therein, and to be received by the treasurer during the ensuing year, or \$500,000, whichever is smaller.

(c) Sheriff, not less than five nor more than twenty-five thousand dollars, with not less than three sureties.

(d) Coroner, not less than five hundred nor more than ten thousand dollars, with not less than two sureties.

(e) Clerk of the circuit court, not less than five thousand dollars, with two or more sureties.

(f) District attorney, one thousand dollars.

(g) Register of deeds, in counties containing less than 150,000 population, \$3,000, with 2 or more sureties. In counties containing 150,000 or more population, not less than \$3,000, with 2 or more sureties, conditioned for the accuracy of his work and the faithful, correct and impartial performance of his duties, and in addition thereto a bond of not less than \$10,000, with 2 or more sureties, conditioned for the faithful accounting for and paying over to the county treasurer all moneys which may come into his hands as such officer, or into the hands of his deputy or assistants for him.

(h) Surveyor, one thousand dollars.

(i) County abstractor, five thousand dollars, with two or more sureties.

(2) Each such official bond shall be in sum fixed by law; or if not so fixed, in sum fixed by resolution of the county board, within the limitations prescribed by law, if any, at the annual meeting in November prior to the commencement of the term of office of the particular officer. Both the bond and the sufficiency of the sureties thereto shall be approved by a committee consisting of the chairman and not less than two other members of the county board who shall report in writing their action on all bonds.

(3) Each such bond shall be guaranteed by the number of personal sureties prescribed by law, or if not prescribed, by the number fixed by the county board within the limitations, if any, prescribed by law, or by a surety company as provided by s. 204.07. In the case of the county clerk, county treasurer and county abstractor the county board may by resolution require them to furnish bonds guaranteed by surety companies and direct that the premiums be paid as provided in s. 19.01 (8).

(4) If it deems the bond of any officer insufficient, the county board may by resolution require him to furnish additional bond in sum to be named in the resolution, not exceeding ten thousand dollars for the register of deeds of any county with a population of less than one hundred fifty thousand, and not exceeding the maximum sum, if any, fixed by law for additional bonds for other officers.

History: 1955 c. 366, 439.

If county requires a corporate surety requirement of letting by advertised bidding. bond of county treasurer and pays premium 40 Atty. Gen. 1. thereon, as provided in (3), there is no re-

59.14 Offices, where kept; when open. (1) Every sheriff, clerk of the circuit court, register of deeds, county treasurer, register of probate and county clerk shall keep his office at the county seat in the offices provided by the county or by special provision of law; or if there be none such, then at such place as the county board directs. The county board may also require any elective or appointive county official to keep his office at the county seat in an office to be provided by the county. All such officers shall keep such offices open during the usual business hours each day, Sundays and legal holidays excepted, and except that the county board of each county may permit said officers to close their offices on Saturday for such time as the county board may direct, and with proper care shall open to the examination of any person all books and papers required to be kept in his office and permit any person so examining to take notes and copies of such books, records or papers or minutes therefrom.

(2) If any such officer neglects or refuses to comply with any of the provisions of this section he shall forfeit five dollars for each day such noncompliance continues. Actions for the collection of such forfeiture may be brought upon the complaint of the district attorney of the proper county or of any party aggrieved by such refusal or neglect.

History: 1951 c. 606.

Notwithstanding 18.01, 59.14 (1) and 59.23, documents, and physical evidence relating the public enjoys no right of inspection of to law enforcement activities in the office of telephone and radio logs, criminal complaint of the sheriff or of a city police department. reports, criminal investigation reports, au- 41 Atty. Gen. 237. tomobile accident reports, or other papers,

59.15 Compensation, fees, salaries and traveling expenses of officials and employes.

(1) **ELECTIVE OFFICIALS.** (a) The board shall, prior to the earliest time for filing nomination papers for any elective office to be voted on in the county (other than supervisors and

circuit judges), which officer is paid in whole or part from the county treasury, establish the total annual compensation for services to be paid him (exclusive of reimbursements for expenses out-of-pocket provided for in sub. (3)). The annual compensation may be established by resolution or ordinance, on a basis of straight salary, fees, or part salary and part fees, and if the compensation established is a salary, or part salary and part fees, it shall be in lieu of all fees, including per diem and other forms of compensation for services rendered, except those specifically reserved to the officer in such resolution or ordinance. The compensation established shall not be increased nor diminished during the officer's term and shall remain for ensuing terms unless changed by the board.

(am) The board may provide additional compensation for any judge who in addition to his elective duties is acting as judge of a juvenile court, appointed or designated under s. 48.03, as compensation for the additional services rendered by him.

(b) Any officer authorized or required to collect fees appertaining to his office shall keep a complete record of all fees received in the form prescribed by the board and shall file a record of the total annual receipts in the clerk's office within 20 days of the close of the calendar year or at such other times as the board requires. Any officer on a salary basis or part fees and part salary shall collect all fees authorized by law appertaining to his office and shall remit all fees not specifically reserved to him by enumeration in the compensation established by the board pursuant to par. (a) to the treasurer at the end of each month unless a shorter period for remittance is otherwise provided.

(2) APPOINTIVE OFFICIALS, DEPUTY OFFICERS AND EMPLOYEES. (a) The board has the powers set forth in this subsection and sub. (3) as to any office, board, commission, committee, position or employe in county service (other than elective officers included under sub. (1), supervisors and circuit judges) created under any statute, the salary or compensation for which is paid in whole or in part by the county, and the jurisdiction and duties of which lie within the county or any portion thereof and the powers conferred by this section shall be in addition to all other grants of power and shall be limited only by express language.

(b) The board may abolish, create or re-establish any such office, board, commission, committee, position or employment, and may transfer the functions, duties, responsibilities and privileges to any other agency including a committee of the board except as to boards of trustees of county institutions.

(c) The board may provide, fix or change the salary or compensation of any such office, board, commission, committee, position, employe or deputies to elective officers without regard to the tenure of the incumbent (except as provided in par. (d)) and also establish the number of employes in any department or office including deputies to elective officers, and may establish regulations of employment for any person paid from the county treasury, but no action of the board shall be contrary to or in derogation of the rules and regulations of the state department of public welfare pursuant to s. 49.50 (2) to (5) relating to employes administering old-age assistance, aid to dependent children, aid to the blind and aid to totally and permanently disabled persons or ss. 16.31 to 16.44.

(d) The board or any board, commission, committee or any agency to which the board or statutes has delegated the authority to manage and control any institution or department of the county government may contract for the services of employes, setting up the hours, wages, duties and terms of employment for periods not to exceed 2 years.

(3) REIMBURSEMENT FOR EXPENSE. The board may provide for reimbursement to any elective officer, deputy officer, appointive officer or employe of any expense out-of-pocket incurred in the discharge of his duty in addition to his salary or compensation, including without limitation because of enumeration, traveling expenses within or without the county or state, and the board may establish standard allowances for mileage, room and meals, the purposes for which such allowances may be made, and determine the reasonableness and necessity for such reimbursements, and also establish in advance a fair rate of compensation to be paid to the sheriff for the board and care of prisoners in the county jail at county expense.

(4) INTERPRETATION. In the event of conflict between this section and any other statute, this section to the extent of such conflict shall prevail.

History: 1951 c. 725; 1953 c. 61; 1955 c. 651.

A county has authority to make pay roll deductions for and remittances of union dues (or hospital insurance premiums) as to any employe who authorizes and directs his employer to do so. 38 Atty. Gen. 464.
County highway committee has authority to enter into valid agreement with a union representing its employes as to hours, wages, duties and terms of employment for a period not to exceed 2 years, but maintenance of membership in a union may not be made a condition of retaining employment. 39 Atty. Gen. 48.
Maintenance of prisoners, see note to 53.33, citing 39 Atty. Gen. 218.
County may change salary of judge of juvenile court under this section. 39 Atty. Gen. 443.
The county board has power to fix the number of deputies that a county clerk shall employ. 39 Atty. Gen. 579.
See note to 59.21, citing 39 Atty. Gen. 611.

A county board fixing an annual salary for a register in probate, under (2) (c), may also authorize him to retain for his own use fees for certified copies furnished by him. 40 Atty. Gen. 460.

The clerk of circuit court may not retain for his own use fees received for services in naturalization proceedings, if the county board has provided an annual salary under (1), without specifically providing for retention of such fees. A county clerk may not retain for his own use fees paid under 206.41 (5) (b), for conducting examinations for life insurance agents' licenses, when such examinations are conducted in the clerk's office during office hours. 40 Atty. Gen. 460.

County board may authorize county clerk and register of deeds to account once a month or oftener for moneys received, but may not authorize such officers to maintain separate bank accounts. 41 Atty. Gen. 160.

Ordinance adopted by a majority vote of county board of Milwaukee county providing salary increases for county court judges and civil court judges to take effect December 28, 1952, actually became effective on said date, notwithstanding the fact that contrary to a prior rule of said board it did not subsequently provide funds with which to pay such salary increases. Since the ordinance increasing the salaries of the county court judges and civil court judges became effective December 28, 1952, the county board is obligated to provide funds from which such salaries can be paid from said date. 42 Atty. Gen. 50.

Under (1), where sheriff is on straight salary basis he may not be paid in addition the per diem allowance provided by 59.29 (1). 43 Atty. Gen. 237.

Power of county board to hire and fire county employes under (2) discussed. 44 Atty. Gen. 262.

Under (3) county board may in its discretion reimburse county officials for membership dues in such organizations as Wisconsin district attorneys association. 45 Atty. Gen. 51.

(1) (a) prohibits decrease in sheriff's compensation during his term of office, and where the ordinance establishing his compensation permits him to retain fees in civil cases, the county board may not arbitrarily and incorrectly classify county traffic ordinance violations as criminal so as to deprive the sheriff of those fees which he was entitled to retain under the salary ordinance in effect when he took office. 45 Atty. Gen. 118.

(2) (c) does not specifically authorize retroactive salary increases for county employes, and such increases may not be granted except under special circumstances, e.g., where there is a prior agreement with the employes that when a future pay raise is granted it will be effective as of some prior agreed date. 45 Atty. Gen. 146.

Salary increases and decreases discussed. 45 Atty. Gen. 166.

See note to 253.15, citing 45 Atty. Gen. 277, 296.

See note to 46.22, citing 46 Atty. Gen. 137.

59.16 County clerk; deputies; salaries; vacancies. (1) Every county clerk shall appoint in writing one or more deputies and file such appointment in his office. Such deputy or deputies shall aid in the performance of the duties of such clerk under his direction, and in case of his absence or disability or of a vacancy in his office, unless another is appointed therefor as provided in subsection (3), shall perform all the duties of such clerk during such absence or until such vacancy is filled. The county board may in its discretion, at any meeting, provide a salary for such deputy or deputies.

(2) In each county having a population exceeding one hundred and fifty thousand according to the last state or national census, the county clerk may also appoint such number of assistants as the county board may, at any legal meeting thereof, authorize and prescribe, and said assistants shall receive such salaries as said county board at any such meeting shall provide and fix.

(3) If any county clerk is incapable of discharging the duties of his office the county board may, if they see fit, appoint a person such clerk, who shall serve until such disability is removed. If the county board is not in session at the time of such incapacity, the chairman of said board may appoint such clerk, whose term shall not extend beyond the next regular or special meeting of the county board. A person so appointed or appointed to fill a vacancy in the office of county clerk, upon giving an official bond with like sureties as are required of such clerk, shall perform all the duties of such office; and thereupon the powers and duties of the deputy of the last clerk shall cease.

County clerks may properly appoint deputies for the purpose of sale of hunting and fishing licenses only. 39 Atty. Gen. 579.

County clerk is personally responsible to make all proper remittances to the conservation department for hunting and fishing licenses sold by himself or his deputies. 39 Atty. Gen. 579.

59.17 County clerk; duties. The county clerk shall:

(1) **COUNTY BOARD PROCEEDINGS.** Act as clerk of the county board at all the meetings thereof; keep and record in a book therefor true minutes of all the proceedings of the board; make regular entries of their resolutions and decisions upon all questions; record the vote of each supervisor on any question submitted to the board, if required by any member present, and perform all duties prescribed by law or required by the board in connection with their meetings and transactions.

(2) **SAME.** Record at length in a book therefor every resolution, order and ordinance adopted or passed by the board.

(3) **SAME.** Sign all orders for the payment of money directed by the board to be issued, and keep in a book therefor a true and correct account thereof, and of the name of the person to whom each order is issued; but he shall in no case sign or issue any county order except upon a recorded vote or resolution of the board authorizing the same; nor shall he sign or issue any such order for the payment of the services of any justice of the peace, magistrate, clerk of court, district attorney or sheriff until the person claiming such order files an affidavit stating that he has paid into the county treasury all

moneys due the county and collected or received by him in his official capacity; nor shall he sign or issue any order for the payment of money for any purpose in excess of the funds appropriated for such purpose unless first authorized by a resolution passed by the county board pursuant to section 65.90 (5).

(4) ACCOUNTS. File and preserve in his office all accounts acted upon by the board, and indorse their action thereon, designating specifically upon every account the amount allowed, if any, and the particular items or charges for which allowed, and such as were disallowed, if any.

(5) RECEIPTS AND DISBURSEMENTS. Record in a book therefor the reports of the county treasurer of the receipts and disbursements of the county.

(6) SAME. Keep a true and accurate account in a book therefor of all money which comes into his hands by virtue of his office, specifying the date of every receipt or payment, the person from or to whom the same was received or paid, and the purpose of each particular receipt or disbursement, and keep such book at all times open to the inspection of the county board or any member thereof.

(7) SAME. Keep in the manner prescribed in subsection (6) a separate account of all moneys paid the county treasurer by him.

(8) SAME. Keep all of the accounts of the county and all such books of account as the county board directs.

(9) ACTIONS; NOTIFY DISTRICT ATTORNEY. Promptly notify the district attorney of every action or proceeding commenced against the county and of every appeal from the action of the county board.

(10) SCHOOL TAXES, RECORDS TO STATE SUPERINTENDENT. Transmit to the state superintendent on the last Monday in December in each year certified copies of all resolutions and proceedings of the county board passed or had during the preceding year relating to the raising of any money for school purposes, and report the amount to be raised in each town in the county.

(11) SCHOOL MONEYS, NOTICE OF APPORTIONMENT. File in his office every notice received from the state superintendent of the apportionment of school money to be distributed in the county, and forthwith transmit a certified copy thereof to the county treasurer, and lay a like copy before the county board at their next annual meeting.

(12) VILLAGES, TOWNS; CHANGE OF NAME. Immediately transmit to the secretary of state, after the name of any town or village is changed or a new town is organized or the boundaries of any town are altered by the county board, a certified copy of the ordinance adopted therefor, indicating such change or changes.

(13) DUPLICATE RECEIPTS. Make out and deliver to the treasurer duplicate receipts of all moneys received by him as such clerk, and countersign and file in his office the duplicate receipts delivered to him by the treasurer of money received by him.

(14) CERTIFIED COPIES; OATHS AND BONDS; SIGNATURES. (a) Make and deliver to any person, on demand and payment of the lawful fees therefor, a certified copy or transcript of any book, record, account, file or paper in his office, and make any certificate which by law is declared to be evidence, and charge ten cents for each folio of such copy or transcript and twenty-five cents for each such certificate.

(b) Except as otherwise provided, the county clerk shall receive and file the official oaths and bonds of all county officers and upon request shall certify under his signature and seal the official capacity and authority of any county officer so filing and charge therefor the statutory fee. Upon the commencement of each term every county clerk shall file his signature and the impression of his official seal in the office of the secretary of state.

(15) TAXES; ELECTION DUTIES. Perform all duties imposed on him in relation to the assessment and collection of taxes, and to the preparation and distribution of ballots and the canvass and return of votes at general, judicial and special elections.

(16) REPORT, RECEIPTS AND DISBURSEMENTS TO COUNTY BOARD. Make a full report to the county board, at the annual meeting or at any other regular meeting of the county board when so stipulated by the board, in writing, verified by his oath, of all money received and disbursed by him, and separately of all fees received by him; and settle with the board his official accounts and produce to them all books, accounts and vouchers relating to the same.

(17) PROCEEDINGS TO HISTORICAL SOCIETY. Forward to the state historical society, postpaid, within thirty days after their publication a copy of the proceedings of the county board, and of all printed reports made under authority of such board or by the authority of other county officers.

(18) COUNTY HIGHWAY COMMISSIONER; NOTIFY OF ELECTION. Except in counties hav-

ing a population of one hundred and fifty thousand or more, notify a county commissioner of highways of his election within ten days thereafter.

(19) COUNTY TAX FOR ROAD AND BRIDGE FUND. Except in counties having a population of one hundred and fifty thousand or more, notify the proper town officers of the levy and rate of any tax for the county road and bridge fund.

(20) LIST OF MUNICIPAL OFFICERS. Each county clerk shall, annually, on the first Tuesday of June, transmit to the secretary of state a typewritten or printed list showing the name and post-office address of the chairman, mayor, president, clerk, treasurer and assessor of each town, city and village within his county. Such lists shall be placed on file for the information of the public.

(25) GENERAL. Perform all other duties required of him by law.

History: 1963 c. 145; 1955 c. 10.

(3), as amended by ch. 274, Laws 1949, makes no basic changes in the administration of 65.90 (5), but does place an express responsibility on the county clerk to see that its provisions are followed. 38 Atty. Gen. 568. County clerk must make report required by (16) at annual November meeting of county board. 39 Atty. Gen. 372. Liability of clerk who signs orders for unauthorized payments discussed. 39 Atty. Gen. 519.

59.175 Clerks of counties containing state institutions to make claims in certain cases. The county clerk of any county, where such county is entitled to reimbursement as provided in section 15.15 (7), shall make certified claim against the state, without direction from the county board, in all cases where such reimbursement is directed in said subsection, upon forms prescribed by the director of budget and accounts and to contain such information as shall be required by him; such claims to be filed with the state department of public welfare on or before June first of each year. If the claims are approved by such department they shall be certified to the director of budget and accounts and paid from the appropriations made by s. 20.550 (3).

See 253.18 (3) for a requirement that certain probate records be kept or microfilmed.

59.18 County treasurer; eligibility. No person holding the office of sheriff, undersheriff, county judge, district attorney, clerk of the circuit court, county clerk or member of the county board shall be eligible to the office of county treasurer or deputy county treasurer.

59.19 Deputies; oath; salary; temporary vacancy. (1) The county treasurer may appoint in writing one or more deputies to aid him in the discharge of the duties of his office. Such deputy or deputies, in the absence of the treasurer from his office or in case of a vacancy in said office or any disability of the treasurer to perform the duties of his office, unless another is appointed therefor as provided in sub. (2), may perform all the duties of the office of treasurer until such vacancy is filled or such disability is removed. The person or persons so appointed shall take and file the official oath. They shall file their appointment with the county clerk. The county board may, in its discretion, at its annual meeting or at any special meeting, provide a salary for each such deputy.

(2) If any county treasurer is incapable of discharging the duties of his office, the county board may, if they see fit, appoint a person treasurer who shall serve until such disability is removed. A person so appointed or appointed to fill a vacancy in the office of treasurer, upon giving an official bond with like sureties as are required of such treasurer, shall perform all the duties of such office, and thereupon the powers and duties of any deputy performing the duties of the last treasurer shall cease.

History: 1957 c. 271.

59.20 County treasurer; duties. The county treasurer shall:

(1) Receive all moneys from all sources belonging to the county, and all other moneys which by statute or county ordinance are directed to be paid to him, and, except in counties having a population of 500,000 or more in the case of the payment of delinquent property taxes or the redemption of tax sales, and the sale or assignment of property for taxes at or after tax sale, make out and deliver to the county clerk duplicate receipts therefor, and file in his office the duplicate receipts delivered to him by the county clerk for money received by him. In the case of the exception hereinabove provided, the county treasurer shall file a duplicate receipt in his office.

(2) Pay out all moneys belonging to the county only on the order of the county board, signed by the county clerk and countersigned by the chairman, except when special provision for the payment thereof is otherwise made by law; and, except in counties having a population of 500,000 or more, pay out all moneys belonging to the county road and bridge fund on the written order of the county commissioner of highways, signed by the county clerk and countersigned by the chairman of the county board.

(3) Pay all such county orders in the order of time in which they are presented for payment; but where two or more are presented at the same time, give precedence to the

order of the oldest date, but he shall receive of town, city and village treasurers all county orders issued in such county, which such treasurers may present in payment of county taxes, to the amount of the county taxes actually collected by any such treasurer in the year for which such orders are offered in payment, which amount shall be determined by the affidavit of such treasurer.

(4) Keep a true and correct account of the receipt and expenditure of all moneys which come into his hands by virtue of his office in books kept therefor, specifying the date of every receipt or payment, the person from or to whom the same was received or paid, and the purpose of each particular receipt or payment; keep also in like manner a separate account of all fees received, a separate account of all moneys received for taxes, and a separate account of money received upon redemption of lands from sales thereof for nonpayment of taxes, further specifying in the two last accounts the description of the property on account of which such money was paid, which books shall be open at all times to the inspection of the county board or any member thereof and to all the county and state officers; make in writing a fully itemized statement and report, verified by his oath, to such board on the first day of their annual meeting and at such other times as they may direct, of all moneys of whatsoever nature received and disbursed by him; exhibit his vouchers therefor to be audited and allowed, and settle with them his accounts as treasurer; and exhibit to the board all moneys in his custody or under his control as treasurer, and, if required, make oath that such moneys are the funds of the county.

(5) Transmit to the state treasurer at the time he is required by law to pay the state taxes a particular statement, certified by his affidavit indorsed upon or attached thereto, of all moneys received by him during the preceding year and which are payable to the state treasurer for licenses, fines, penalties, or on any other account, and at the same time pay to the state treasurer the amount thereof after deducting the legal fees.

(6) Cause to be insured, when directed by the county board, at the expense of the county, the county buildings or any of them in the name of the county; and, in case of loss, demand and receive the money due on account of such insurance for the use of the county; and all such money shall be applied to rebuilding or repairing such county buildings.

(7) Make annually, on the third Monday of March, a certified statement, and forward the same to each town, city and village clerks in his county, showing the amount of money paid from the county treasury during the year next preceding to each such town, city and village treasurer in his county, specifying the date of each payment, the amount thereof and the account upon which the same was made; and it shall be unlawful for any county treasurer to pay to the treasurer of any town any money in his hands belonging to such town from the third Monday of March until ten days after the annual town meeting except upon the written order of the town board.

(8) Retain 10 per cent for fees in receiving and paying into the state treasury all moneys received by him for the state for fines and penalties, except that 50 per cent of the fines and penalties under chs. 341 to 349 shall be retained as fees, and retain such other fees for receiving and paying money into the state treasury as are prescribed by law.

(9) Make and deliver to any person on demand and payment of the lawful fees therefor a certified copy or transcript of any book, record, account, file or paper in his office and make any certificate which by law is declared to be evidence, and collect as fees therefor ten cents for each folio of any copy or transcript and twenty-five cents for each certificate.

(10) On the first day of each month pay into the county treasury the whole amount of fees received by him.

(11) Pay to the state treasurer on his order all state suit tax moneys received from the clerk of the circuit court pursuant to s. 59.395 (5) and if any such moneys remain in his hands when he is required to pay the state tax, pay such moneys therewith to the state treasurer.

(12) Perform all other duties required of him by law.

(13) If his county receives national forest income, make distribution thereof to the towns in the county wherein national forest lands are situated, each town to receive such proportion thereof as the area of national forest lands therein bears to the area of such lands in the entire county. Fifty per cent of the amount received by it shall be expended by the town exclusively for the benefit of roads therein and the remaining 50 per cent thereof shall be allotted by the town treasurer, in such equitable manner as the town board shall determine, to school districts in the town for school purposes.

History: 1951 c. 302; 1955 c. 651; 1957 c. 260.

Where the only school district in a town forest income distributed to said town under is an integrated district composed of all the (13) (59.07 (22), Stats. 1951) is distributable area of the town and of the territory of ad- by said town to such school district. 41 joining towns, 50 per cent of the national Atty. Gen. 283.

59.21 Sheriff; undersheriff; deputies. (1) Within 10 days after entering upon the duties of his office the sheriff shall appoint some proper person, resident of his county, undersheriff, provided that in selecting such undersheriff, in counties where the sheriff's department is under civil service the sheriff, in conformity with county ordinance, may grant a leave of absence to a deputy sheriff, and appoint him undersheriff, or to any other position in the sheriff's department, on request of such appointee, and upon acceptance of such new appointment and duties, and after completion thereof, such appointee shall immediately be returned to his deputy sheriff position and continue therein without loss of any rights under the civil service law; the sheriff, however, may not grant such leave of absence to a deputy sheriff until he first secures the consent of the county board by resolution duly adopted by the county board, provided that in counties with a population of 500,000 or more the appointment of an undersheriff shall be optional; and within such time the sheriff shall appoint deputy sheriffs for his county as follows:

(a) One for each city and village therein having one thousand or more inhabitants.

(b) One for each assembly district therein, except the district in which the undersheriff resides, which contains an incorporated village having less than one thousand inhabitants and does not contain a city or incorporated village having more than one thousand inhabitants.

(c) Each deputy shall reside in the city or village for which he is appointed, or if appointed for an assembly district, shall reside in the village in such district.

(2) He may appoint as many other deputies as he may deem proper.

(3) He may fill vacancies in the office of any such appointee, and may appoint a person to take the place of any undersheriff or deputy who becomes incapable of executing the duties of his office.

(4) A person appointed undersheriff or deputy for a regular term or to fill a vacancy or otherwise shall hold office during the pleasure of the sheriff.

(5) The sheriff or his undersheriff may also depute in writing other persons to do particular acts.

(6) Every appointment of an undersheriff or deputy, except deputations to do a particular act, and every revocation of such appointment shall be in writing and be filed and recorded in the office of the clerk of the circuit court.

(7) In case of a vacancy in the office of sheriff the undersheriff shall in all things and with like liabilities and penalties execute the duties of such office until the vacancy is filled as provided by law.

(8) (a) In counties having a population of less than 500,000, the county board may by ordinance fix the number of deputy sheriffs to be appointed in said county which number shall not be less than that required by sub. (1) (a) and (b), and fix the salary of such deputies; and may further provide by ordinance, that deputy sheriff positions shall be filled by appointment by the sheriff from a list of 3 persons for each position, such list to consist of the 3 candidates who shall receive the highest rating in a competitive examination of persons residing in such county for at least one full year prior to the date of such examination. Such competitive examinations may be by a county civil service commission or by the state bureau of personnel at the option of the county board and it shall so provide by ordinance. The director of the state bureau of personnel shall upon request of the county board conduct such examination according to the methods used in examinations for the state civil service and shall certify an eligible list of 3 names for each position to the sheriff of such county who shall thereupon make an appointment from such list to fill such position within 10 days after the receipt of such eligible list. The county for which such examination is conducted shall pay the cost thereof. In the event that a civil service commission is decided upon for the selection of deputy sheriffs, then the provisions of ss. 16.31 to 16.44 shall apply so far as consistent with this subsection, except ss. 16.33, 16.34 and 16.43 and except the provision governing minimum compensation of the commissioners. The ordinance or an amending ordinance may provide for employe grievance procedures and disciplinary actions, for hours of work, for tours of duty according to seniority and for other administrative regulations. County board provisions consistent herewith and existing on July 25, 1951 are validated.

(b) 1. The persons appointed shall hold the office of deputy sheriff on good behavior. In any county operating under this subsection, but not under s. 59.07 (20), whenever the sheriff believes that a deputy has acted so as to show him to be incompetent to perform his duties or to have merited suspension, demotion or dismissal he shall report in writing to the grievance committee setting forth specifically his complaint, and may suspend or demote the officer at the time such complaint is filed. The grievance committee shall be appointed in the same manner and at the same time as standing committees of the county board of supervisors are appointed. The committee may be made up of members of the county board or other electors of the county, or both. Such members shall be paid in the same manner as members of other county board committees.

2. The grievance committee shall forthwith notify the accused officer of the filing of the charges and on request furnish him with a copy of the same.

3. The grievance committee shall, if the officer requests a hearing, appoint a time and place for the hearing of the charges, the time to be within 3 weeks after the filing of same, and notify the sheriff and the accused of the time and place of such hearing. The committee is authorized to take testimony at the hearing, and any testimony taken shall be transcribed. The chairman of the committee shall issue subpoenas for the attendance of such witnesses as may be requested by the accused. Subpoenas shall be served in the same manner as in justice court.

4. At such hearing the chairman of the committee shall possess authority to maintain order and enforce obedience to his lawful requirements and if any person at the hearing shall conduct himself in a disorderly manner, and after notice from the chairman shall persist therein, the chairman may order him to withdraw from the hearing, and on his refusal may order the sheriff or other person, to take him into custody until the hearing is adjourned for that day.

5. At the termination of the hearing the grievance committee shall determine in writing whether or not the charge is well founded and shall take such action by way of suspension, demotion, discharge or reinstatement as it may deem requisite and proper under the circumstances and file the same with the secretary of the committee.

6. The accused may appeal from the order to the circuit court by serving written notice thereof on the secretary of the committee within 10 days after the order is filed. Within 5 days thereafter the board shall certify to the clerk of the circuit court the record of the proceedings, including all documents, testimony and minutes. The action shall then be at issue and shall have precedence over any other cause of a different nature pending in the court, which shall always be open to the trial thereof. The court shall upon application of the accused or of the board fix a date of trial, which shall not be later than 15 days after such application except by agreement. The trial shall be by the court and upon the return of the board, except that the court may require further return or the taking and return of further evidence by the board. The question to be determined by the court shall be: Upon the evidence was the order of the board reasonable? No costs shall be allowed either party and the clerk's fees shall be paid by the county. If the order of the committee is reversed, the accused shall be forthwith reinstated and entitled to his pay as though in continuous service. If the order of the committee is sustained it shall be final and conclusive.

(c) The county board of any county adopting the ordinance provided for in this subsection may provide that any deputy sheriff acting as such at the time of such adoption shall be eligible to such appointment without examination.

(em) Any county board may, by a majority vote, establish by ordinance in connection with the adoption of an ordinance providing for civil service selection and tenure of deputy sheriffs under paragraphs (a) and (b) or by amendment to such an ordinance previously adopted, a traffic division of the sheriff's department and fix the number of deputy sheriffs as traffic patrolmen and other employes in said division in which case the provisions of section 83.016 shall become inoperative as to that county. The board in such ordinance shall further provide that the personnel in such traffic division of the sheriff's department shall be appointed and hold their positions in the manner and under the conditions set forth in paragraphs (a) and (b). The county board may also provide that traffic patrolmen who have been appointed by the highway committee pursuant to section 83.016 and who are employed by the county at the time of the adoption of such ordinance pursuant to this subsection establishing a traffic division in the sheriff's department and providing civil service therefor shall be appointed to positions in such traffic division without examination.

(d) Adoption of the ordinances provided for by this subsection shall not preclude the county board from thereafter amending or repealing such ordinances, but such amendment or repeal shall not be effective unless voted by the affirmative vote of three-fourths of the members-elect of such board. The civil service provisions of this section shall apply only to such deputies or traffic patrolmen who are regularly employed by the county or sheriff and shall not apply to honorary deputies. Notwithstanding the provisions of this subsection the county board may enact a civil service ordinance for county employes under s. 59.07 (20) which civil service ordinance may include deputy sheriffs or traffic patrolmen, or both.

History: 1951 c. 15, 524; 1953 c. 61, 272; 1955 c. 40; 1957 c. 562.

Under (1), as amended by ch. 15, Laws restoration of his civil-service standing as a deputy sheriff, as against a contention that he was not entitled thereto as a "person who in the past has changed . . . his status from that of deputy sheriff to any other status in the same department, and who is performing those duties at the time"

the act of 1951 became effective, because he had previously made 2 changes of status, instead of one, that is, he had become sheriff and then undersheriff. *La Violette v. Milligan*, 263 W 349, 57 NW (2d) 329.

Under (1), a deputy sheriff who obtained a leave of absence to accept appointment as undersheriff retained his civil service status, and could compel reinstatement as deputy sheriff. *Fuller v. Spieker*, 265 W 601, 62 NW (2d) 713.

Under (1), a deputy sheriff who fails to obtain a leave of absence for the time he expects to serve as sheriff abandons his civil service status and is not entitled to be restored to his former status upon ceasing to be sheriff. *Becker v. Spieker*, 265 W 605, 62 NW (2d) 715.

Under (8), county board may not delegate to sheriff power to suspend deputy without pay. Power to suspend deputy is vested in county board as incidental to power of removal for cause. When necessary, sheriff may order deputy to cease performance of duties. 39 Atty. Gen. 91.

The sheriff has control over the jail and over his deputies. A committee of the county board cannot compel the sheriff to deputize radio operators it has hired and to use them as jailers. The county board may at any time by appropriate resolution reduce the number of authorized employes in the sheriff's department, but it cannot take away from the sheriff complete control over their selection without enacting a civil service ordinance. 39 Atty. Gen. 611.

Deputy sheriff who became sheriff in 1945 and served as such until 1949 when he became undersheriff, and served as undersheriff until some time in February, 1952, is not entitled to reinstatement as deputy sheriff under (1), as amended by ch. 15, Laws 1951. 41 Atty. Gen. 120.

Deputy sheriff must be resident of county for which appointed, and duly appointed deputy sheriff may act in or outside of the county within limitations of statutes. 45 Atty. Gen. 267.

59.22 Liability for appointees' acts; bonds. (1) Except as provided otherwise in subsection (3), the sheriff shall be responsible for every default or misconduct in office of his undersheriff, jailer and deputies during the term of his office, and after the death, resignation or removal from office of such sheriff as well as before; and an action for any such default or misconduct may be prosecuted against such sheriff and his sureties on his official bond or against the executors and administrators of such sheriff.

(2) The sheriff may require his undersheriff, jailer and every deputy who is not required by subsection (3) to furnish an official bond, before entering upon the duties of his office, to execute and deliver to him a bond in such sum and with such sureties as he may require, conditioned for the faithful performance of his official duties; and every default or misconduct of such undersheriff or deputy for which the sheriff shall be liable shall be a breach of such bond.

(3) In counties having a population of two hundred thousand or more, the sheriff shall not be responsible for the acts, defaults or misconduct in office of either his jailer or his deputies, appointed under sections 16.31 to 16.44, inclusive, except where such deputy or jailer acts under the express direction of the sheriff. Each such deputy and jailer shall execute and file an official bond and shall be liable for his acts, defaults, or misconduct in office in the same manner and to the same extent that the sheriff and his executors and administrators would otherwise be liable, and actions therefor shall be prosecuted directly against such deputy or jailer and the surety on his official bond.

(4) In counties having a population of less than 200,000 in which a civil service ordinance covering sheriff's deputies and jailers is in effect pursuant to the provisions of s. 59.21 (8) or s. 59.07 (20), the sheriff shall not be financially responsible for the acts, defaults or misconduct in office of either his jailer or his deputies, appointed under the provisions of s. 59.21 (8) or s. 59.07 (20), except where such deputy or jailer acts under the express direction of the sheriff. Each such deputy and jailer shall execute and file an official bond and shall be liable for his acts, defaults or misconduct in office in the same manner and to the same extent that the sheriff and his executors and administrators would otherwise be liable, and actions therefor shall be prosecuted directly against such deputy or jailer and the surety on his official bond. The official bond required shall be in such principal amount as the county board shall determine and shall have a licensed surety company as surety. The cost of any such bond shall be paid by the county.

National forest income allotted to a school district under (13) (59.07 (22), Stats. 1951) is not deductible by town in tax collection distributions to a school district for its school tax levy. Town board may allot national forest income to only those school districts having national forest acreage if it determines that is an equitable manner of distribution. 41 Atty. Gen. 268.

59.225 Arming sheriffs. The county board of any county may furnish its sheriff, undersheriff and deputy sheriffs with the necessary arms, ammunition, gas bombs and gas sticks for the carrying out of their respective duties, such arms, ammunition, gas bombs and gas sticks to remain the property of the county.

59.23 Sheriff; duties. The sheriff shall:

(1) Take the charge and custody of the jail maintained by his county and the persons therein, and keep them himself or by his deputy or jailer.

(2) Keep a true and exact register of all prisoners committed to any jail under his charge, in a book therefor, which shall contain the names of all persons who are committed to any such jail, their residence, the time when and cause of commitment, and the authority by which they were committed; and if for a criminal offense, a description of his

person; and when any prisoner is liberated, state the time when and the authority by which he was liberated; and if any person escapes, state the particulars of the time and manner of such escape.

(3) Attend upon the circuit court held in his county during its session, and at the commencement of every term of such court file with the clerk thereof a list of his deputies, not exceeding three, who are to receive a per diem for attendance on such court. The court, however, may by special order authorize a greater number of deputies to attend when the court is engaged in the trial of any person charged with a crime.

(4) Personally, or by his undersheriff or deputies, serve or execute according to law all processes, writs, precepts and orders issued or made by lawful authority and to him delivered.

(5) Deliver on demand to his successor in office, when he has qualified according to law, the jail and other property of the county and all prisoners in such jail, and all books records, writs, processes, orders and other papers belonging to his office and in his possession or in that of his undersheriff, jailer or deputies, except as provided in s. 59.33, and upon the delivery thereof such successor in office shall execute to him a receipt therefor.

(6) In counties having a population of three hundred thousand or more, assign one deputy, to be mutually agreed upon by him and the district attorney, to the office of the district attorney.

(7) Perform all other duties required of him by law.

(8) The sheriff is authorized to destroy all sheriff's dockets, daily jail records and cash books dated prior to 1901. It shall be the duty of the sheriff to hereafter retain and safely keep all such records for a period of 30 years, after which the same may be destroyed.

(9) When the sheriff is required to serve or execute any summons, order or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable in all respects for neglect of duty; and if the sheriff be a party the coroner shall perform the service and all statutes relating to sheriffs shall apply to coroners where the sheriff is a party.

(10) To enforce in his county all general orders of the industrial commission relating to the sale, transportation and storage of explosives.

(11) Conduct operations within his county and, when the county board so provides, in waters of which his county has jurisdiction under s. 2.04 for the rescue of human beings and for the recovery of human bodies.

History: 1953 c. 506; 1955 c. 330.

If a sheriff is properly to perform his primary duty of preserving law and order throughout his county, he cannot merely sit in his office waiting to be informed, and it is necessary for him to inform himself of what is going on in the less reputable as well as the more respectable circles, and he may go outside the county without departing from duty. *Andreski v. Industrial Comm.* 261 W 234, 52 NW (2d) 135.

Sheriff has duty to confine persons arrested by city police where he has reason to believe that the arrest has been proper. Duties and responsibilities of sheriff relative to custody of prisoners in county jail discussed. 39 Atty. Gen. 50.

Sheriffs have duty to accept prisoners from state conservation wardens when ar-

rest is made without warrant under 29.05 (1). 39 Atty. Gen. 132.

A sheriff may elect to carry out his duties under 59.23 (1) and 53.37, with respect to furnishing meals for prisoners in the county jail, by his own services or those of his wife instead of by a deputy appointed under civil service regulations. 40 Atty. Gen. 140.

A sheriff may receive compensation for services performed for private individuals as an auctioneer, if the services do not interfere with proper performance of his official duties. 40 Atty. Gen. 163.

"Sheriff's docket" as used in (8) means a book in which are listed civil writs, processes, and other papers delivered to the sheriff for service. Also see note to 59.14 citing this opinion. 41 Atty. Gen. 237.

59.24 Peace maintenance; powers and duties of peace officers. Sheriffs and their undersheriffs and deputies shall keep and preserve the peace in their respective counties and quiet and suppress all affrays, routs, riots, unlawful assemblies and insurrections; for which purpose, and for the service of processes in civil or criminal cases and in the apprehending or securing any person for felony or breach of the peace they and every coroner and constable may call to their aid such persons or power of their county as they may deem necessary.

59.25 Transportation of criminals through other counties; rewards for their apprehension. (1) Any sheriff or other officer who has legally arrested any person in any county may pass across and through such parts of any other county or counties as are in the ordinary route of travel from the place where such person was arrested to the place where he is to be conveyed, according to the command of the process by which such arrest was made; and such conveyance of such prisoner shall not be deemed an escape, nor shall the prisoner so conveyed or the officers having him in custody be liable to arrest on any civil process while passing through such other county or counties.

(2) Whenever a person convicted of, or charged with, any felony, the punishment for which is not less than five years' imprisonment, shall escape, or whenever any such felony shall be committed by any unknown person or persons the sheriff of the county from which such escape was made or in which such felony was committed may, in his dis-

cretion and with the consent of the chairman of the board of such county when such board is not in session, and with the consent of the board when they are in session, offer such reward for the apprehension and delivery of such escaped person, or the apprehension or conviction of the perpetrator of such felony as he may deem necessary, not exceeding one thousand dollars in any one case; but no such reward or any part thereof shall be paid to any such sheriff, his undersheriff or any deputy. The right to any such reward shall be determined finally by such sheriff; and if more than one person claims the same he shall determine what portion, if any, the claimants are entitled to, and shall certify his determination to the county treasurer, and such certificate shall be the treasurer's authority for paying the sum so certified.

59.26 Not to act as attorney. No sheriff, undersheriff, deputy or coroner shall appear or practice as attorney in any court, draw or fill up any writ, pleading or proceeding for a party in any action, nor, with the intent to be employed in the collection of any demand or the service of any process, advise or counsel any person to commence an action or proceeding; and for violation of any of the provisions of this section every such officer shall forfeit not exceeding fifty dollars.

59.27 Service on sheriff; how made. Every writ, notice or other paper required to be delivered to or served on any sheriff may be served by leaving the same at his office during the hours it is required to be kept open; but if there is any person belonging to such office therein, such writ, notice or other paper shall be delivered to such person; and every such service shall be deemed equivalent to a personal delivery to or service on such sheriff.

59.28 Sheriff; fees. Every sheriff shall be entitled to receive the following fees in advance for his services providing the county board approves advance payment, except for services in actions or proceedings before justices of the peace, for which fees are specially provided by law:

(1) For serving a summons or any other process by which action shall be commenced in any court of record, or writ or order of injunction or other order, and making return thereon, for one defendant, \$2; for each additional defendant, \$1; for attempting to serve, one-half of the foregoing fees.

(2) Traveling in making service of any summons, writ or other process, except upon criminal warrants, ten cents per mile for each mile actually traveled going and returning; provided, that the sheriff shall serve all process, orders and papers in any one action or proceeding which may then be in his hands for service, which can be served at the same time and upon all persons upon whom service is required who can be served in the same journey, and he shall be entitled to one mileage for the greatest distance actually traveled by him to make such service, and no more; and that for summoning grand and petit jurors no traveling fees shall be charged for more than the distance actually and necessarily traveled in summoning such jurors.

(3) Taking a bond or undertaking in any case, when required by law, and approving the same, fifty cents.

(4) Making a copy of any bond or undertaking, summons, writ, complaint or other paper served or taken, when required by law or demanded by a party, and when not furnished by a party to the action or his attorney, ten cents per folio.

(5) Serving and returning a subpoena to testify, for the first person served, \$2; and \$1 for each additional person named.

(6) Serving an execution on a judgment, demanding payment thereof or other writ not provided for, \$2.

(7) Collecting and paying over all sums upon execution, writ or process for the collection of money, five per cent on the first three hundred dollars; two and one-half per cent on the next three hundred dollars or any part thereof and one and one-half per cent on any excess over six hundred dollars; but in no case shall the whole percentage exceed thirty dollars.

(8) Advertising goods and chattels for sale upon execution, writ or process, seventy-five cents; but where there is more than one execution, writ or process in the hands of the sheriff against the same defendants there shall be but one advertising fee charged in the whole, which shall be on the execution having priority.

(9) Drawing advertisement of real estate, per folio, twenty-five cents.

(10) Every certificate of sale of real estate, fifty cents.

(11) Filing copy thereof with register of deeds, including fees of register of deeds, \$2.

(12) Drawing, executing and acknowledging a deed pursuant to a sale of real estate, two dollars, to be paid by the grantee in such deed.

(13) Summoning a grand or petit jury, to be paid from the county treasury, fifty cents for each juror named.

- (14) Summoning a jury upon a writ of inquiry attending such jury, and making and returning the inquisition, one dollar and fifty cents.
- (15) Summoning a special jury, struck pursuant to an order of court, and returning the panel, \$2.50.
- (16) Summoning a jury, pursuant to any precept or summons of any officer in any special proceeding, \$1; and for attending such jury when required, \$3 per day.
- (17) Attending a view when ordered by the court, \$3 per day, and 10 cents per mile traveling fee, going and returning.
- (18) Summoning appraisers and swearing the same, one dollar.
- (19) Every appraiser, for each day, not less than \$1 nor more than \$7 as shall be fixed by the county board.
- (20) Drawing an inventory or other paper, except return upon a summons, subpoena or venire, twenty-five cents per folio; provided, that whenever several writs of attachment against the same defendant are delivered to the sheriff for service and execution, such sheriff shall be entitled to ten cents per folio for drawing an inventory on all writs subsequent to the first writ of attachment so executed by him, of any property included in the first inventory so drawn by him, and no more; and five cents per folio for all copies thereof.
- (21) Attending the supreme court, one dollar and fifty cents per day, to be allowed on the certificate of the chief justice or clerk and paid out of the state treasury.
- (22) Attendance upon the circuit or county court, three dollars per day to the sheriff and two dollars each per day to the necessary deputies, to be paid out of the county treasury; provided, that in any county having a population of at least sixty thousand, the sheriff or necessary deputies shall receive such salary or per diem in excess of the amount herein prescribed as the county board may determine.
- (23) Serving notice of any election upon election officers, fifty cents for each election district, to be paid by the county.
- (24) For serving any writ or other process with the aid of the county, \$2.50 and \$2.50 per hour for each deputy assigned to inventory the property when seizing property on attachment, replevin, execution, or evicting on a writ of restitution or writ of assistance plus all necessary expenses incurred thereby.
- (25) All such necessary expenses incurred in taking possession of any goods or chattels and preserving the same as shall be just and reasonable in the opinion of the court.
- (26) All fees allowed by law and paid to any printer for any advertisement required to be published by the sheriff.
- (27) Traveling to serve any criminal process for every mile actually traveled ten cents per mile, whether in the county from which process issued or not, and actual and necessary disbursements for board and conveyance of prisoner.
- (28) Every commitment to prison, \$2.
- (29) Discharging a person from prison, fifty cents, which shall include the drawing and filing of a certificate of discharge with the clerk of the court.
- (30) Bringing up a prisoner upon habeas corpus to testify or answer in any court or before any judge, \$2.
- (31) Attending before any officer with a prisoner for the purpose of having him surrendered in exoneration of his bail or attending to receive a prisoner so surrendered who was not committed at the time, and receiving such prisoner into custody, in either case \$1.50.
- (32) Attending any court with a prisoner \$3 per day and \$1.50 for each half day, besides actual and necessary expenses. Guarding any prisoner sentenced to imprisonment at hard labor in the county jail, when the prisoner performs such labor upon any highway or public improvement and there are no secure means for preventing his escape, \$1.50 for each day and 75 cents for each half day so employed.
- (33) For selling real estate under any judgment or order of court, or on foreclosure by advertisement, and making all the necessary papers and notices, including deed or certificate, when the amount bid does not exceed one thousand dollars, ten dollars; when the amount bid exceeds one thousand dollars, fifteen dollars; for travel performed in making such sale, to be computed from the courthouse, ten cents per mile going and returning, besides the cost of publishing any advertisement of sale. For drawing and executing and acknowledging a deed upon a sale made by his predecessor in office, three dollars. When any such sale is made by a referee or any other officer he shall have the same fees.
- (34) When any person accused of any criminal offense shall escape from custody or pursuit without fault or negligence of the sheriff, and the district attorney shall certify such pursuit was necessary and proper, and the county board shall be satisfied by proof that such escape was not the result of the carelessness or negligence of the sheriff, such

board may, in their discretion, allow a fair compensation for the time and necessary expense incurred in such pursuit.

(35) For assisting clerk of circuit court in drawing jury, one dollar.

(37) For bringing a person alleged to be mentally ill, infirm or deficient before the court and subpoenaing witnesses, the fees allowed him in other cases; for taking such patient to a hospital or removing one therefrom, \$10 per day and his necessary expenses and the actual expenses for the support and transportation of the patient, and \$6 per day and necessary expenses for each assistant as may be ordered by the court.

(38) Any increase in fees under this section authorized by legislative act during the year 1957 shall be payable to the county treasury and shall not be reserved by any sheriff whose annual compensation is fixed by county board resolution or ordinance on the basis of straight salary, fees, or part salary and fees notwithstanding any other statutory provision to the contrary. This subsection shall remain in effect until December 31, 1959, after which time the provisions of s. 59.15 (1) (a) shall prevail.

History: 1955 c. 265, 457, 506, 654; 1957 c. 618.

59.29 Compensation for apprehensions in other states; conditions. (1) In all cases where by the laws of this state the governor is authorized to demand of the executive authority of any other state any fugitive from justice or any person charged with crime in this state and to appoint an agent to receive such person, and such person is apprehended in any other state by the sheriff or deputy sheriff of the county in this state where the warrant for such fugitive from justice is properly issued, or such crime was committed, and such person voluntarily returns with said sheriff to this state without requisition, such sheriff shall be entitled to eight dollars per day for the time necessarily expended in traveling to, apprehending and returning with such person and his actual and necessary expenses for such time, which compensation and expenses shall be allowed by the county board of such county upon the presentation thereto of an itemized and verified account, stating the number of days he was engaged, the number of miles traveled and each item of expense incurred in rendering such services, including the transportation and board of the person in his custody. No allowance whatever shall be made him as mileage.

(2) The sheriff of any county having less than three hundred thousand population shall not receive the compensation provided for in subsection (1), unless the apprehension shall have been duly authorized in writing by the district attorney or by the county judge of the county wherein the crime was committed, which written authority shall certify that the ends of justice will be subserved by the apprehension and return of such person, and the sheriff shall attach such certificate to and file it with his itemized account of such services.

(3) If the district attorney certifies in writing that it is necessary or desirable, the sheriff or deputy sheriff may be accompanied and assisted in retaining custody of any such prisoner, by one or more other deputy sheriffs, who shall be entitled for such services to compensation at the rate of \$5 per day, unless a different rate is established by resolution of the county board, and to their necessary and actual expenses. Such compensation and expenses shall be claimed and allowed in the manner provided in subsection (1) and the said certificate of the district attorney shall be attached to the verified account of such deputy for such services.

See note to 59.15, citing 43 Atty. Gen. 237.

59.30 Fees, how collected. All fees allowed to the sheriff upon the service of an execution or a writ for the collection of money or judgment for the sale of real estate and advertising thereon shall be collected by virtue of such execution, writ or judgment in the same manner as the sum therein directed to be collected.

59.31 Fees, how paid. All fees to which sheriffs or their deputies are entitled for attendance required by law upon any court of record shall be paid out of the treasury of the county wherein such services were rendered in the manner that fees of jurors attending such courts are paid; and whenever any such officer is required to perform any service for the state, which is not chargeable to his county or some officer or person, his account therefor shall be paid out of the state treasury.

59.32 Excessive fees. No sheriff, undersheriff or deputy shall directly or indirectly ask, demand or receive for any services or acts to be by him performed in the discharge of any of his official duties any greater fees than are allowed by law; and for the violation of any of the provisions of this section every such officer shall be liable in treble damages to the party aggrieved and shall forfeit not less than twenty-five nor more than two hundred and fifty dollars.

59.33 Powers after term. (1) Every sheriff, undersheriff and deputy, compensated for his services by fees or by part salary and part fees, may execute and return all writs, processes and orders in their hands at the expiration of the sheriff's term of office and

which such sheriff, undersheriff or deputy has, prior to that time, begun to execute by service, levy, advertisement or the collection of money thereon.

(2) In counties where the compensation of sheriffs, undersheriffs and deputies has been changed from the fee to the salary system as provided by law, the sheriff, immediately upon the expiration of his term, shall turn over to his successor all writs, processes and orders in his hands, or in the hands of his undersheriff or deputies, whether or not such writs, processes and orders have been partly or fully executed or returned, and such successor shall execute and return or complete the execution and return of such writs, processes and orders.

(3) In case of a vacancy in the office of sheriff, of any county, his undersheriff and deputies then in office having then any writ, process or order in their hands shall have the same authority and be under the same obligation to serve, execute and return the same as if such sheriff had continued in office.

59.34 Coroner; medical examiner; duties. The coroner shall: (1) Take inquest of the dead when required by law, except that in counties having a population of 500,000 or more such duty and the powers incident thereto shall be vested exclusively in the office of the medical examiner hereby created. Appointment to such office shall be made by the county board of supervisors under ss. 16.31 to 16.441. Such office may be occupied on a full or part-time basis and shall be paid such compensation as the county board of supervisors of such county may by ordinance provide. The medical examiner may appoint such assistants as the county board shall authorize. Whenever requested by the court or district attorney, the medical examiner shall testify to facts and conclusions disclosed by autopsies performed by him, at his direction, or in his presence; shall make physical examinations and tests incident to any matter of a criminal nature up for consideration before either court or district attorney when requested so to do; shall testify as an expert for either such court or the state in all matters where such examinations or tests have been made, and perform such other duties of a pathological or medicolegal nature as may be required; and without fees or compensation other than the salary provided.

(2) When there is no sheriff or undersheriff in any county organized for judicial purposes, exercise all the powers and duties of sheriff of his county until a sheriff is elected or appointed and qualified; and when the sheriff for any cause is committed to the jail of his county, be keeper thereof during the time the sheriff remains a prisoner therein.

(3) Serve and execute process of every kind and perform all other duties of the sheriff when the sheriff is a party to the action and whenever the clerk of the circuit court addresses the original or other process in any action to him as provided in s. 59.395 (6), execute the same in like manner as the sheriff might do in other cases; exercise the same powers and proceed in the same manner as prescribed for sheriffs in the performance of similar duties; and in all cases the coroner and his sureties shall be liable in the same manner and to the same extent on his official bonds as sheriffs and their sureties are liable in similar cases.

(4) Perform all other duties required by law.

History: 1957 c. 31.

59.35 Special counties; deputies and assistants; powers. (1) The coroner of every county having a population of 500,000 or more, the medical examiner and his assistants, shall be compensated for the performance of all their official duties by salaries fixed by the county board of supervisors, which shall be in lieu of any other compensation.

(2) In any such county the medical examiner provided by section 59.34 (1) shall exercise all of the powers and perform all of the duties of the coroner in the event of his absence or disability, or in the event of a vacancy in said office, until such vacancy shall have been filled; except that such medical examiner shall not be subject to the direction, supervision or control of said coroner in the exercise of any of the powers or the performance of any of the duties defined by section 59.34 (1).

(3) The county board of any such county at its annual meeting next preceding the general election of county officers, shall fix the salary of the coroner to be elected at such election.

(4) In any such county the medical examiner and his assistants shall have all the powers of a constable or sheriff to serve subpoenas requiring the attendance of witnesses at any inquest to be held by such medical examiner, or other orders or writs.

59.36 Service when no coroner. Whenever, for any cause, there is a vacancy in the office of coroner, or when he is absent from his county, sick or unable to perform the duties of his office, or for any reason, except the nonpayment of legal fees, refuses to serve and execute legal process against the sheriff in any action commenced in any court of record within the county for which such coroner was or should have been elected, any judge of a court of record or court commissioner of such county may, on proof of such

vacancy, sickness, absence or refusal to serve and execute such process, by an order to be indorsed on such process and addressed to him, empower any respectable citizen and taxpayer of the county in which such process is to be served and executed to serve and execute the same; and such order shall be sufficient authority to the person therein named to serve and execute such process with like powers, liabilities and fees as the coroner.

59.365 Deputy coroner. (1) Within ten days after entering upon the duties of his office, the coroner may appoint some proper person, resident of his county, deputy coroner. Such deputy shall reside in the county for which he is appointed. The coroner may fill vacancies in the office of any such appointee, and may appoint a person to take the place of such deputy who becomes incapable of executing the duties of his office. A person appointed deputy coroner for a regular term or to fill a vacancy or otherwise shall hold office during the pleasure of the coroner. Every appointment of a deputy coroner and every revocation of such appointment shall be in writing and filed and recorded in the office of the clerk of the circuit court. In case of a vacancy in the office of coroner, the deputy coroner shall in all things and with like liabilities and penalties execute the duties of such office until the vacancy is filled as provided by law.

(2) The coroner shall be responsible for every default or misconduct in office of his deputy coroner during the term of his office, and after the death, resignation or removal from office of such coroner as well as before; and an action for any such default or misconduct may be prosecuted against such coroner and his sureties on his official bond or against the executors and administrators of such coroner.

(3) The coroner may require his deputy coroner, before entering upon the duties of his office, to execute and deliver to him a bond in such sum and with such sureties as he may require, conditioned for the faithful performance of his official duties; and every default or misconduct of such deputy coroner for which the coroner shall be liable shall be a breach of such bond.

(4) Whenever a medical examiner has been appointed in counties having a population of 500,000 or more as provided in section 59.34 (1), the provisions of this section shall not apply in such counties, nor shall the coroner of such counties be responsible for any default or misconduct in office of such medical examiner.

59.37 Coroner; fees. For all services rendered by coroners they shall be allowed the same fees as are allowed to sheriffs for similar services. For confining a sheriff in any house on civil process, fifty cents for each day, to be paid by such sheriff before he shall be entitled to be discharged from such confinement, unless otherwise ordered by the court.

59.375 Coroner as funeral director, limitation. No coroner or deputy coroner who is a licensed funeral director or embalmer, an owner or operator of a funeral establishment as defined in s. 156.01, or an employe of a funeral establishment, and no funeral establishment with which such coroner or deputy coroner is associated, shall perform any of the services of a funeral director or embalmer upon the body of any person whose death is required by law to be investigated by such coroner or his deputy. Any person who violates this section shall be fined not more than \$50.

History: 1955 c. 225.

59.38 Clerk of court; deputies; chief deputy; calendar deputy clerk in certain counties. Every clerk of the circuit court shall appoint one or more deputies, men or women, which appointments shall be approved by the judge of the circuit court, but be revocable by the clerk at pleasure; such appointments and revocations shall be in writing and filed in his office; such deputies shall aid the clerk in the discharge of his duties, and in his absence from his office or from the court they may perform all his duties; or in case of a vacancy by resignation, death, removal or other cause the deputy appointed shall perform all such duties until such vacancy is filled. In counties having a population of 250,000 or more the clerk shall appoint one chief deputy clerk, a calendar deputy clerk and one or more deputy clerks, men or women, as the county board shall authorize. Such deputy clerks shall aid the clerk in the discharge of his duties under the supervision of the clerk or the chief deputy clerk. The appointment of such chief deputy clerk and such calendar deputy clerk shall be in writing and filed in the clerk's office; shall be approved by the judges of said circuit, but be revocable at the pleasure of the clerk. Such chief deputy clerk shall have all powers and duties of deputy clerks, shall have supervision over all deputy clerks, and in the absence of the clerk from his office or from the court he may perform all said clerk's duties; or in case of a vacancy by resignation, death, removal or other cause the chief deputy clerk shall perform all such duties until such vacancy is filled. Such calendar deputy clerk shall have the duties prescribed by the judges of the circuit court in the county.

History: 1953 c. 155.

59.39 Clerk of court; to keep court papers, books and records. The clerk of circuit court shall:

(1) File and keep all papers properly deposited with him in every action or proceeding unless required to transmit such papers. If such papers have been filed for 30 years a microfilm record may be retained in lieu of the original papers and such papers may be destroyed upon compliance with ss. 59.715 and 59.717.

(2) Keep a book called a court record and write therein names of parties in every civil action or proceeding in such court, the names of attorneys representing such parties, a brief statement of the nature of the action or proceeding, the date of filing every paper therein and of each proceeding taken, the file wherein such papers can be found, the time when put on the calendar for trial, and when and how disposed of; the volume and page of the minute book where minutes in every case can be found and the place in the judgment book or microfilm file where any judgment, order or report has been recorded, so as to make the court record a history in brief of each action or proceeding from beginning to final disposition; and a complete index of all proceedings therein.

(3) Keep a book called a criminal record and write therein a history in every criminal action like the court record in civil actions and proceedings with references to the file where papers in the action can be found, to the minute book and to the information book where indictments and informations can be found.

(4) Keep a book called a minute book and write therein a brief statement of all proceedings in open court showing motions and orders during trial, names of witnesses, jurors drawn, the officer sworn to take them in charge, jury verdicts and openings and adjournments of court.

(5) Keep a book called a judgment book or a microfilm file and record therein all judgments, orders or reports in civil actions or proceedings which purport to finally dispose of an action or proceeding or which the judge orders to be recorded.

(6) Keep a book called an information book or a microfilm file and record therein all indictments and informations.

(7) Keep a book or books called judgment dockets and docket therein all money judgments of the court, transcripts from judgment dockets of other Wisconsin courts and of federal courts, warrants for unemployment compensation and warrants for delinquent Wisconsin income taxes.

(8) Keep a book or books called lien dockets and docket therein all claims for liens filed by contractors, subcontractors, materialmen and laborers and all claims filed for log, mining and maintenance liens.

(9) Keep an index or indices to: the court record, the criminal record, the judgment docket or dockets and the lien docket or dockets.

(10) File, docket, record and keep such other papers, books and records as are required by law.

History: 1953 c. 327; 1955 c. 204, 553.

Under ch. 237, Laws 1945, relating to additional jurisdiction of the county court of Door county, the clerk of the circuit court who is ex officio clerk of the circuit court branch of the county court may be assigned the clerical duties incident to the administration of the justice court branch of said court. 43 Atty. Gen. 281.

59.395 Clerk of court; duties. The clerk of circuit court shall:

(1) Keep court papers, books and records as specified in s. 59.39.

(2) Keep a book or books called registers of officials and write or copy therein in tabular form the names of court commissioners, deputy sheriffs, notaries public and justices of the peace. In addition to the names of the above officers the clerk shall list the dates of their qualification and the commencement and termination, if any, of their terms. Such names shall be in alphabetical order or there shall be an index in alphabetical order to such names.

(3) Keep a book or books called certificate lists and write or copy therein a list of all certificates issued by him to witnesses, interpreters, jurors, sheriffs, deputy sheriffs and deputy clerks, stating the persons to whom issued, the number, date and amount of each certificate. A certified copy of such list for the previous year shall be furnished to the county board at each annual session and shall be entered in full on the board records.

(4) Send to the secretary of state on or before June 1 of each year a certified list of all justices of the peace who filed their official bonds during the preceding year.

(5) Pay quarterly to the county treasurer for the use of the state the state tax required to be paid on each civil action, cognovit judgment and special proceeding filed during the preceding quarter. Such payments shall be made by the fifteenth day of January, April, July and October. The clerk shall take duplicate receipts from the treasurer and shall forward one receipt to the director of budget and accounts within 10 days with a certificate of the number of actions, cognovit judgments and special proceedings filed during the preceding quarter.

(6) Address process to the coroner if a party, his agent or attorney files an affidavit that he believes the sheriff will not properly perform his duty in such action.

(7) Perform such other duties as required by law.

History: 1955 c. 553.

Cross References:

Furnish information to the bureau of vital statistics, ch. 69.
 Collect and disburse alimony and support payments, ch. 247.
 Furnish information to the judicial council, 251.181.
 Authenticate, certify and transmit documents, 251.251, 252.11, 252.12, 261.10, 274.13, 327.08 and 327.09.
 Receive bail as provided by law, ch. 264 and ch. 954.
 Perform duties with respect to jurors, ch. 255.
 Care for county law library, 256.40.
 Prepare calendars, assist in drawing jurors and perform other duties in connection with trials and judgments, ch. 270.
 Tax costs and collect fees, ch. 271, s. 59.42.
 Issue executions and writs of assistance, ch. 272.
 Issue and sign subpoenas, s. 325.01.

59.40 Not to act as attorney. No person acting as clerk of any circuit or county court in this state shall be allowed to practice as attorney or solicitor in the court in which he is acting as clerk; nor shall he be eligible to the office of justice of the peace during the time he holds the office of such clerk.

59.41 Certify records as clerk of county court. The clerk of the circuit court in each county shall be the clerk of the county court for the purpose of certifying to copies and transcripts of all the records and files of said county court to be used in any other state, agreeably to section 905 of the revised statutes of the United States and in making such certificate he shall use the seal of said county court and sign himself "Clerk of the County Court," and shall also have authority in such capacity to authenticate acknowledgments of all instruments taken by the judge of said county, and for such services the clerk shall receive the fee allowed by law for similar service.

59.42 Clerk of court; fees. Notwithstanding other provisions in the statutes or session laws, the clerk of circuit court and the clerk of any other court of record (in all actions and proceedings civil or criminal brought under jurisdiction concurrent with the circuit court, except those handled under essentially justice court or small claims procedure) shall collect the following fees:

(1) **CRIMINAL ACTIONS.** In criminal actions, upon disposition of such actions, for all necessary filing, entering, docketing and recording:

(a) If there is a dismissal or plea of guilty or nolo contendere, \$5;

(b) If there is a plea of not guilty and a trial before the court without a jury, \$10;

(c) If there is a plea of not guilty and a jury trial, \$15;

(d) If criminal fees are lawfully retained by the clerk as part of his compensation, the foregoing fees, if not assessed against the defendant and paid by him, shall be paid by the county.

(2) **CIVIL ACTIONS.** In civil actions and cognovit judgments at the times indicated below, for all necessary filing, entering, docketing and recording, drawing of jurors, swearing of witnesses, jurors and officers to take charge of jurors, placing cases on the calendar and taxing costs (but no fee other than suit tax shall be paid by counties, municipalities or school districts initially or upon change of venue, nor shall fees other than suit tax be paid in judicial reviews of industrial commission orders or awards; the state shall pay fees but no suit tax):

Kind of action or proceeding	At time of filing initial document required for commencement of action or proceeding (in addition to state tax)
(a) Cognovit	\$6
(b) All special proceedings independent of an action taken at the instance and for the benefit of one party without notice to or contest by any person adversely interested	\$4
(c) All other actions and special proceedings	\$8

(3) **CHANGE OF VENUE; APPEAL.** On a change of venue at commencement in the court to which the action is transferred (no suit tax), \$5; on filing an appeal from an inferior, municipal or justice court, \$5 plus suit tax.

(4) **FOREIGN JUDGMENT.** On filing of a verified complaint for registration of any foreign judgment \$5 in addition to suit tax.

(6) **WRITS; EXECUTIONS.** For issuing any writ not commencing an action or special proceeding, or issuing an execution, \$1.

(7) CERTIFICATES; COMMISSIONS; SUBPOENAS. Except as provided in sub. (13), for issuing certificates (including seals), or commissions to take depositions, 50 cents.

(8) JUDGMENTS; LIENS; WARRANTS. For issuing, filing and docketing in connection with all transcripts, certified copies and satisfactions of judgments, claims for contractors, subcontractors, materialmen, maintenance and other liens, delinquent state income tax warrants and unemployment compensation warrants the following amounts:

- (a) Issuing transcripts from judgment docket, \$1;
- (b) Filing and docketing transcripts from judgment docket of any court or delinquent income tax or unemployment compensation warrants, \$2;
- (c) Filing and docketing assignments or satisfactions of judgments or warrants, or assignment or satisfaction of any lien, 50 cents;
- (d) Filing and docketing liens, \$1;
- (e) Filing and docketing certified copies of judgments or judgment rolls for enforcing real estate judgments rendered in other courts of the state, \$3;
- (f) Filing and docketing judgment on award of industrial commission, \$2.

(9) TRANSMITTING DOCUMENTS. For certifying and transmitting documents upon appeals, writs of error, changes of venue, for special terms in other counties, for enforcing real estate judgments in other counties, or for enforcing judgments in other states (in addition to postage), \$2.

(10) DISBURSING MONEY. For receiving money deposited by a debtor for payment of a judgment or receiving and disbursing a trust fund, such sum as the presiding judge may direct.

(11) BONDS AND UNDERTAKINGS. For approving any bond or undertaking, 25 cents.

(12) NOTARY CERTIFICATES. For filing certificates of notaries public, 50 cents.

(13) CERTIFIED COPIES. For certified copies of any document for which a specific fee is not established in this section, per page 50 cents if prepared by the clerk, 25 cents if only compared by the clerk, but in no case less than \$1. If a photostatic copy is furnished by the applicant the fee for certifying the same shall be \$1 regardless of the number of pages. There is no additional charge for the certificate.

History: 1953 c. 511, 662; 1957 c. 429.

Gross Reference: For other specific provisions on clerk of court fees, see 270.93, 272.62, 289.19, 289.40 (2), 301.30 and 306.12. The list may be incomplete.

Under sec. 10 of ch. 662, Laws 1953, the clerk of the circuit court upon entry of judgment or other disposition of cases commenced prior to the effective date of ch. 511, Laws 1953, should charge the total clerk's fee provided by ch. 662 less a credit for the \$2 paid under 59.42 (40), Stats. 1951. 43 Atty. Gen. 15.

See note to 85.08, citing 43 Atty. Gen. 38. Filing fees provided by 59.42 have no application to petitions for amortization of debts of wage earners for which a filing fee of \$10 is provided by 128.21 (1). 43 Atty. Gen. 212.

When a case is transferred from a justice court under 301.245, the clerk of the court to which it is transferred must collect a clerk's fee under 59.42 (2) (c) of \$8 and

a suit tax under 262.04 of \$5, before filing the papers. 43 Atty. Gen. 319.

The legislature can provide clerk's fees in inferior courts which vary from those provided for courts of record. 44 Atty. Gen. 37.

Under 59.42 (2), counties are subject to suit tax imposed by 271.21, in proceedings brought under ch. 52, to enforce the liability of relatives to support dependent persons. 44 Atty. Gen. 259.

While costs in illegitimacy proceedings are to be taxed under 959.055, as in criminal cases, the clerk's fee for filing an illegitimacy settlement agreement made under 52.28 is that provided by 59.42 (2) (a), relating to civil actions. 45 Atty. Gen. 123.

59.43 Payment of filing fee. The clerk of the circuit court and the clerk of any other court of record may refuse to accept any paper for filing or recording until the clerk's fee provided in s. 59.42 or other applicable statute is paid.

History: 1957 c. 206.

59.44 District attorney pro tempore; assistants in criminal and civil cases. (1)

When there is no district attorney for the county, or he is absent from the court, or has acted as counsel or attorney for a party accused in relation to the matter of which the accused stands charged and for which he is to be tried, or is near of kin to the party to be tried on a criminal charge, or is unable to attend to his duties, or is serving in the armed forces of the United States, the circuit court, by an order entered in the minutes stating the cause therefor, may appoint some suitable person to perform, for the time being, or for the trial of such accused person, the duties of such district attorney, and the person so appointed shall have all the powers of the district attorney while so acting.

(2) The court may, in the same manner, and in its discretion, appoint counsel to assist the district attorney, in the prosecution of persons charged with crime punishable by imprisonment in the state prison, and in case of prosecutions before a grand jury, and upon indictments found by grand juries, and in bastardy cases. Such counsel shall be paid such sums as the court, by order entered in the minutes, certifies to be a reasonable

compensation therefor, which sum shall in no case exceed twenty-five dollars per day for each day actually occupied in such prosecution, and not to exceed fifteen dollars per day for not more than five days actually and necessarily occupied in preparing for trial in any one case, the same to be paid in the manner provided by law for the payment of counsel for indigent criminals.

(3) When there is an unusual amount of civil litigation to which the county is a party or in which it is interested, the circuit court may, on the application of the county board, by order filed with the clerk of said county, appoint an attorney or attorneys to assist the district attorney, and fix his or their compensation.

59.45 Assistants in other than special counties. The district attorney, except in counties containing a city of the first class, may, when authorized by the county board by a majority of all of its members, appoint one or more assistant district attorneys and a stenographer and a clerk to aid him in the performance of his duties. Such assistant district attorneys shall be attorneys admitted to practice law in this state. The assistant district attorneys so appointed shall have authority to perform all the duties of the district attorney. No assistant district attorney so appointed shall be required to give an official bond.

59.455 Corporation counsel in special counties. In counties having a population of 500,000 or more there is created the office of corporation counsel, and such assistant corporation counsels, assistants, stenographers and clerks at such salaries as are authorized by the county board of supervisors. The corporation counsel and such assistant corporation counsels shall be attorneys at law licensed to practice in Wisconsin. All of such offices and positions shall be included in the classified civil service of said county. The corporation counsel shall be chosen by the county board from names certified under civil service rules. Assistant corporation counsels, assistants and clerical and stenographic help in said office shall be appointed, under civil service, by the corporation counsel. Assistant corporation counsels shall have, according to their rank and seniority, the powers and duties of the corporation counsel in his absence or disability. The corporation counsel and assistant corporation counsel shall take and file the constitutional oath of office. All persons now occupying in any county the position of corporation counsel and assistant corporation counsels, as well as assistants, stenographers and clerks in said office, by virtue of regular appointment under civil service, who have been in the employ of such county for one year or more prior to May 17, 1957 or who have been in the employ of the county less than one year but by virtue of civil service examination received appointment, shall retain such offices and positions and be deemed regularly appointed thereto under this section and subject to suspension, demotion or discharge under the civil service laws, ordinances and rules and regulations applicable in the county.

History: 1957 c. 92.

59.456 Corporation counsel in special counties; duties. The duties of the corporation counsel and assistant corporation counsels shall be, without restriction because of enumeration, to:

(1) Prosecute and defend all civil actions, proceedings, applications and motions in any court, commission, board, tribunal or body in any jurisdiction of this or other states or of the nation in which his county or any board, commission, committee or officer thereof is interested or a party by virtue of such office; and shall in like manner represent or assist in representing the state, or any commission, board, agency or tribunal of the state, in such civil actions or proceedings when requested to do so by the attorney general or when the district attorney of said county is required by any statute to do so.

(2) Give advice to the county board, county park commission, county board of public welfare, expressway commission and other boards, commissions, committees, agencies or officers of his county, when requested, in all civil matters in which the county or state is interested or relating to the discharge of the official duties of such board or officers; examine all claims against the county for officers', interpreters', witnesses' and jurors' fees in civil actions and examinations, when presented to the county board, and report in writing thereto as to the liability of the county for any and all claims of whatever nature filed against it; and act as legislative counsel for the county board when so authorized by it.

(3) Serve as legal advisor to the county highway commissioner and county highway committee and draw all papers required in the performance of their duties and attend to all civil legal matters in and out of court where such commissioner or committee is a party or wherein the acquisition of lands for state or county highway purposes is concerned.

(4) When requested, represent the assessor of incomes, before meetings of the county boards of review and on appeals from decisions of such board.

(5) Perform all duties in connection with civil matters relating to his county or any agency, board, commission or officer thereof or to the state within said county now or

hereafter imposed by any statute upon the district attorney of such county and for such purposes the term "district attorney" wherever it appears in the statutes relating to duties of a civil nature shall, with regard to counties containing a population of 500,000 or more, mean the corporation counsel. Opinions of the corporation counsel shall have the same force and effect as opinions of the district attorney except that in matters relating to elections the district attorney shall have the right of review. After May 17, 1957 the district attorney's powers and duties as to civil matters shall cease to the extent that they are herein or hereafter conferred upon the corporation counsel and the district attorney shall be relieved of the responsibility of performing such duties. The corporation counsel may request the attorney general to consult and advise with him in the same manner as district attorneys under s. 14.53 (3).

History: 1957 c. 92.

Assistant district attorney, appointed pursuant to county board resolution for the sole purpose of handling highway right of way acquisitions, may not undertake defense of criminal prosecutions nor represent private clients in matters adverse to the interests of the county. 39 Atty. Gen. 202.

59.46 Assistants in special counties. (1) The district attorney of any county having a population of 200,000 or more may appoint 2 deputy district attorneys and such assistants as may be authorized by the county board. The deputies according to rank shall have authority to perform all the duties of the district attorney, under his direction, and in the absence or disability of the district attorney, such deputies, according to rank, may do and perform all the acts required by law to be performed by the district attorney. Such deputies shall each have practiced law in this state at least 2 years prior to such appointment, and shall hold office during the pleasure of the district attorney. Such assistants, when appointed, shall have full authority to perform all the duties of the district attorney, under his direction. The district attorney of such county may when he deems necessary appoint such temporary counsel as may be authorized by the county board.

(2) The district attorney in any county containing a city of the first, second or third class may also appoint one or more clerks and one or more stenographers, the number and salary of whom is to be fixed by the board at any meeting thereof.

(3) The district attorney of any county containing a city of the first class may appoint such investigators as may be authorized by the county board, and the county board may abolish such positions at their pleasure. Such investigators when so appointed shall have general police powers within said county.

History: 1957 c. 92.

59.47 District attorney; duties. The district attorney shall:

(1) Prosecute or defend all actions, applications or motions, civil or criminal, in the courts of his county in which the state or county is interested or a party; and when the place of trial is changed in any such action or proceeding to another county, prosecute or defend the same in such other county.

(2) Prosecute all criminal actions, except for battery in violation of s. 940.20 or for disorderly conduct in violation of s. 947.01, before any magistrate in his county, other than those exercising the police jurisdiction of incorporated cities and villages in cases arising under the charter or ordinances thereof, when requested by such magistrate; and upon like request, conduct all criminal examinations which may be had before such magistrate, and prosecute or defend all civil actions before such magistrates in which the county is interested or a party.

(3) Give advice to the county board and other officers of his county, when requested, in all matters in which the county or state is interested or relating to the discharge of the official duties of such board or officers; examine all claims against the county for officers', interpreters', witnesses' and jurors' fees in criminal actions and examinations when presented to the county board, and report in writing thereto as to the liability of the county to pay the same.

(4) Attend, when requested by any grand jury, for the purpose of examining witnesses in their presence; give them advice in any legal matter; draw bills of indictment and informations; issue subpoenas and other processes to enforce the attendance of witnesses.

(5) File, on or before the eighth day of November in each year, in the office of the county clerk, an account verified by his affidavit of all money received by him during the preceding year by virtue of his office for fines, recognizances, forfeitures, penalties or costs, specifying the name of each person from whom he may have received the same; the amount received from each and the cause for which the same was paid; and at the same time pay all such money to the county treasurer; and for every neglect or refusal to render

such account and pay the money so received by him to the county treasurer he shall forfeit not less than fifty nor more than two hundred dollars.

(6) Attend to the settlement of bills of exceptions in cases which he has tried during his term of office after his term of office has expired; for which services so rendered he shall receive compensation from the county where elected, not to exceed twenty-five dollars per day for time actually expended.

(7) Upon the request and under the supervision and direction of the attorney-general, brief and argue all criminal cases brought by appeal or writ of error or certified from his county to the supreme court.

(8) Serve as legal adviser to the county highway commissioner and draw all papers required in the performance of the commissioner's duties, and attend to all legal matters in and out of court where such commissioner shall be a party.

(9) Enforce the provisions of sections 100.22 and 100.23, by appropriate actions in courts of competent jurisdiction.

(10) To enforce the provisions of all general orders of the industrial commission relating to the sale, transportation and storage of explosives.

(11) Perform any duties in connection with juvenile court proceedings as the juvenile court judge may request.

History: 1955 c. 575, 696.

See note to 13.69, citing State ex rel. Arthur v. Superior Court, 257 W 430, 43 NW (2d) 484.

Where assignment of a cause of action can properly be demanded under 49.06, the prosecution of an action under such assignment would fall within the duties of the

district attorney. 42 Atty. Gen. 178.

See note to 49.51, citing 42 Atty. Gen. 231.

Except as provided in 59.46 (3) and 59.88,

district attorney has no authority to employ

investigator to investigate unsolved crime.

44 Atty. Gen. 159.

59.48 Not to be city attorney. It is unlawful for any district attorney of any county having a population of 40,000 or more to hold the office of or act as city attorney of any city in the county of which he is district attorney. If any district attorney violates this section, his office of district attorney shall be deemed vacant.

History: 1953 c. 441.

The offices of city attorney and district attorney are not incompatible as a matter of law in counties having a population of less than 40,000, and may be held by the same attorney. However, situations may arise in

which such attorney may be required to disqualify himself from representing the city or the state (or county), or both, under Canon 6 of the A. B. A. Canons of Professional Ethics. 42 Atty. Gen. 14.

59.485 May be town or village attorney. A district attorney who is not compensated by the county on a full-time basis may serve as town or village attorney, or as city attorney in any county having a population of less than 40,000. In cases where conflicts arise as the result of his being employed by a governmental unit other than the county, the district attorney shall withdraw from such other employment and shall represent only the interest of the county.

History: 1957 c. 170.

59.49 Restrictions on district attorney. No district attorney shall receive any fee or reward from or on behalf of any prosecutor or other individual for services in any prosecution or business to which it shall be his official duty to attend; nor be concerned as attorney or counsel for either party, other than for the state or county, in any civil action depending upon the same state of facts upon which any criminal prosecution commenced but undetermined shall depend; nor shall any district attorney while in office be eligible to or hold any judicial office whatever, nor shall any person who shall have acted as district attorney, assistant district attorney, or special district attorney at the time of the arrest, examination, or indictment of any person charged with crime, and who was at such time such official of the county where the crime charged was committed, thereafter appear for, or defend such person against the crime charged in such complaint, information or indictment.

Cross Reference: District attorney may not be employed by common carrier or public utility; see 196.675.

59.50 Register of deeds; deputies. Every register of deeds shall appoint one or more deputies, who shall hold their office during his pleasure. Such appointment shall be in writing and filed and recorded in his office. Such deputy or deputies shall aid the register in the performance of his duties under his direction, and in case of vacancy or the register's absence or inability to perform the duties of his office such deputy or deputies shall perform the duties of register until such vacancy is filled or during the continuance of such absence or inability.

See note to 59.074, citing 41 Atty. Gen. 105.

Register of deeds cannot appoint funeral director as special deputy to issue burial permits. 46 Atty. Gen. 80.

59.51 Register of deeds; duties. The register of deeds shall:

(1) Record or cause to be recorded in suitable books to be kept in his office, correctly and legibly all deeds, mortgages, maps, instruments and writings authorized by law to be recorded in his office and left with him for that purpose, provided such documents have plainly printed or typewritten thereon the names of the grantors, grantees, witnesses and notary.

(2) State upon the record of any instrument the number and denomination of all United States internal revenue stamps, if any, affixed thereto.

(3) Keep the several books and indexes hereinafter mentioned in the manner required.

(4) Indorse upon each instrument or writing received by him for record his certificate of the time when it was received, specifying the day, hour and minute of reception and the volume and page where the same is recorded, which shall be evidence of such facts.

(5) Indorse plainly upon the top of the back, when folded, of each instrument received for record, or file as soon as received a number consecutive to the number affixed to the instrument next previously received according to the numbering now established, and to enter the same in the indexes.

(6) Safely keep and return to the party entitled thereto, on demand within a reasonable time, every instrument left with him for record not required by law to be kept in his office.

(7) Register, file and index as directed by law, all marriages contracted and deaths, births and fetal deaths occurring in his county.

(8) Make and deliver to any person, on demand and payment of the legal fees therefor, a copy duly certified, with his official seal affixed, of any record, paper, file, map or plat in his office.

(9) File and safely keep in his office all records, documents and papers of any post of the Grand Army of the Republic and of any historical society in his county.

(10) Keep a book and record therein all certificates of organization of corporations, and all amendments thereof filed or required by law to be recorded in his office, and an alphabetical index of the names of such corporations, with a reference to the number and page of the volume where such writings are recorded respectively.

(11) File, indorse, enter and index all bills of sale, chattel mortgages, conditional sale contracts, assignments, releases and renewals, or copies thereof, affidavits relating thereto, and foreclosure affidavits, as provided by law. These documents shall be executed on white or light colored sheets of paper, of not less than 24 substance, or if bond paper, not less than 13 substance, either of which papers shall contain at least 50 per cent rag content, 8½ inches wide and 7, 10½ or 14 inches long. Provided, whenever after July 1, 1943, there shall be offered for filing any instrument which varies from the approved substance of paper, or varies more than one-eighth of an inch from the approved size, then in addition to the regular filing fee an additional filing fee shall be made by such register of deeds, as prescribed by section 59.57. No assignment, release or other instrument shall be offered for filing which is executed or indorsed on any other document, but each shall be a separate and distinct instrument, excepting those assignments printed or written on and immediately following the original document, offered for filing at the same time, shall be considered as one instrument. No chattel mortgage or conditional sale contract shall be filed without the post-office addresses of the parties. All assignments, releases, statements, renewals or extensions or foreclosure affidavits of any chattel mortgage or conditional sale contract shall contain the date of such chattel mortgage or conditional sale contract, its filing date and document number. The register or any of his assistants shall not stamp any original document numbers or filing dates on any instrument except those left with him for filing, or certified copies. All these instruments shall be legibly written, and shall have the names of the grantors and grantees therein plainly printed or typed thereon.

(12) Keep these chattel documents in consecutive numerical arrangement, for the inspection of all persons, indorsing on each instrument the document number, the date and time of reception, entering the name of every grantor or mortgagor alphabetically in indices, of which each page shall be divided into 9 columns, with heads to the respective columns as follows: Number of instrument, date and time of filing, name of grantor, name of grantee, name of instrument, date of instrument, amount, brief description of property, and the last column set aside for the entry of assignments, foreclosure affidavits, extensions and releases thereof.

(13) Enter on the same line in the last column where the chattel mortgage or conditional sale contract appears in the index, the document number and date of filing of all assignments, releases, renewals or extensions thereof and foreclosure affidavits, pertaining thereto.

(14) The county board of any county may, upon request of the register of deeds, au-

thorize the destruction of all obsolete documents pertaining to chattels antedating by 5 years, including final books of entry.

(15) Perform all other duties required of him by law.

History: 1955 c. 10, 253.

Register of deeds is not required to make search of records or furnish abstracts relating to chattel mortgages and may not do such work on own time as a private business using county offices and facilities therefor without authorization by county board. 38 Atty. Gen. 556.

of deeds on the certificate indorsing the time, volume and page of recording may be made by rubber stamp. 44 Atty. Gen. 170.

(14) is permissive rather than mandatory. It should be used by the register of deeds with caution and upon legal advice of the district attorney. 44 Atty. Gen. 227.

See note to 75.521, citing 42 Atty. Gen. 21.

See note to 59.715, citing 46 Atty. Gen. 8.

Under (4), the signature of the register

59.513 Including name of person drafting instrument. (1) No instrument by which the title to real estate or any interest therein or lien thereon, is conveyed, created, encumbered, assigned or otherwise disposed of, shall be recorded by the register of deeds unless the name of the person who, or governmental agency which, drafted such instrument is printed, typewritten, stamped or written thereon in a legible manner. An instrument complies with this section if it contains a statement in the following form: "This instrument was drafted by (name)"

(2) This section does not apply to an instrument executed before May 9, 1957, nor to:

- (a) A decree, order, judgment or writ of any court.
- (b) A will or death certificate.
- (c) An instrument executed or acknowledged outside of this state.

History: 1957 c. 70.

The word "person" as it appears in 59.513 both refer to a natural person. 46 Atty. Gen. 165.

59.515 Effect of certain omissions in registers' records. The validity and effect of the record of any instrument in the office of register of deeds shall not be lessened or impaired by the fact that the name of any grantor, grantee, witness or notary was not printed or typed on the instrument or by the fact that it does not comply with s. 59.513.

History: 1957 c. 70.

59.52 General index. Each register of deeds shall keep a general index, each page of which shall be divided into nine columns, with heads to the respective columns as follows:

Number of instrument.	Time of reception.	Name of grantor.	Name of grantee.	Description of land.	Name of instrument.	Volume and page where recorded.	To whom delivered.	Fees received.
.....
.....

He shall make correct entries in said index of every instrument or writing received by him for record, under the respective and appropriate heads, entering the names of the grantors in alphabetical order; and he shall immediately upon the receipt of any such instrument or writing for record enter in the appropriate column, and in the order of time in which it was received, the day, hour and minute of reception; and the same shall be considered as recorded at the time so noted. Wherever any register has made in any the land affected by the instrument indexed, the words "see record," "see deed," "see index required by law to be kept in his office, in the index column provided for describing mortgage," or other instrument, as the case may be, such entry shall be a sufficient reference to the record of such instrument if it be in fact recorded at large in the place so referred to.

59.53 Index of records. He shall keep an index of all records or files kept in his office showing the number of the instrument or writing consecutively, the kind of instrument and where the same is recorded or filed, thus:

Number of instrument.	Kind of instrument.	WHERE RECORDED OR FILED.		
		Volume.	Page.	Letters of file.
.....
.....

and shall keep another index showing the number of the instrument and the names of the

grantees in each instrument or writing in alphabetical order, and the names of the grantors, and the volume and page where the same is recorded, and the name of the instrument or writing.

59.54 Record of attachments, lis pendens, etc. He shall keep a separate book or register divided into columns with appropriate headings, in which he shall enter an abstract of every writ of attachment or copy thereof and certificate of real estate attached, of every certificate of sale of real estate, and of every notice of the pendency of any action affecting real estate, which may be filed pursuant to law in his office, specifying the day, hour and minute of his reception thereof, the names of the several parties mentioned therein, designating separately plaintiffs and defendants; the names of the attorneys of the respective parties; the date when the land was sold; the description of all such real estate mentioned, and the amount of indebtedness claimed in any such writ, and the amount for which any such land was sold; and he shall keep for each such book an index, showing in alphabetical order, separately, the names of each party plaintiff and each party defendant, and the page on which such name is found, and shall file and carefully preserve in his office every such paper received. When a notice of the pendency of an action for the foreclosure of a mortgage is filed he shall enter upon the margin of the record of such mortgage a memorandum of the filing of such notice and of the date thereof.

59.55 Tract index system; power to alter. (1) The register shall also keep a tract index in suitable books, so ruled and arranged that opposite to the description of each quarter section, sectional lot, town, city or village lot or other subdivision of land in the county, which a convenient arrangement may require to be noted, there shall be a blank space of at least forty square inches in which he shall enter in ink the letter or numeral indicating each volume, and the class of records of such volume designating mortgages by the letter M, deeds by the letter D, and miscellaneous by the abbreviation Mis., and the register of attachments, sales and notices by the letter R, together with the page of said volume upon which any deed, mortgage or other instrument affecting the title to or mentioning such tract or any part thereof shall heretofore have been or may hereafter be recorded or entered; provided, that no such index shall be kept in any county where none now exists until ordered by the county board to be made; but no such index, when once made in any county, shall ever thereafter be discontinued, unless such county has or shall adopt, keep and maintain a complete abstract of title to the real estate therein as a part of the records of the office of the register of deeds thereof.

(2) In any county which has a city of the first class, the county board of supervisors may, by resolution, adopt a more complete system of tract indices than that above specified, or a system of chain of title indices, provided such system be clearly specified in such resolution; and may thereafter at any time before the completion of such system alter or change such system or add to the same by resolution clearly specifying such alterations, changes or additions. In the event of such adoption, said board of supervisors may contract, with any suitable person, to compile and complete such system of indices, and may make supplemental contracts for the compilation and completion of such alterations, changes and additions, and may levy such taxes as may be required to cover the cost of so doing; said register of deeds shall not be required to compile, install or complete such system of indices or such alterations, changes or additions, but shall after the same be so completed under such contract, or contracts of such board of supervisors, thereafter maintain and keep up the same; and, thereafter shall discontinue all other tract indices theretofore in use or maintained.

(3) In the event of the adoption of any such system of tract indices, or of any such system of chain of title indices, by such county board of supervisors, by such resolution, if such resolution shall provide that any such index shall include an abstract or notation of any proceeding or proceedings pending, or of any instruments or documents filed or entered in the office of the clerk of any court of such county or of the county court or of the register of probate, or of any sales for taxes made by any officer of said county, or of any city in said county, and shall call for a daily report to be made to the register of deeds of said county by any officer in charge of any such office of any such proceedings, instruments or documents or tax sales, each such office so called upon by said resolution to make such daily report, shall, upon the close of business on each day report, in writing, under his hand, to said register of deeds, any and all proceedings, instruments and documents, and tax sales, so called for by such resolution, and said register shall, when required to maintain and keep up such system of indices, note all such proceedings, instruments and documents, and tax sales upon such indices, in accordance with such resolution.

(4) Whenever in the judgment of the county board of any county any existing tract index or indices become unfit for use, because of mistake therein or of imperfection in or insufficiency of plan, or because of becoming worn, overcrowded, or unserviceable or unreliable for any reason the county board may at any meeting thereof, by resolution, order a

new and corrected set of tract indices arranged and compiled according to such plan as it may authorize, and in that behalf may purchase suitable books and receive bids and contract with any competent person to do said work, at a price not exceeding five cents per folio, which shall be paid out of the county treasury on acceptance of said work by the county board. The person contracting to do said work, and his assistants, shall have access to and be entitled to the use of the old tract indices and other records in the register's office and other county records; and when said work is completed and said new tract indices are approved and adopted by the county board, the old tract indices shall be preserved as provided in section 59.71 subsection (2). The resolutions of the county board ordering, approving, and adopting such new tract indices, duly certified by the county clerk, shall be recorded in each volume of such new tract indices; and thereupon the same shall become and be the only lawful tract indices in the register's office.

59.56 Special counties; record of changes in streets, alleys, etc. In counties having a population of two hundred and fifty thousand or more according to the last state or United States census, and when the county board has prepared and compiled in book form an eminent domain record containing an abstract of facts relating to the laying out, widening, extending or vacating any street, alley, water channel, park, highway or other public place by any court, legislature, county board, common council, village board or town board and shall make an order that such records with an index thereto be thereafter maintained and kept up, and provide a suitable book for that purpose, the register of deeds shall thereafter maintain and keep such book in which shall be entered an abstract of all proceedings relating to the laying out, widening, extending or vacating any street, alley, water channel, park, highway or other public place by any court, county board, common council, village board or town board. Such abstract shall substantially contain the facts as to the filing of a notice of lis pendens, the date of filing, the description, the court in which or the body before whom the proceeding is pending, the result of the proceedings, the action taken and the date thereof and briefly all the essential facts of any such proceeding, and such records shall have a practical index, with reference to the number and page of the volume where such abstracts are entered respectively. The abstracts and records to be kept by the register of deeds shall by him be certified to be true and correct and when so certified shall be prima facie evidence of the facts therein recited and shall be received in all courts and places with the same effect as the original proceedings; and the record so prepared and compiled by the county board shall be prima facie evidence of the facts therein recited and shall also be received in all courts and places with the same effect as the original proceedings.

59.57 Register of deeds; fees. Except as otherwise provided by law every register of deeds shall receive the following fees, to wit:

(1) (a) For entering and recording the following forms of standard instruments as approved by the register of deeds association and filed in the approved form in the office of the secretary of state:

FEES FOR RECORDING WISCONSIN LEGAL FORMS

Forms	Nature of Instrument	Fees
1 to 14	Warranty or quitclaim deed	\$1.50
15 to 32	Mortgage	2.00
33 to 36	Land contract	2.50
37 to 39	Assignment of land contract	1.00
40 to 48	Assignment of real estate mortgage	1.00
49 to 51	Partial release of mortgage	1.00
52 to 54	Partial payment mortgage receipt	1.00
55 to 60	Satisfaction of real estate mortgage	1.00

(ab) An extra charge of 50 cents per mortgage shall be made for any mortgage over one in number, assigned, partially released or satisfied by any one of approved forms 40 to 60, both inclusive, or by any instrument in other than such approved form.

(am) An extra charge of 20 cents per folio or fraction thereof shall be made on approved forms for all descriptions in excess of 2 folios, and a charge of 5 cents shall be made for every entry in the tract index in excess of 3.

(b) For entering and recording standard instruments not drawn on an approved form and other instruments for which there is no approved form 20 cents per folio, and 5 cents for every necessary entry in a tract index in excess of 3 entries in counties where a tract index is kept; with a minimum fee for recording standard instruments not drawn on an approved form as specifically set forth in s. 59.57 (1) (a) of \$2 for any deed, \$3 for any mortgage, and \$1.50 for any other instrument.

(c) In the event of conflict between par. (b) and any other statute, the provisions of par. (b) shall, to the extent of such conflict, prevail.

(d) No additional recording fee shall be required as the result of inclusion on an instrument of information concerning the identity of the draftsman under s. 59.513.

(2) For recording any instrument written in any other than the English language, twenty cents for each folio.

(3) For filing and entering any writ of attachment or copy thereof, with the certificates of the officer, or any certificate of sale, or any notice of the pendency of any action containing not more than 20 defendants, \$1, and 50 cents for every additional 20 defendants in any such notice affecting from one to 3 lots, and 5 cents for each additional lot.

(4) For copies of any records or papers, 20 cents for each folio, with a minimum of 50 cents, and 25 cents for his certificate.

(5) Notwithstanding any other provision of law the register of deeds with the approval and consent of the county board may enter into contracts with municipalities, private corporations, associations, and other persons to provide noncertified copies of the complete daily recordings and filings of documents pertaining to real property for a consideration to be determined by the county board which in no event shall be less than cost of labor and material plus a reasonable allowance for plant and depreciation of equipment used.

(6) For filing and entering bills of sale, chattel mortgages, conditional sales contracts, assignments and renewals or copies thereof, foreclosure affidavits, or any other paper relating thereto, 50 cents; and for filing and entering releases thereof, 25 cents for each instrument released. Chattel mortgages or conditional sales contracts, together with a printed or written assignment thereon, offered for filing at the same time, shall be considered as one instrument receiving but one document number. The filing fee for such instruments shall be 50 cents. Whenever after July 1, 1943, there shall be offered for filing any instrument which varies from the approved substance of paper or varies more than one-eighth of an inch from the approved size as prescribed by section 59.51, an additional filing fee of one-half the regular fee shall be made by such register.

(6a) For the filing of any other instrument where no specific fee is provided, an amount of 50 cents.

(7) For a certified copy of the full record of any marriage, birth or death, \$1; and for a short-form certificate, 25 cents, with the exceptions stated in ch. 69.

(8) For examining the proofs of marriage, birth or death, when presented in the form of affidavits, fifty cents.

(9) For making a new tract index upon the order of the county board, such sum as may be fixed by the county board, not exceeding two cents for each entry, to be paid from the county treasury.

(10) For recording plats containing from one to fifty lots, twenty-five dollars, and for each additional lot, ten cents, except cemetery plats, containing from one to two hundred lots or fractional part thereof, twenty-five dollars, and for each additional two hundred lots or fractional part thereof, five dollars.

(11) For ordinary exhibits or sketches, attached to or incorporated in any deed or other instrument not exceeding a page 10 inches by 16 inches, \$5, and those exceeding this size, \$10; except where a photostatic, photographic or similar process is used by the register of deeds, such fee shall be one-half of such amounts.

(11a) For exhibits, drawings or plats and printed matter, attached to any deed or other instrument, not exceeding a page 10 inches by 16 inches, \$10, and for those exceeding this size, \$20; except where a photostatic, photographic or similar process is used by the register of deeds, such fee shall be one-fourth of such amounts.

(11b) For registering any marriage, birth, fetal death or death certificate, when recorded into regular bound volumes, or filed in special filing cases, securely locked, 25 cents to be paid by the county.

(12) All the foregoing fees to be payable in advance by the party procuring such service.

(13) For the recording of a right of way easement, or consent to easement, in favor of a co-operative association organized under chapter 185 for the transmission and distribution of electrical energy and power in order to secure benefits made available under the federal electrification administration, ten cents each, if filed by the co-operative association in the form of a photostatic copy. In counties where the register of deeds is on a salary basis, the county board may vote to waive the filing of such easements in photostatic form, and may vote to waive the recording fee, for such easements in whole or in part.

(14) Fifty cents for the filing of a certificate discharging an attachment or lis pendens.

(15) For the filing of any papers specified in section 69.225, 30 cents per folio.

History: 1951 c. 218, 312; 1953 c. 174; 1955 c. 10, 238; 1957 c. 70, 215, 226, 672.

If the form of mortgage used deviates from the standard form an additional charge of \$1 should be made as provided by 235.16 (3). 40 Atty. Gen. 232.

Provisions of 235.16 (3) relating to additional charge of 50 per cent in recording instruments in office of register of deeds is applicable only where the form used varies

from the standard form approved by the register of deeds association and filed with the secretary of state. No extra charge may properly be made merely because some notation as to prorating taxes, etc., is typed in the instrument following the description or in the blank spaces provided in the form. 40 Atty. Gen. 241.

An instrument which combines the features of a real estate mortgage and a chattel mortgage along with various collateral contractual provisions as to the operation of the business of a telephone company is

subject to the recording fees prescribed by (1) (b), even though such document when recorded has the effect of a chattel mortgage under 180.25. 40 Atty. Gen. 499.

Deviations from the approved forms in wording and blank spaces provided permit a higher recording fee under (1) (b). The degree of variance is immaterial. 42 Atty. Gen. 297.

The fee for recording a certified survey map under 236.34 (2) is \$1.50. 45 Atty. Gen. 47.

See note to 59.513, citing 46 Atty. Gen. 165.

59.575 Certifications and filings for veterans; no charge. (1) The term "veteran" as used in this section means any person, male or female, who performed active service in the armed forces of the United States during any war declared by Act of Congress, and who has been honorably discharged, or released from such active service under honorable conditions, or who is presently serving in the armed forces of the United States.

(2) No fee shall be charged by any register of deeds, clerk of circuit court or any other public officer, either state, county or local, having custody of statistical records, for the making and certifying of copies, or examining proofs of any public record or instrument, required for or in connection with, the filing of any claim or application with the United States Veterans Administration or any other federal agency, or to any state agency, or to the regularly established agency of any state, for benefits under federal or state laws, by a veteran or by any dependent of a veteran, when certified proof is required in connection with any claim or application for benefits, under federal or state laws, to which such veteran, or a dependent of a veteran, either living or dead, may be required to file, except, that in the counties where the register of deeds or clerk of circuit court is under the fee system and not a fixed salary, the usual fee for such service shall be paid by the county to the proper officer. The provisions of this section shall supersede any provision of law in conflict therewith.

59.58 County abstractor; appointment; duties; fees. (1) Whenever any county adopts a tract index system or any recognized chain of title system, the county board thereof may create a department to be known as an abstract department, either in connection with or independent of the office of the register of deeds, as said county board deems advisable and may appoint a competent person for a term of two years, who shall be known as the county abstractor, and shall have charge of and operate said abstract department. The board shall furnish a seal for said abstractor, who shall place said seal on each and every abstract issued by him.

(2) The register of deeds shall be eligible to the office of county abstractor and may hold both offices at the same time.

(3) The county abstractor shall at all times on demand of any person, and on payment of the fee therefor, make and deliver to any such person an abstract of title to any land in such county.

(4) The county board shall fix the salary of said abstractor, provide such clerical assistance as may be necessary and fix their compensation and shall fix the fees to be received for the compiling and furnishing of abstracts and may at any time prescribe regulations for the operation and conduct of said department. All fees received for the compiling and furnishing of abstracts shall be paid into the county treasury.

(5) The county board may by two-thirds vote of all the members of said board discontinue the furnishing of abstracts.

59.59 Surveyor; deputies. The surveyor may appoint and remove deputies at will on filing a certificate thereof with the county clerk.

59.60 Surveyor; duties. The county surveyor shall:

(1) Execute, by himself or his deputy, any survey required of him by order of any court or upon application of any individual or corporation.

(2) Make a record in books kept therefor, of all corners set and the manner of fixing the same and of all corrected bearings and the distances of all courses run, of each survey made by him or his deputies and so arrange or index the same as to be easy of reference and file and preserve in his office the original field notes and calculation thereof; and within ten days after completing any survey, make a true and correct copy of the foregoing record, in record books to be furnished by the county and kept on file in the office of the county clerk.

(3) Furnish a copy of any record, plat or paper in his office to any person on demand and payment of his legal fees therefor.

(4) Administer to every chainman and marker assisting in any survey, before commencing their duties as such, an oath or affirmation faithfully and impartially to dis-

charge the duties of chainman or marker, as the case may be; and the said surveyor and his deputies are empowered to administer the same.

(5) Perform such other duties as may be required by law.

59.61 How bearings expressed in surveys. In all surveys the bearings shall be expressed as nearly as may be according to the true meridian, and the declination of the magnetic meridian from the true meridian shall be given, with the year, month and day of the survey, except in the survey of an east and west and north and south line, when the declination of the needle from the line surveyed with the date thereof shall be sufficient.

59.62 Subdividing sections. Whenever a surveyor is required to subdivide a section or smaller subdivision of land established by the United States survey he shall proceed according to the statutes of the United States and the rules and regulations made by the secretary of the interior in conformity thereto.

History: 1957 c. 567.

59.63 Relocation and perpetuation of section corners and division lines. (1) Whenever a majority of all the resident landowners in any section of land within this state desire to establish, relocate or perpetuate any sectional or other corner thereof, or in the same section a division line thereof, they may make a formal application in writing to the town clerk of the town in which the land is situated. Such clerk shall file such application in his office and shall within a reasonable time give at least ten days' notice in writing to the owner or owners of all adjoining lands, if such owner or owners reside in the county where said land is situated and if not, by publication once each week for three weeks successively in a newspaper published nearest to such land, stating the day and hour when the town board will meet to consider and pass upon such application, and said town board shall, at such meeting, hear all interested parties and shall approve or reject such application; if such application is approved the town clerk shall notify the county surveyor who shall within a reasonable time proceed to make the required survey and location. If a corner is to be perpetuated, he shall deposit in the proper place a stone or other equally durable material of the dimensions and in the manner and with the markings set forth in section 60.37, and shall also enter in his field notes one or more bearing trees if there be such, the species and size, direction and distance thereof, and if there be no trees he shall deposit one or more suitable stones at a sufficient depth as witness to said corner, all of which proceedings shall be accurately entered by said surveyor or his deputy in a suitable book to be kept for that purpose, carefully preserved and which shall together with all applications on file be turned over by such county surveyor to his successor in office upon request and a receipt taken therefor.

(2) All expense and cost of the publication of said notice, if any, and of said survey shall be apportioned by the town clerk among the several pieces or parcels of land in said section upon the basis of the area surveyed and by him included in the next tax roll and shall be collected in the same manner as other taxes are collected.

59.635 Perpetuation of landmarks. (1) No landmark, monument, corner post of the government survey or survey made by the county surveyor or survey of public record shall be destroyed, removed, or covered by any material that will make said landmark, monument, or corner post inaccessible for use, without first having erected as hereinafter provided witness or reference monuments for the purpose of identifying the location of such landmark and making a certified copy of the field notes of the survey setting forth all the particulars of the location of said landmark with relation to the reference or witness monuments so that its location can be determined after its destruction or removal and filing the same in a manner hereinafter provided.

(2) Whenever it becomes necessary to destroy, remove or cover up in such a way that will make it inaccessible for use, any landmark, monument of survey, or corner post within the meaning of this section, the person or persons who intend to commit such act shall serve written notice upon the county surveyor of the county within which said landmark is located, except that such notice shall be served upon the city or village engineer if such landmark is located within the corporate limits of a municipality, to the effect that he, or they, deem it necessary to remove or destroy such landmark, giving a legal description of the same together with the reason for doing so. The county surveyor, city or village engineer upon receipt of said notice, shall within a period of not to exceed 30 working days, either by himself or by his deputy, make a survey of said landmark, and, if he deems it necessary because of the public interests to remove said landmark, he shall erect 2 or more witness monuments or, if within a municipality, may make 2 or more offset marks at places near said landmark and where they will not be disturbed. He shall make a survey and field notes giving a description of the landmark and the witness monuments or offset marks, stating the material and size of the witness monuments and locating the offset marks, the distance and courses in terms of the true

meridian that the witness monuments bear from the landmark and, also, of each witness monument to at least one of the other witness monuments. He may also make notes as to such other objects, natural or artificial, as will enable anyone to locate the position of the landmark. The witness monuments shall be made of durable material of cement, natural stone, iron, or other equally durable material, except wood. If iron pipe monuments are used, they shall be made of 2 inch or more galvanized iron pipe not less than 30 inches in length having an iron or brass cap fastened to the top and marked with a cross cut on the top of the cap where the point of measurement is taken. If witness monuments are made of cement, stone or similar material, they shall be not less than 30 inches in length nor less than 5 inches in diameter along the shortest diagonal marked on the top with a cross where the point of measurement is taken. The county surveyor upon completing the survey shall make a certified copy of the field notes of the survey and record it as provided for in section 59.60. The city or village engineer upon completing the survey shall record the notes in his office, open to the inspection of the public.

(3) In those counties where there are no county surveyors or where the county surveyor, because of illness or other infirmities, does not commence the work within the required period of time, a petition can be made to the county judge of the county within which said landmark is located requesting him to appoint a surveyor to act in the capacity of the county surveyor. The county judge, upon receipt of this petition, may appoint a qualified surveyor to act in the capacity of the county surveyor in doing this work.

(4) The cost of the work of perpetuating the evidence of any landmark under the scope of this section shall be borne by the party or parties deciding to have such work done.

(5) Any person or persons who shall remove or destroy or make inaccessible any landmark, monument of survey, corner post of government survey, survey made by the county surveyor or survey of public record without first complying with this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not to exceed \$250 or by imprisonment in the county jail for a period of not more than one year.

(5m) Any person who destroys, removes or covers any landmark, monument or corner post rendering them inaccessible for use, without first complying with the provisions of subsections (1), (2) and (3) shall be liable in damages to any person for the amount of any additional expense incurred because of such destruction, removal or covering.

(6) It shall be the duty of every forest ranger, forest patrolman, conservation warden, and every other officer of the department of conservation and the district attorney to enforce the provisions of this section.

(7) Every qualified engineer employed by the state highway commission or by a county may, incident to his employment as such, assume and perform the duties and act in the capacity of the county surveyor under this section with respect to preservation and perpetuation of landmarks, witness monuments and corner posts upon and along state trunk, county trunk and town highways. Upon completing a survey and perpetuating landmarks and witness monuments as provided in sub. (2), a state engineer shall file his field notes and records in the district office or main office of the highway commission, and a county engineer shall file his field notes and records in the office of the county highway commissioner, open to inspection by the public, and in either case a true and correct copy of the field notes and records shall be filed with the county clerk and county surveyor.

History: 1955 c. 267.

59.64 Certificates and records as evidence. The certificate and also the official record of the county surveyor when produced by the legal custodian thereof or any of his deputies, when duly signed by him or them in his or their official capacity, shall be admitted as evidence in any court within this state, but the same may be explained or rebutted by other evidence and if any surveyor or either of his deputies be interested in any tract of land a survey of which becomes necessary, such survey may be executed by any competent person to be appointed by the court before whom such matter may be pending.

59.65 Surveyor; fees. The surveyor and his deputies may demand and receive the following fees, except it be otherwise agreed upon with the parties employing them:

(1) For each day's service, five dollars; but the county boards of the several counties may at any annual meeting fix the per diem to be paid at a greater sum.

(2) For each mile traveled in going from his office to the place of rendering service and returning, ten cents.

(3) For plat and certificate, except town plats, \$1.

(4) For recording a survey, \$1.

(5) For each chainman and marker necessarily employed, not less than \$2 per day, unless they be furnished by the person for whom the survey is made.

(6) For making a copy, 10 cents a folio and 25 cents for his certificate.

59.66 Penalty for nonfeasance. Any county surveyor who fails or refuses to perform any duty required of him by law shall be punishable by a fine of not less than twenty-five dollars nor more than fifty dollars for each such failure or refusal.

59.67 County property. (1) **HOW HELD.** County property shall be held by the clerk in the name of the county. All property, real or personal, conveyed to the county or its inhabitants or to any person for the use of the county or its inhabitants is county property; such conveyances have the same effect as if made directly to the county by name.

(2) **EFFECT OF TRANSFER.** All deeds, contracts and agreements made on behalf of the county pursuant to the directions of the board under s. 59.07 (1), when signed and acknowledged by the clerk and the county seal attached, are valid and binding on the county to the extent of the terms of the instrument and the right, title and interest which the county has in the property.

History: 1955 c. 651.

59.68 Courthouse and jail; restrictions. (1) Each county shall provide a courthouse, jail, fireproof offices and other necessary buildings at the county seat and keep them in good repair.

(2) No jail shall be constructed until the plans and specifications are approved by the state department of public welfare.

(3) When the courthouse from any cause becomes unsafe, inconvenient or unfit for holding court, the board shall provide some other convenient building at the county seat for that purpose temporarily, and this building shall then be deemed the courthouse for the time being.

(4) The construction of any courthouse shall be in accordance with plans and specifications accompanied by the certificate of the circuit judge in whose circuit the building is to be erected, to the effect that after consultation with competent experts he is advised and believes that the courtrooms provided for will possess proper acoustical properties. The fee for this advice shall be paid by the county upon the judge's certificate.

(5) Repairs which amount substantially to a reconstruction of a courthouse shall be governed by the same restrictions, so far as practicable.

(6) The personnel required to comply with ss. 53.41 and 53.42 shall be provided at the expense of the county.

History: 1955 c. 651; 1957 c. 284.

59.685 Annual inspection. At least once each year the county board of each county, or a committee thereof, shall visit, inspect and examine each jail maintained by such county, as to health, cleanliness and discipline, and the keeper thereof shall lay before it a calendar setting forth the name, age and cause of committal of each prisoner; and if it shall appear to the said board or committee that any of the provisions of law have been violated or neglected it shall forthwith give notice thereof to the district attorney of the county.

History: 1955 c. 330.

59.69 Fairgrounds and fairs. (1) **ACQUISITION; USE.** Land upon which to hold agricultural and industrial fairs and exhibitions may be acquired by county boards and improvements made thereon as follows:

(a) In counties containing less than 50,000 population, by gift, purchase or land contract, but the purchase price of the land shall not exceed \$8,000, and expenditures for the construction of improvements on said land shall not exceed \$8,000, unless the expenditure in either case shall be first approved by the electors of the county as provided in par. (c).

(b) In counties containing more than 50,000 and less than 500,000 population, by gift, purchase or land contract, but the purchase price of the land shall not exceed \$1,000 for each 1,000 of population within the county, and expenditures for the construction of improvements on said land shall not exceed \$1,000 for each 1,000 of population within the county, unless the expenditures in either case shall be first approved by the electors of the county as provided in par. (c).

(c) Sums in excess of those permitted under par. (a) or (b) may be expended, if the question whether such expenditure shall be made is submitted to a vote of the electors of the county and a majority of those voting approve the making of the expenditure. Such election shall be noticed and conducted, and the votes counted, canvassed and returned as provided in s. 67.14.

(d) The board may grant the use of fairgrounds acquired under par. (a) or (b) to agricultural and other societies of similar nature for agricultural and industrial fairs and exhibitions, and such other purposes as tend to promote the public welfare, and may receive donations of money, material or labor from any person or municipality for the improvement or purchase of such land. All improvements made on such lands by societies using them may be removed by the societies at any time within 6 months after their right

to use the land terminates, unless otherwise agreed in writing between the societies and the county at the time of the making of the improvements.

(e) In counties containing more than 500,000 population, by donation, purchase or condemnation, but not exceeding in value \$150,000, and the board may convey or donate such lands so purchased or acquired or the use thereof to the state of Wisconsin or to agricultural and industrial societies for the purpose of holding thereon agricultural and industrial fairs and exhibitions, and may receive donations of money, material or labor from any person or municipality for the improvement or purchase of such land. If at any time lands or the use thereof so conveyed or donated shall be abandoned or no longer used for the purpose for which such lands or the use thereof were so conveyed or donated, the title to such lands shall revert to the county; and the commissioners of public lands, in the case of conveyances or donations to the state, are authorized and directed to execute and deliver such proper deeds of conveyance as well as revert the title to such lands in such county, and when such lands or the use thereof were conveyed or donated to an agricultural and industrial society, such proper deeds or conveyance shall be executed and delivered by such society by its proper officers. However, the state may at any time within one year after title to any such lands reverts, by proper conveyance in such county, remove any structures erected thereon by or for the state subsequent to the acquisition of such lands by the state.

(f) The provisions of sub. (3) shall in no way affect this subsection and s. 27.05 (6).

(2) **AID TO FAIRS.** The board of any county having a population of 30,000 or more may vote an amount not exceeding \$20,000 and in all other counties the board may vote an amount not exceeding \$5,000 in the aggregate for all societies in the county in any year to aid in the purchase of, or to make improvements upon the fairgrounds for any organized agricultural society, or to aid any organized agricultural society or any incorporated poultry association in any of its public exhibitions held or to be held; and any amount so voted shall be paid upon demand by the treasurer to the treasurer of such organized agricultural society, who shall keep an accurate record of the expenditure thereof by such society, and file a verified copy of such record with the clerk within one year after the receipt of such amount.

(3) **REFERENDUM ON COUNTY FAIR.** Whenever a majority of the electors (upon a referendum in any county have approved thereof, the board may provide for and conduct county fairs and exhibitions and for such purpose may:

- (a) Acquire by deed or lease real estate and make improvements thereon.
- (b) Appropriate funds for the adequate equipment and the proper management and control of such fair or exhibition.
- (c) Adopt rules and regulations for the management and control of such property and of such fair or exhibition and for the appointment and salaries of persons necessary therefor.

(d) The powers granted to counties under pars. (b) and (c) may be exercised without another referendum vote by the board of any county which has acquired or acquires real estate for the purpose of conducting a county fair thereon, pursuant to a referendum vote of the electors.

History: 1951 c. 727; 1955 c. 651.

See note to 59.06, citing 40 Atty. Gen. 228. Where a part of land and buildings constituting fairgrounds is owned by county and part by fair association, an agreement between the 2 is legal whereby title to the portion owned by the fair association would be conveyed to the county in consideration of \$1 and a lease of the entire fairgrounds to the fair association which would provide either that the fair association run the fair and all other activities on the fairgrounds or that the association run the fair only and the county board run all other activities thereon. 42 Atty. Gen. 169.

59.70 Isolation hospitals. (1) In counties having a population of thirty thousand or more the county board may erect, establish and maintain isolation hospitals or places for the care and treatment of all persons afflicted with infectious, contagious and communicable diseases, requiring isolation and quarantine under the laws of the state, who are inmates of the charitable, penal, correctional and other institutions of said county or who are required to be cared for and treated at the expense of said county. The board may also provide for the care and treatment therein of all persons so afflicted, who are required to be cared for by the various towns, cities and villages in said counties, under such terms, conditions, rules and regulations, as to apportionment of cost of erection of such buildings and places and the expense of care and treatment of such persons afflicted, as may be agreed upon between the county board and the common council of such cities and the boards of such villages and towns, and each such council or board is hereby vested with power and authority to enter into such contracts and to appropriate such funds as may be necessary to carry into execution all contracts so made.

(2) All isolation hospitals and other places, when so erected or established in counties having a county board of administration, shall be conducted under the control and management of said board in the same manner and to the same extent as other institutions

under the control of such board, and in other counties such isolation hospitals and other places shall be conducted under the control and management of the county board. Any resident of this state not indigent may be received into, treated and cared for in such isolation hospital or other place upon such terms and conditions and at such rate or pay as may be established and fixed by the board having charge of such isolation hospital or other place; provided, however, that indigent and destitute sick persons shall be cared for and have preference of admission to such hospitals and places.

59.71 Records where kept; public examination; rebinding; transcribing. (1) The books, records, papers and accounts of the county board shall be deposited with the respective county clerks and shall be open without any charge to the examination of all persons.

(2) When any book or public record, or the record of any town, village or city plat in any county office shall, from any cause, become unfit for use in whole or in part, the county board shall make an order that such book, record or plat be rebound or transcribed; if said order be to rebind such book, record or plat, such rebinding must be done under the direction of the officer in charge of said book, record or plat, and in his said office; if said order be to transcribe such book, record or plat, it shall be the duty of the officer having charge of the same to provide a suitable book for that purpose; and thereupon such officer shall transcribe the same in the book so provided; and carefully compare the transcript with the originals, and make the same a correct copy thereof, and shall attach to such transcript a certificate over his official signature that he has carefully compared the matter therein contained with, and that the same is a correct and literal copy of the book, record or plat from which the same was transcribed, naming such book. Such copy of book, record or plat, so certified, shall have the same effect in all respects as the original, and such original book, record or plat shall be deposited with the county treasurer and carefully preserved. The order of the county board directing the transcribing of any book, record or plat duly certified by the county clerk shall, with such certificate, be recorded in each copy of book, record or plat transcribed. The fee of the officer for such service shall be fixed by the board, not exceeding ten cents per folio, or if such books or any part thereof consist of printed forms, not to exceed five cents per folio for such books or records, to be paid by the county.

59.715 Destruction of obsolete county records. Whenever necessary to gain needed vault and filing space, county or court officers and the custodian of the records of all courts of record in the state may, subject to ss. 59.716 and 59.717, destroy obsolete records in their custody as follows:

- (1) Notices of tax apportionment received from the secretary of state, after 3 years.
- (2) Copies of notices of tax apportionment sent to local taxing districts by the county clerk, after 3 years.
- (3) Records of bounty claims forwarded to the conservation commission, after one year.
- (4) Lists of town, city and village officers certified to the county clerk by the town, city and village clerks, after the date of the expiration of the term listed.
- (5) Crop reports made to the county clerk by the local assessors, after 3 years.
- (6) Illegal tax certificates charged back to local taxing districts, 3 years after the date of charging back the same.
- (7) Notices of application for the taking of tax deeds and certificates of nonoccupancy, proofs of service and tax certificates filed with the county clerk in connection with the taking of tax deeds, after 15 years.
- (8) Official bonds, after 6 years.
- (9) Claims paid by the county, and papers supporting such claims, after 7 years.
- (10) Contracts, notices of taking bids, and insurance policies to which county is a party, 7 years after the last effective day thereof.
- (11) Election notices, and proofs of publication and correspondence filed in connection with such notices, one year after the date of the election, except in cases where an election is contested in which case such records shall be retained until one year after the contest has been settled.
- (12) Reports of town treasurers to the county clerk on dog licenses sold and records of dog licenses issued, after 3 years.
- (14) County clerk's copies of all receipts issued by the county treasurer, 4 years or until after being competently audited, whichever date is earlier.
- (15) Copies of notices given by the county clerk to the town assessors setting out lands owned by the county and lands sold by the county, after 3 years.
- (16) Tax receipts, after 15 years.
- (17) All other receipts of the county treasurer, after 7 years.
- (18) Canceled checks, after 7 years.

(19) Oaths of office, 7 years.

(20) Court records and exhibits in any civil, criminal action and proceeding, or probate proceedings of any nature under the jurisdiction of the courts of record in the state, provided the same shall first be photographed or microphotographed and preserved as provided in s. 327.30 in all cases except exhibits not of a documentary nature:

(a) After 10 years from the entry of a final order or judgment therein, or

(b) After 10 years from the date when the same shall have been commenced; provided that the same shall have been dormant for 10 years and that the destruction thereof shall be authorized by the order of the judge of the court whose records are to be destroyed, or

(c) Upon a written order of the judge of the court, the records of which are to be destroyed, the records and exhibits of that court which the judge deems obsolete and useless, but not including inventories and final accounts of deceased persons, may be destroyed after 10 years as provided in pars. (a) and (b) without being first reproduced, photographed or microphotographed.

(21) Case records and other record material of all public assistance kept pursuant to ch. 49 and s. 45.20 where no payments have been made for 5 years or more, provided that a face sheet or similar record of each case and a financial record of all payments for each aid account shall be permanently preserved, and provided further, that records of aid to the blind, aid to dependent children, old-age assistance and aid to disabled persons, and all case records of relief when a claim for reimbursement from the state is pending under s. 49.04, shall be destroyed only in accordance with the rules adopted by the state department of public welfare.

History: 1951 c. 464; 1955 c. 132; 1957 c. 230.

Registers of deeds are not authorized to destroy original records of births, marriages, and deaths for the years 1852 to 1905. 46 Atty. Gen. 8.

59.716 Transfer of obsolete county records. Prior to destruction under section 59.715, the proper officers shall offer to the state historical society under section 44.09, and if the offer be accepted by the said society within 60 days shall transfer, title to non-current records in their custody as follows:

(1) Original papers, resolutions and reports connected with county board proceedings.

(2) Tax rolls.

(3) Original minutes of the county board.

(4) Records of any court in the state which have been photographed or microphotographed under s. 59.715 (20) or deemed obsolete and useless and ordered destroyed by the judge of the court whose records are to be destroyed as provided in s. 59.715 (20).

History: 1951 c. 464; 1957 c. 230.

59.717 Destruction of county records, when. If title is not accepted by the state historical society within 60 days after written notice, county officers may destroy records as follows:

(1) Original papers, resolutions and reports appearing in county board proceedings, 6 years following the date of first publication of the same in the official proceedings of the board.

(2) Tax rolls, after 15 years.

(3) Records of any court of record in the state which have been photographed or microphotographed under s. 59.715 (20) or deemed obsolete and useless and ordered destroyed by the judge of the court whose records are to be destroyed as provided in s. 59.715 (20).

History: 1951 c. 464; 1957 c. 230.

59.72 County auditors; powers; duties. (1) In counties having a population of less than three hundred thousand, according to the last preceding state or United States census, the county clerk shall act as auditor, unless an auditor is appointed as provided in subsection (2), and, when directed by resolution of the county board, shall examine the books and accounts of any county officer, board, commission, committee, trustees or other officer or employe intrusted with the receipt, custody, or expenditure of money, or by or on whose certificate any funds appropriated by the county board are authorized to be expended, whether compensated for services by fees or by salary, and the books and accounts of justices of the peace, and all original bills and vouchers on which moneys have been paid out and all receipts of moneys received by them. He shall have free access to such books, accounts, bills, vouchers and receipts as often as may be necessary to perform the duties required under this subsection and he shall report in writing the results of such examinations to the county board.

(2) The county board of any county having less than three hundred thousand population, according to the last preceding United States or state census, may appoint and by resolution fix the compensation of a county auditor. A person so appointed shall perform the duties and have all the powers conferred upon the county clerk as auditor by subsec-

tion (1), and shall perform such additional duties and shall have such additional powers as are imposed and conferred upon him from time to time by resolution adopted by the board.

(3) In counties having a population of three hundred thousand or more, according to the last preceding state or United States census, the chairman of the county board shall appoint a person known to be skilled in matters of public finance and accounting to act as county auditor. Such appointment shall be made pursuant to sections 16.31 to 16.44 of the statutes and shall be subject to confirmation by the county board. The auditor shall direct the keeping of all of the accounts of such county, in all of its offices, departments and institutions, and shall keep such books of account as may be necessary to properly perform the duties of his office. His salary and the amount of his official bond shall be fixed by the county board. He shall perform all duties pertaining to his office, and shall have all of the powers and perform all the duties specified and enumerated in subsection (1) and shall perform such other duties as may be imposed by the county board.

(4) In counties included within subsection (3), the county auditor may appoint a deputy auditor pursuant to sections 16.31 to 16.44 to aid him in the discharge of the duties of his office, and who, in the absence or disability of the county auditor, or in case of a vacancy in said office, shall perform all the duties of the office of county auditor until such vacancy is filled, or disability is removed. Such deputy shall execute and file an official bond in the same amount as that given by the county auditor.

59.73 Receipts and deposits of money; accounts. Every county officer and employe and every board, commission or other body that collects or receives moneys for or in behalf of the county, shall:

(1) Give such receipts therefor and file such duplicates thereof with the county clerk and county treasurer as the county board directs.

(2) Keep books of account and enter therein accurately from day to day with ample description, the items of his official service, and the fees therefor.

(3) Pay all such moneys into the county treasury at such time as is prescribed by law, or if not so prescribed daily or at such intervals as are prescribed by the county board.

(4) Perform all other duties in connection therewith that are prescribed by or pursuant to law.

59.74 Depositories; designation. (1) The county board of each county containing two hundred thousand or more population shall designate two or more, and in other counties the county board, or when the occasion arises and the county board is not in session, then a committee of the board which has been authorized to do so shall designate one or more banks, banking institutions, or trust companies organized and doing business under the Wisconsin or United States laws, located in Wisconsin, as county depositories, one or more of which shall be designated as working banks, all deposits in which shall be active deposits.

59.75 Funds to be placed in depositories; reports; cash balance. (1) Whenever any county board shall have designated a county depository or depositories in accordance with the provisions of section 59.74 the county treasurer shall deposit therein as soon as received all funds that come to his hands in that capacity in excess of the sum he is authorized by such board to retain and any sum so on deposit shall be deemed to be in the county treasury, and such treasurer shall not be liable for any loss thereon resulting from the failure or default of such depository; provided, that the county board or a committee thereof designated by it may invest any funds that come into his hands in excess of the sum he is authorized by the county board to retain for immediate use, in the name of the county in interest bearing bonds of the United States, or of any county or municipality in the state, and such board or committee may sell such securities when deemed advisable.

(2) Every such depository shall on the first business day of each month, and oftener when required, file with the county clerk a statement of the amount of county money deposited with it during the preceding month, and the treasurer shall at the same time file with such clerk a statement showing the amount of moneys received and disbursed by him during the previous month.

(3) The county board may fix the amount of money which may be retained by the treasurer but in no case shall the sum exceed \$3,000; provided, that in all counties having a population of 200,000 inhabitants or over, the treasurer may retain such sum as may be fixed by the county board, not exceeding \$150,000.

(4) Such treasurer and clerk, whenever the cash balance does not amount to the sum authorized by the county board to be retained, may increase it to such amount by their check on the county depository or depositories in favor of such treasurer.

59.76 Claims against counties; actions on; disallowance. (1) No action shall be brought or maintained against a county upon any account, demand or cause of action when the only relief demandable is a judgment for money, except upon a county order, unless the county board shall consent and agree to the institution of such action, or unless such claim shall have been duly presented to such board and they shall have failed to act upon the same within the time fixed by law. No action shall be brought upon any county order until the expiration of thirty days after a demand for the payment thereof has been made; and if an action is brought without such demand and the defendant fails to appear and no proof of such demand is made, the court or the clerk thereof shall not permit judgment to be entered, and if judgment is entered it shall be absolutely void.

(2) The decision of the county board disallowing in whole or in part any claim of any person shall be final and a bar to any action founded thereon, except as provided in subsection (1), unless an action be brought to recover against the county within six months after such disallowance. Failure to allow a claim before the adjournment of the next annual session of the board after the claim is filed shall be deemed a disallowance.

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

Agreements entered into by the district attorney with the plaintiff's counsel regarding waiver of provisions as to procedure were invalid as being in excess of the district attorney's powers, and did not estop the county from challenging the plaintiff's procedure. *Raube v. Christenson*, 270 W 297, 70 NW (2d) 639.

Where the plaintiff's alleged cause of action against the county for injuries sustained in an automobile collision did not

grow out of the use of the county's vehicles, the plaintiff's claim and action against the county were controlled as to procedure by 59.76 and 59.77, and not by 85.095. Strict compliance with 59.76 and 59.77 is required, and disallowance of the claim by the county board is a condition precedent to the commencement of an action against the county. *Raube v. Christenson*, 270 W 297, 70 NW (2d) 639.

59.77 Claims, how made; procedure. (1) **IN GENERAL.** Every person, except jurors, witnesses, interpreters, and except physicians or other persons entitled to receive from the county fees for reporting to the register of deeds births or deaths, which have occurred under their care, having any such claim against any county shall:

(a) Make a statement thereof in writing, setting forth the nature of his claim and the facts upon which it is founded, and if the claim is an account the items thereof separately, the nature of each and the time expended in the performance of any service charged for, when no specific fees are allowed therefor by law, and, if the claim is for mileage, the statement shall specify dates and places so as to show between what points and when and the purpose for which the travel charged for was had.

(b) Such statement shall be filed with the county clerk; and the county board may in its discretion require that all or certain types of such statements shall be verified by the affidavit of the claimant, his agent or attorney; and no such claim against any county shall be acted upon or considered by any county board unless such statement is made and filed pursuant to this section.

(2) **OF COURT OFFICERS, CERTIFIED BY DISTRICT ATTORNEY.** No claim for official services, in any criminal action or proceeding before a justice of the peace or other magistrate shall be allowed by any county board until the same has been examined and a written report made thereon by the district attorney of the proper county as required by subsection (4); nor shall the claim of any sheriff, undersheriff, deputy sheriff, constable or other such officer for the services or expenses of an assistant in making an arrest or commitment be allowed unless the magistrate before whom the prisoner is brought certifies that there was a necessity for such assistance because of the dangerous character of the defendant or because two or more persons were arrested at the same time.

(3) **OF JUDICIAL OFFICERS.** County judges, court commissioners and justices of the peace shall, on or before the first Monday of November in each year, forward to the county clerk of their respective counties a correct statement of all actions or proceedings had before them, during the year next preceding, in which the county shall have become liable for costs, giving the names of the parties in each action or proceeding, the nature and result of the same, the amount of costs in detail in each case, and what items, if any have been paid and the amount thereof. The county clerk shall file such statements in his office; and no such officer who shall neglect to make and return such statements within the time above prescribed shall receive any compensation from the county for any service ren-

dered by him in any criminal case or proceeding during the year next preceding the time when such statement is required to be made and returned. Each such justice of the peace shall also, at the time of making any such statement, annex thereto and file with the said clerk a sworn statement, giving the titles of all criminal actions tried before him during the same period in which the defendant, or any defendant, shall have been convicted, and shall also state therein that he filed a certificate of conviction in each such case as and within the time required by law; and no bill of any justice of the peace shall be allowed, in whole or in part, unless accompanied by such sworn statement, nor unless all such certificates of conviction have been filed.

(4) OF COURT OFFICERS; CERTIFICATION; AUDIT BY DISTRICT ATTORNEY; WAIVER. Fees of officers, in any action or proceeding before a justice of the peace, court commissioner or county judge, shall be certified to and allowed by the county board in the manner following, and in no other way:

(a) At least ten days before the annual meeting of such board every such officer shall make and file with the county clerk a certified statement of all actions or proceedings had or tried before him in which the state was a party, and wherein the county has become liable for the fees of officers, or magistrates, within the year next preceding the date of such statement, showing the title and nature of the action or examination, date of trial, the names of all officers, who actually attended court and gave in a statement of their attendance and travel; and also such on the part of the defendant as were allowed against the county, and the amount to which they are severally entitled. Such statement shall be substantially in the following form, viz.:

STATE OF WISCONSIN } IN JUSTICE COURT.
against } Complaint for
..... } Before, Justice of the Peace.
Heard the day of, 19..

To the County Board of County:

I hereby certify that in the foregoing entitled action the following named persons rendered services therein, and attended before me in the capacity stated, and that they are severally entitled to the amounts specified below for said services, attendance and travel, and that said services were actually and necessarily rendered, and said action was prosecuted in good faith:

A. B. (constable or sheriff), actually and necessarily traveled in serving the.. herein, miles, and attended court days, and is entitled to dollars for other just and lawful services in the cause, and in all is entitled to dollars.

Dated this day of, 19..

(b) The county clerk shall deliver such statement to the district attorney, who shall examine the same and make a report in writing thereon to the county board, specifying the items in each for which the county is or is not liable, and the extent of its liability if it is liable for a part only of any such item. Such statement and report shall be laid before the county board by the county clerk and in so far as the items charged therein are approved by the district attorney such statement shall be prima facie evidence of the claims of the persons named therein; and the board shall examine the same and allow such as are legal, and direct that orders be drawn for the amount allowed to each person named therein. If any person in whose favor any such order is drawn shall not call for the same within two years from the time his claim is allowed his right to any compensation for his services shall be deemed waived and the county board shall cancel such order.

(5) OF JURORS, WITNESSES, INTERPRETERS; PENALTY. Whenever any county is liable for fees of jurors, witnesses on the part of the state or on the part of the defendant, or of interpreters in any action or proceeding before a justice of the peace, court commissioner, county judge or other magistrate, procedure to secure payment of the same shall be as follows:

(a) The officer before whom such juror, witness or interpreter attended, shall furnish to such person a certificate setting forth the name of such person, the time served, the number of miles traveled by him and the amount of compensation to which he is entitled, together with the title of the action in which such person so served, the capacity in which he served and the date of service. Such certificate shall be dated and signed by such magistrate and examined and certified to by the district attorney of the county in which such persons or person so served.

(b) The person receiving such certificate shall in the presence of the magistrate issuing the same indorse thereon a certificate that he is the person mentioned therein by the magistrate, that the time of service, the number of miles traveled and the capacity in which he served are true and correct as therein stated, and that he has not at any time received any compensation therefor.

(e) Upon presentation of such certificate of such magistrate, together with the certificate of such district attorney and of the person holding the same indorsed thereon as hereinbefore specified, the county treasurer shall, except in counties having a population of over three hundred thousand, pay to the holder of such certificate the amount therein set forth, out of the funds of the county, and such certificate with the indorsement thereon shall be filed in the office of the county treasurer.

(e) Said certificate shall then be filed with the county clerk.

(f) Any magistrate, juror, witness or interpreter who shall make or sign any such certificate which is untrue in respect to anything material, which he knows to be false, or which he has not good reason to believe is true shall be punished as provided in s. 946.12.

(6) FEES FOR STATEMENTS AND CERTIFICATES. Every county judge, court commissioner and justice of the peace shall receive from the county treasurer twelve cents per folio for making statements and returns required by subsection (3), and twenty-five cents for making each certificate required by subsection (4), and all such statements and certificates shall be transmitted to the county clerk by registered mail, and for so transmitting such statements and certificates such county judge, court commissioner or justice of the peace shall receive the sum of twelve cents.

(7) OF JUDGES, JUSTICES AND COMMISSIONERS. The county board at any session thereof, either an adjourned or a special session, may as provided in paragraph (b) of subsection (4) of this section examine and allow any statement, account or claim of any county judge, court commissioner and justice of the peace which is on file with the county clerk before the opening of such session of the county board.

(8) PAYMENT OF JUROR, WITNESS, INTERPRETER, ATTORNEY, GUARDIAN AD LITEM AND TRANSCRIPT FEES IN POPULOUS COUNTIES; PENALTY. Whenever any county having a population of 300,000 or more is liable for juror, witness, interpreter, attorney, guardian ad litem fees on the part of the state or of the defendant in any action or proceeding before a judge of the circuit, municipal, district, county, civil or children's court, or in either of said courts, or before the medical examiner of such county, the procedure to secure payment of such fees shall be as follows:

(a) The clerk of the respective court, the register of probate, or the medical examiner as the case may be shall issue to such person an order directing the county treasurer to make payment of such fee. Said order shall state the name of the person to whom payable, the time served, the number of miles traveled by him, and the amount of compensation to which he is entitled, together with the title of the action in which such person so served, the capacity in which he served and the date or dates of service, or in case of transcript fees, the title of the action and the dates on which the testimony for such transcript was taken.

(b) The person to whom such certificate or order is issued shall be required to indorse the same prior to receiving payment and thereby indicate that he is the person mentioned therein, that the number of miles traveled and the capacity in which he served and the work which he performed is true and correct as stated and that he has not at any time received any compensation therefor.

(c) Upon presentation of such certificate or order properly signed and indorsed, the county treasurer of any county having a population of 300,000 or more shall pay to the holder upon surrender thereof the amount therein set forth, and such order or certificate shall thereafter in all other respects be handled by said treasurer in the same manner as all other county orders drawn upon him are handled.

(d) Any judge, magistrate, juror, witness, interpreter, attorney, guardian ad litem or recipient of transcript fees who shall make, sign or endorse any such certificate or order which is untrue in respect to anything material, which he knows to be false, or which he has not good reason to believe is true, shall be punished as provided in s. 946.12.

History: 1951 c. 240; 1955 c. 696.

59.78 Special counties; classification of claims. In counties containing a population of more than three hundred thousand, the county auditor shall classify all such claims according to the budgetary funds provided for in section 59.84, against which they are chargeable, before such claims are laid before such board. He shall then submit with the claims chargeable against each fund, a statement of the balance in such fund against which no county orders have been issued. If such balance in any fund is less than the total of the claims chargeable against such fund, he shall call the attention of the board to that fact, and such board shall not issue county orders in excess of such balance without previously appropriating to such fund an additional sum at least sufficient to cover such orders. If any claims or claim shall be for a purpose for which no specific appropriation has been made in the budget, such claim or claims shall be considered as chargeable against the con-

tingent fund. When the county auditor countersigns any order on the county treasurer for the payment of a claim allowed he shall charge such order against the fund appropriated for that purpose.

59.79 Action on claims by board. The county clerk shall, on the first day of any meeting of the county board, lay before said board all such claims, statements of which have been filed in his office since the last meeting of such board, with a schedule of the same showing the amount thereof and the order in which the same were filed; and the county board shall act upon all such claims before the adjournment of the next annual session of such board after such statements were filed with the clerk, and shall examine and allow or disallow the same in whole or in part unless withdrawn by leave of the board; and in case of the disallowance of a part of an account or other claim composed of separate items the board shall designate particularly each item disallowed; and when the amount allowed for any claim shall have been accepted and received by the claimant, and no action shall be brought to recover the remainder thereof, no further sum shall thereafter be allowed or paid thereon by the county board. The county board, or a committee thereof, for the purpose of ascertaining the facts in relation to any claim presented for their exemption and allowance, may take such testimony as they may deem necessary.

59.80 Salaries and automobile allowance; when payable. Salaries of county officers and employes shall be paid at the end of each month, but the county board of any county may authorize the payment of such salaries semimonthly or once in every 2 weeks in such manner as it may determine. Payment for automobile allowance to officers and employes, duly authorized to use privately owned automobiles in their work for the county, shall be made upon certification of the respective department heads in a manner similar to that in which salaries are paid, provided such method of payment of automobile allowance is authorized by ordinance specifically stating the departments to which it shall apply.

History: 1951 c. 89.

59.81 County orders and scrip. (1) ISSUANCE; LIMITATIONS. When any claim is allowed by any county board, either in whole or in part, said board shall direct an order to be drawn upon the county treasurer in favor of the claimant for the amount so allowed, but no order except for the per diem and mileage of the members of said board shall be drawn in favor of any claimant within five days after the allowance of his claim. Any person whose claim has been allowed in part may receive the order drawn for the part so allowed without prejudice to his right to appeal as to the part disallowed. But no county board shall issue a greater amount of orders, scrip and certificates of indebtedness than the amount of the county taxes levied in such county for such year. The county board may authorize the issuance of orders, scrip or certificates of indebtedness at a rate of interest specified thereon, but not to exceed six per cent per annum; except that such orders, scrip and certificates of indebtedness shall bear no interest if paid and payable within one month from date of issuance, and shall bear no interest after date of publication of redemption notice as hereafter provided. The county treasurer may give notice that the county will redeem certain outstanding orders, scrip or certificates by publication in any newspaper published in the county. Such publication shall specify the particular orders, scrip or certificates, or series thereof then redeemable.

(2) DISBURSEMENTS ON. In all counties having a population of less than three hundred thousand, all disbursements from the county treasury shall be made by the county treasurer upon the written order of the county clerk after proper vouchers have been filed in the office of the county clerk; and in all cases where the statutes provide for payment by the treasurer without an order of the county clerk, it shall hereafter be the duty of the county clerk to draw and deliver to the treasurer an order therefor before or at the time when such payment is required to be made by the treasurer. The provisions of this subsection shall apply to all special and general provisions of the statutes relative to the disbursement of money from the county treasury.

(3) SPECIAL COUNTIES; COUNTERSIGNED BY AUDITOR. In all counties having a population of 300,000 or more all orders and warrants drawn upon or against county funds shall be countersigned by the county auditor; and the treasurer of such county shall make no payments of county funds for any purpose unless the order, warrant, certificate, direction or authority given him for such payment is countersigned by such county auditor. This provision requiring the countersigning by said auditor shall apply to all laws and statutes, special and general, relative to the payment of county funds by the county treasurer except certificates or orders issued for the payment of juror, witness, interpreter, attorney, guardian ad litem and transcript fees.

(4) EXAMINATION OF. The county board at their annual session, or oftener if they deem necessary, shall carefully examine the county orders returned paid by the county

treasurer by comparing each order with the record of orders in the county clerk's office, and cause to be entered in said record opposite to the entry of each order issued the date when the same was canceled. They shall also make a complete list of the orders so canceled, specifying the number, date, amount, and person to whom the same is made payable, except in counties having a population of more than five hundred thousand, the name of the person to whom the same is made payable may be omitted, which statement shall be entered at length on the journal of the board; and immediately after the above requirements are complied with the orders so canceled shall be destroyed in the presence of the board.

(5) **UNCALLED FOR ORDERS; CANCELLATION; REISSUE.** The county clerk shall prepare and present to the county board, at each annual session thereof, a descriptive list giving the amount, date and payee of all county orders which have remained in his office for two years uncalled for by the payee. The board shall cause such orders to be compared with such list, and when found or made correct such list shall be entered at length on the journal of the board and filed in the office of such clerk; and all such orders shall be canceled and destroyed. The person in whose favor such order was drawn, excepting those issued under the provisions of subsection (4) of section 59.77, may, upon application to the chairman of the board and county clerk, made within six years from the date of such order and not afterwards, have a new order issued to him for the amount of the original, without interest.

59.82 Magistrates' dockets, audit and report. The auditing committee of the county board in counties which have such a committee and in other counties the county auditor, or the county clerk if there is no county auditor, shall personally, before the meeting of the county board in each year, inspect the docket of every justice of the peace, police justice, municipal judge or other magistrate in the county who is authorized to receive fines under s. 960.34, when such magistrate has had any criminal case during the previous year and ascertain therefrom the amount of such fines received by any such magistrate during the preceding year ending October 31 and make a separate written report for each such magistrate, which report shall be verified by his affidavit, embrace the title of each case in which any such fine was received, the date of conviction and the total amount of fines received during the period covered by such report. To facilitate the making of such examinations and reports the several magistrates shall deliver their dockets to the auditing committee, county auditor or county clerk, as the case may be, at such time before or during the annual meeting of the county board and at such place as such committee, auditor or clerk may designate, to be forthwith examined and to be returned to such magistrate on the same day of delivery. The county board shall, at their annual meeting, compare the reports upon such examinations with those made by magistrates pursuant to said s. 960.34.

History: 1951 c. 247 s. 19.

59.83 Publication of financial report. The several county boards shall cause to be made out and published immediately after their annual meeting, in at least one newspaper published in their county, if such there be, a report of the receipts and expenditures of the year next preceding and the accounts allowed; and if no newspaper be published in the county, then a copy of such report shall be posted on the courthouse door and at two other public places in the county. The county board may within its discretion waive the publication of names of needy soldiers, sailors, marines and United States war veterans and the amount of relief provided under section 45.14 and shall publish in lieu thereof the total disbursements thereunder.

59.84 Milwaukee county; budgetary procedure; transfer of funds. (1) The fiscal year of all county departments in every county having a population of more than 500,000 shall be the calendar year.

(2) In every such county each county department shall annually, on or before August 15, file with the county auditor in such form and content as the county auditor may require, a detailed estimate of all the necessary expenditures to be made by his department during the ensuing year together with a statement of work program and other justification of expenditure which the county auditor may deem to be desirable or proper. The term department as used in this section shall include boards, commissions, offices, institutions and agencies which expend county money, and unless otherwise expressed shall refer to the head of such department.

(3) In every such county the county auditor shall prepare the proposed budget for the ensuing year. Such proposed budget shall consist of (a) a compilation and review of the departmental expenditure estimates submitted to him pursuant to sub. (2) hereof; (b) his statement of principal and interest becoming due on bonds outstanding and on other financial obligations; (c) his estimate of all other expenditures, including capital

improvements; (d) his estimate for a contingency appropriation; and (e) his estimate of revenue from all sources, including the property tax levy. In arriving at the estimated property tax levy, he shall deduct from the total proposed expenditure budget, the estimated amount of revenue from other than property tax levy sources, and shall also deduct the estimated amount of unappropriated surplus as at the close of the current year. The county auditor shall submit the proposed expenditure budget and proposed financing thereof in a report to the county board on or before September 15, and such board shall immediately refer the same to the finance committee thereof. Such committee shall then hold a public hearing thereon at which the head or a representative of every county department shall appear and give information with regard to appropriations requested by such department, including work programs, other justification of expenditures, and such other data as the committee may request. The county auditor or his deputy shall attend such hearing to render assistance and advice. Such committee shall make such changes in the proposed budget as in its discretion may be deemed desirable or proper. Such committee shall, on or before October 15, submit to the county board the budget as amended after such hearing. Such amended proposed budget shall be the tentative budget and shall include comparable figures of revenues and expenditures for the previous year, actual revenues and expenditures for the first 6 months of the current year, an estimate for the current year, the budget for the current year, and other adequate comparisons. The committee shall publish at least once a summary of the tentative budget and aforesaid comparative figures together with a comparative statement of bonded indebtedness in the 2 daily newspapers having the largest circulation in the county and make available to the general public reprinted copies of the summary as published. The summary as published shall state the date, hour and place of the hearing to be held by the county board on such tentative budget.

(4) The county board shall, not less than 14 days after publication of the summary of the tentative budget and prior to the adoption of a property tax levy, but not later than November 5, hold a public hearing on such tentative budget at which time citizens may appear and express their opinion. After such public hearing and on or before the annual meeting, the board shall adopt the budget with such changes as it may deem proper and advisable. When so adopted the sums provided shall constitute legal appropriations and revenue estimates for the ensuing year.

(5) The county auditor shall exercise financial and budgetary control and shall cause separate accounts to be maintained for each appropriation.

(6) At the close of each year, all unexpended appropriations shall lapse, except that the county board may by resolution adopted by a vote of two-thirds of the members-elect carry over any unexpended appropriation balance to the succeeding year when so requested by departments giving reasons therefor which in the opinion of the county board are adequate, except further that all unexpended appropriations against which purchase contracts have been entered into shall be automatically carried over, except further that unexpended appropriations derived from the sale of bonds, and appropriations for the payment of interest and principal on bonds shall be automatically carried over.

(7) The term "unappropriated surplus" shall mean that portion of the surplus of a given fund or funds which is not segregated for specific purposes, and shall be determined as follows: The unappropriated surplus at the close of a fiscal year shall equal the sum of the following items as at the close of that year: (a) Money in the county treasury, (b) investments made by the county pursuant to ss. 59.75 (1) and 66.04 (2), (c) money ordinarily payable into the county treasury prior to January 31 of the ensuing year and due from the United States treasury, state of Wisconsin, from municipalities, and from county departments; minus the sum of the following items as at the close of that year: (d) sinking funds created pursuant to law, (e) highway funds, (f) insurance fund created pursuant to s. 59.07 (2), (g) agencies and trust funds including taxes collected in advance, (h) appropriations that are being carried over pursuant to sub. (6) hereof, and (i) current liabilities. The unappropriated surplus as determined upon the annual closing of the books of account minus that portion thereof used in determining the preceding tax levy pursuant to sub. (3) may by resolution adopted by a vote of two-thirds of the members-elect of the county board be appropriated in whole or in part for any legal purpose.

(8) At the request of the head of any department the county board may by resolution transfer from one appropriation to another within the total appropriations of the department for which the request is made, and by a resolution adopted by a vote of two-thirds of the members-elect of the county board transfer from the contingency appropriation to any other appropriation or create a new appropriation for any legal county purpose. Where more than one department is under the jurisdiction of the same board or commission or under the same general management, the county board may, by ordi-

nance, group such departments, and thereafter such group of departments shall be considered the same as a single department with respect to making transfers within the group.

(9) Ordinances or resolutions when duly adopted increasing salaries or creating new permanent positions shall become effective on the first day of the bi-weekly pay period beginning in the calendar year succeeding the year of adoption of such ordinances or resolutions, provided that if the last pay period beginning in such calendar year of adoption includes one week or more in the succeeding year such ordinance or resolution shall become effective as at the beginning of that pay period, provided further, that the county board may by a vote of two-thirds of the members-elect make such ordinance or resolution effective at an earlier date. Such ordinance or resolution shall contain a provision for an appropriation transfer if needed.

(10) In the event appropriations for public assistance as required pursuant to ss. 48.56, 49.02, 49.03, 49.18 to 49.38, 49.51 and 49.61 appear to be inadequate for the remainder of any year, the county auditor shall prepare an estimate of total public assistance costs for such year together with an estimate of state-federal aid and submit such estimate to the county board. The county board may by resolution appropriate any excess of such estimated state-federal aid over the amount of revenue originally set up in the current budget for public assistance and make such additional transfers as may be necessary to increase the various public assistance appropriations as in its discretion is required.

(11) Notice of any change creating an increase in the total budget after the adoption thereof pursuant to sub. (4) hereof shall be published at least once in the 2 daily newspapers having the largest circulation in the county not less than 8 days prior to the hearing before the finance committee of the county board.

History: 1953 c. 294; 1955 c. 205.

A motion to transfer funds from the contingent fund for the purpose of paying the said salary increases failed to be adopted because it was not supported by the affirmative vote of two-thirds of the members-elect of the county board as required by (5). 42 Atty. Gen. 50.

59.85 Aid to immigration societies. (1) The county board of any county may appropriate not to exceed one thousand dollars in any one year for the purpose of assisting any county association of the citizens of such county, or any association composed of the citizens of two or more counties of which the citizens of such county are members, organized solely for the purpose of inducing immigration to the state.

(2) The disbursement of any appropriation made under this section shall be under the supervision of the chairman of said board, the county clerk and county treasurer, and in all cases after such an appropriation has been made, there shall be filed with the said county clerk a sworn statement by the treasurer of the immigration society for whose benefit the appropriation was made, showing that the amount of said appropriation has been used by said association for the purpose of inducing immigration to the county making said appropriation and to adjoining counties, and itemized bills for the expenditure of a sum equal to said appropriation duly verified shall accompany such statement of said treasurer. Upon the approval of such statement and such itemized bills, by the county officers above named, said moneys so appropriated shall be paid by the proper officers of the county making the same into the treasury of said immigration association.

59.87 Co-operative extension service in agriculture and home economics. (1) CREATION. Any county board, in accordance with this section, may establish and maintain a co-operative extension service in agriculture and home economics, referred to in this section as "co-operative extension service".

(2) COMMITTEE ON AGRICULTURE. If the county board of supervisors determines to establish a co-operative extension service, it shall create a committee on agriculture consisting of the chairman of the board, 3 other members of the board selected by the board and the county superintendent of schools. The members of the committee on agriculture shall receive such compensation and expenses as the board may determine under the authority of s. 59.15 (2) (c) and (3). The committee on agriculture shall meet at such intervals as is deemed necessary to properly carry out its functions and responsibilities.

(3) STAFF. (a) The committee on agriculture shall appoint professionally qualified persons to the co-operative extension service staff in co-operation with the college of agriculture, and vacancies and additions to the staff shall be filled in the same manner.

(b) The committee on agriculture shall have the power to enter into joint employment agreements provided that county funds committed in such agreements shall first have been duly appropriated by the board. Persons so employed under co-operative agreements and approved by the board of regents shall be considered employes of both the county and of the University of Wisconsin.

(4) FINANCE. For the partial maintenance of the work of the co-operative extension service, including co-operative extension work as is provided for in an act of congress approved May 8, 1914 (38 Stat. 372) and all acts supplementary thereto, the board may appropriate moneys sufficient to cover the share of the county in such work. The money shall be disbursed by the treasurer only upon orders of the clerk which have been approved by the committee on agriculture.

(5) STATE AIDS. To supplement the funds provided by the county for the work of the co-operative extension services, each county shall be entitled to a minimum state aid of \$1,500 per year if the county board has made the required appropriation to maintain such services, and such additional funds as are required to provide salary increases equal to those granted to state employes by the legislature.

(6) FUNCTIONS. Such co-operative extension service is authorized, under the direction and supervision of the county committee on agriculture, co-operating with the college of agriculture of the University of Wisconsin, and within the limits of funds provided by the board and co-operating state and federal agencies, to:

(a) Aid in the development and improvement of all phases of agricultural production, processing and marketing at the individual farm, community-wide and county-wide level.

(b) Assist in the improvement of farm and home management and business methods and practices.

(c) Prepare young people for useful citizenship by conducting county-wide or community-wide programs, projects or activities to guide the physical, mental and moral growth of young people through 4-H club work and other means.

(d) Aid in the improvement of homes, homemaking and family living.

(e) Aid in fostering and protecting improved land use and in the conservation of soil, forests, wildlife and water.

(f) Assist local group and service agencies in the development and improvement of recreational and tourist facilities and opportunities.

(g) Aid in community development endeavors by local people and service agencies to provide employment for surplus labor and improve the economic or social level of the community.

(h) Do other work designed to improve agriculture and country life conditions, recreational opportunities or rural development of the county.

(i) Carry out any extension work provided for in an act of congress approved May 8, 1914 (38 Stat. 372) and all acts supplementary thereto.

(j) Take any action that will facilitate the accomplishment of any of the functions listed herein, including without limitation because of enumeration, the following:

1. Training of group leaders and the directing of group activities.
2. Individual or group instruction or consultation.
3. Soil testing.
4. County recreational programs.
5. Demonstration projects, exhibits and other instructional means.
6. Group meetings, institutes and activities.
7. Guidance in the formation and operation of co-operative enterprises.
8. Creation of citizens' advisory committees.
9. Dissemination of information by any appropriate means including press, radio and television.
10. Co-operation with other local, state and federal agencies.

(7) DEPARTMENT OF GOVERNMENT. For the purposes of s. 59.15 (2) (d) the co-operative extension service shall be a department of the county government and the committee on agriculture shall be the committee to which is hereby delegated the authority to direct and supervise such department. In co-operation with the college of agriculture of the University of Wisconsin, the committee on agriculture shall have the responsibility for the formulation and execution of the program of the co-operative extension service. The co-operative extension service shall annually report to the board its activities and accomplishments.

(8) CO-OPERATION. The county superintendent of schools and the co-operative extension service shall co-operate in order to further educational work in the county. The personnel of the co-operative extension service shall, whenever feasible, co-operate with other educational programs relating to agriculture and home economics, conservation and citizenship in the county.

History: 1953 c. 307; 1955 c. 146, 651; 1957 c. 97, 431.

See note to 59.07, citing 45 Atty. Gen. 253.

59.871 Worms, insects, weeds, animal diseases, appropriation. (1) The board may appropriate money for the control of insect and worm pests, weeds, or plant or animal diseases within the county, and select from its members a committee which, upon advice

from the county agent that an emergency exists because of the destruction which is being or may be wrought to farm lands, livestock or crops in the county by any such pests, may take steps necessary to suppress and control such pests. The clerk shall within 10 days notify the state department of agriculture of such appropriation and of the members of such committee. The state entomologist and said department shall co-operate with such committee in the execution of measures necessary for the suppression and control of such pests.

(2) When such emergency exists the committee may draw on the contingent fund, if available, not to exceed \$5,000 which shall be disbursed upon certification of the committee for the purposes specified in sub. (1) as they relate to worm or insect pests; the treasurer shall pay the amounts so certified. No disbursement shall be made by the committee unless the owner of the premises affected has requested the committee to take steps to suppress or control the pests or when steps have been undertaken by another authority.

History: 1953 c. 205; Stats. 1953 s. 59.07 (17); 1955 c. 651.

59.872 Funds appropriated to soil conservation district. The board may appropriate funds to a soil conservation district which includes lands within the county, to be used by the supervisors of the district in the administration of district affairs and in controlling erosion within the district.

History: Stats. 1953 s. 59.07 (25); 1955 c. 651.

59.873 Lime to farmers. The board may manufacture agricultural lime and sell and distribute it at cost to farmers and acquire lands for such purposes.

History: 1955 c. 651 s. 10.

59.874 Land clearing and weed control. The board may purchase or accept by gift or grant tractors, bulldozers and other equipment for clearing and draining land and controlling weeds on same, and for such purposes to operate or lease the same for work on private lands; charge fees for such service and rental of such equipment on a cost basis.

History: 1955 c. 651 s. 10.

59.875 Testing milk and soil. The board may appropriate money and provide office and laboratory space for testing milk and soil and provide residents of the county with reports of such tests.

History: 1955 c. 651 s. 10.

59.876 Immigration board. (1) The board may create a board of immigration of from 3 to 5 members, one of whom shall be the county surveyor. Such board shall meet, and its members shall receive such compensation and expenses and shall serve for such terms as the county board determines.

(2) The immigration board shall aid in promoting settlement of vacant agricultural lands in the county, and protect prospective settlers from unfair practices.

(3) The county board may in any year appropriate for the carrying out of the work of such board a sum not to exceed \$5,000.

History: 1955 c. 651 s. 10.

59.88 District attorney; appropriation for criminal trials and investigations. (1) The county board of each county having less than two hundred fifty thousand inhabitants shall include in its annual tax levy not less than two hundred dollars and not to exceed one thousand dollars to create a fund to be used by the district attorney to defray such expenses in conducting investigations by the grand jury and in the preparation for and in the trial of criminal cases as are necessary and for which no other provision has been made.

(2) No expense shall be incurred against such fund by the district attorney unless he first obtains a written order of the court in which the grand jury is impaneled or the trial is to be had.

(3) Upon the presentation to such judge by the district attorney of a satisfactory statement of any expenses incurred under such order, payment from such fund shall be made as provided in s. 957.26.

(4) Any part of such fund remaining in the treasury at the end of the county's fiscal year shall be transferred to the general fund of the county.

59.89 Disposition of unclaimed funds by court clerks. (1) On or before the tenth day of January of every odd-numbered year the clerk of any circuit court, district court, municipal court, or other court of record in this state shall file with the county treasurer of his county a written report under oath of all moneys, securities, or funds in his hands or under his possession or control where, for a period of four years or more, no order has been made, or no step or proceeding has been had or taken in the case, action, or proceeding in, by or through which said moneys, securities, or funds may have been deposited or left with said clerk or his predecessors in office, and where no valid claim has been made

upon or for any such moneys, securities, or funds for a period of four years or more, and where the owner or ownership of said moneys, securities, or funds is unknown, or undetermined, and said clerk or his successor in office shall hold said moneys, securities or funds, together with all interest or profits had thereon, until two years after the making of said report unless sooner demanded by and turned over to the legal owner or owners thereof.

(2) Two years after the filing of said report the clerk of any circuit, district, municipal, or other court of record holding or having in his possession any such moneys, securities, or funds, shall turn the same over to the county treasurer, unless sooner demanded by and turned over to the legal owner or owners thereof pursuant to order of the court in which such case, action or proceeding shall have been pending, and the county treasurer and his successors in office shall hold the same for a period of 6 years unless sooner demanded by and turned over to the legal owner or owners thereof.

(3) At the end of said six years the county treasurer shall publish, once each week for three successive weeks, in a newspaper published in the county, the fact that he has such unclaimed moneys, securities, or funds in his possession for disposition. If no legal claim is made for such moneys, securities, or funds within ten days after the last publication above provided for, then the county treasurer shall turn such moneys, securities, or funds, together with all interest and profits had thereon, into the general fund of the county treasury, and no action shall thereafter be maintained by any person, firm, or corporation against the county or the county treasurer for the same or any part thereof.

History: 1953 c. 61.

59.90 Unclaimed funds in public treasury. (1) On or before the tenth day of January of every odd-numbered year, each county, town, city and village officer, and each clerk of every court of record, shall file with the county treasurer of his county a written report under oath giving the names and the last known addresses of all persons for whom any such officer or clerk holds money or security, and which has not been claimed for at least one year, and showing the amount of such money or the nature of such security in detail. A duplicate report shall also be mailed to the secretary of state. Upon receiving said reports the county treasurer shall cause a notice to be published on or before February first of the same year in some newspaper having a general circulation in his county, once a week for three successive weeks, which notice shall contain the names and last known addresses of the owners of such unclaimed money or security, and shall state that unless the owners call for and prove their ownership of such money or security within six months from the time of the completed publication, the county treasurer will take possession or control of such money or security.

(2) If within ten years from the time any such money or security is delivered to the county treasurer the owner thereof shall prove to the satisfaction of the county treasurer his right to the possession of the same, it shall be paid or delivered to him. If no such proof is made, then at the end of such ten-year period such money or property shall become the property of the county. Nothing herein contained shall be construed to deprive the owner of any such property of his right to proceed by court action for the recovery of such moneys from the county treasurer.

(3) Any person violating the provisions of this section shall, upon conviction, be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than 30 days nor more than 6 months.

59.903 Disposition of unclaimed personal property other than money or securities of certain deceased persons. All personal property other than money or securities of deceased persons who at the time of their death are patients at any county institution or whose body is taken in charge by the coroner, shall be preserved by the superintendent of such institution or the coroner or medical examiner for one year unless sooner claimed by a person having the legal right thereto. Annually on July 1 such superintendent or coroner or medical examiner shall make a verified written report listing all such personal property which has remained in his custody for one year without being claimed and giving such facts as to ownership thereof as his records contain. He shall file such report with the sheriff of the county and deliver such property to the sheriff, who shall receipt therefor. Thereupon such superintendent or coroner or medical examiner shall be discharged from further liability for such property, title to which shall then vest in the county. The sheriff shall, on or before August 1 annually, post a notice in 3 public places in the county, briefly describing such property and stating that he will sell the same at public auction on a certain date and at a named place, which auction shall be held accordingly. Any of such property which shall not be disposed of at such auction shall be sold for the best price obtainable, and if the same cannot be disposed of by sale, shall be destroyed in the presence of the sheriff. The sheriff shall, on or before September 1 annually, remit the proceeds of such auction or general sale to the county treasurer and shall file a verified report of his action in

connection therewith. Such proceeds shall become a part of the general fund of the county.

59.91 Viaducts and bridges, populous counties; bonds. [Not printed; 1955 c. 10 s. 45; see 1953 Stats.]

59.94 Registration of farms. (1) The owner of any farm or country estate, or his agent duly authorized therefor in writing, may register the name of such farm or estate in the office of the register of deeds of the county wherein the farm or estate is situated. The owner or purchaser of said farm or any part thereof, may change or release said name from his respective interest in said farm by filing a certificate stating that the original registered name is released. A new name or names to said farm or any parts thereof may then be registered. Every register of deeds shall keep a registry book for such purpose, and upon request, shall make registrations therein as provided in this section. Registration shall consist in writing in the registry book the name of the owner of the farm or estate and such name for the farm or estate as the owner or agent may designate, if no other farm or estate in the county has been previously registered under the same name. The register of deeds shall charge and collect 25 cents for making each registration and each certificate filed. The registry book herein provided for shall be a public record in the office of the register of deeds.

(2) Any register of deeds who shall fail or refuse to provide a registry book and make registrations therein, and file certificates, as provided in this section, or who shall charge or collect more than 25 cents for making any such registration, or filing such certificate, or who shall knowingly register a farm or estate under a name previously adopted and registered for some other farm or estate in such county, or any person who shall use, by way of advertisement or otherwise, the name of any farm or estate registered as provided in this section, to designate or as the name of any farm or estate in such county other than the farm or estate for which such name was registered, unless such name was adopted for and used as the name of such other farm or estate prior to April 6, 1905, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$5 nor more than \$25 or by imprisonment in the county jail for not less than 10 nor more than 30 days, or by both such fine and imprisonment.

59.96 Metropolitan sewerage commission. (1) APPOINTMENT OF COMMISSIONERS. In any county where the common council of any city of the first class within such county shall have adopted a resolution declaring that it is necessary to provide sewage disposal works for such city and in which a sewerage commission has been appointed and qualified, and has adopted plans for, and commenced the construction of a sewage disposal plant for said city the governor shall appoint 3 sewerage commissioners who shall constitute and be known as the "Metropolitan Sewerage Commission" of such county. There shall be certified by the sewerage commission of such city of the first class one person, by the state board of health of the state of Wisconsin one person, to the governor of the state of Wisconsin, who shall appoint as members of such metropolitan sewerage commission the 2 persons thus certified, and who shall further name as the third member of such commission a resident within the drainage area hereinafter provided of said county outside of the city limits of such city of the first class. The commissioners in office on January 1, 1953 shall be designated by the governor to serve for terms of 2, 4 and 6 years, respectively from January 1, 1953. Not less than 6 weeks prior to the expiration of the term of any commissioner his successor shall be certified and appointed in the manner provided above for his predecessor in office, but for a term of 6 years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies occurring during the term of any commissioner shall be filled in like manner, but for the unexpired term only.

(2) OATH OF OFFICE; EXPENSES. Each appointee before entering upon the duties of this office shall take and subscribe the oath of office prescribed by the constitution and file the same with the secretary of state, duly certified by the official administering such oath. Each commissioner shall be reimbursed his actual and necessary expenses in the performance of his duties and shall receive no salary.

(a) The removal from the drainage area of said third commissioner who is a resident of said county outside of said city of the first class shall operate as a resignation of his office and the vacancy thus created shall be filled by the governor.

(b) The state board of health or the metropolitan sewerage commission may at any time certify to the governor further respective names whom the governor shall appoint as members of said commission. Each such appointee shall be appointed for the remainder of the term of the member he succeeds.

(3) ORGANIZATION. A majority of the commissioners shall constitute a quorum for the transaction of business. As soon as the commissioners first appointed under this sec-

tion enter upon the duties of their office, they shall organize by electing one of their members chairman, who shall be removable at pleasure by the commissioners. The chairman shall preside over all meetings of the commission and shall perform such other duties as are imposed upon him by this section or may be assigned to him by the commission. The commission shall appoint a secretary, who may or may not be a member of the commission, who shall be removable at pleasure by the commission, and shall receive, if not a member of such commission, such compensation as the commission may determine.

(4) MEETINGS; REPORTS. The metropolitan sewerage commission shall hold meetings for the transaction of business. All sessions or meetings of said commission shall be public and all records shall be public records. The commission shall prepare annually a full and detailed report of its official transactions and expenses and shall mail such statement to the governor of the state, to the state board of health, the mayor of such city of the first class, the sewerage commission of such city of the first class, and to the governing boards of all cities, towns and villages in such county within the drainage area hereinafter provided for.

(5) SURVEYS. Upon the organization of such metropolitan sewerage commission, the sewerage commission of such city of the first class shall submit to such metropolitan sewerage commission the maps and surveys showing the portion of said county which is within the same drainage area as the sewerage system of such city of the first class, the sewage from which may be cared for by the disposal plant located in such city of the first class, and said metropolitan sewerage commission shall thereupon by resolution determine the boundaries thereof in each of the respective towns and villages outside of the city limits of such city of the first class and must file with the clerk of each of the cities, towns or villages affected by this section and with the state board of health a copy of the map and survey and boundaries by it adopted.

(6) POWERS AND DUTIES. (a) The metropolitan sewerage commission shall in its discretion project, plan, construct and maintain in such county outside of the city limits of such city of the first class but within the same drainage area, main sewers, pumping and temporary disposal works and other plants for the collection and transmission of house, industrial and other sanitary sewage to and into the intercepting sewerage system of such city of the first class, and may improve water courses (including the building of storm sewers) needed for the purpose of preventing surcharging of the sewer system and do such other work that may be necessary in connection therewith.

(b) The said metropolitan sewerage commission is authorized in its name to contract and to be contracted with, and to sue and to be sued.

(c) The metropolitan sewerage commission may require any town, city or village in such county, or any occupant of any premises outside of said city of the first class, located in such county, engaged in discharging sewage effluent from sewage plants, sewage refuse, factory waste, into any river or canal within such county within the drainage area hereinafter provided for to so change or rebuild any such outlet, drain or sewer as to discharge said sewage, waste or trade waste into the sewers of such city, town or village or into said main sewers by it established and under such regulations as the commission may determine.

(d) The commission may employ and fix the compensation of all agents, assistants, clerks, employes and laborers as it may deem advisable for the due and proper execution of its duties, and in its discretion may employ the chief engineer or agent or employes of any such city of the first class, or of the sewerage commission thereof, as its engineers, agents or employes, provided, however, that the compensation fixed therefor shall not be paid to such person but to such city or such sewerage commission.

(e) The commission may enter upon the land in the cities, villages and towns in said county outside of said city of the first class for the purpose of making surveys or examinations in the performance of its duties.

(f) The commission may enter upon any state, county or municipal street, road or alley, or any public highway in said county outside of said city of the first class for the purpose of installing, maintaining and operating the sewage system provided for in this section, and it may construct in any such street, road or alley or public highway, a main sewer, intercepting sewer or any appurtenance thereof, without a permit or a payment of a charge. Whenever such work is to be done in a state, county or municipal highway, the public authority having control thereof shall be duly notified, and said highway shall be restored to as good condition as existed before the commencement of such work, and all costs incident thereto shall be borne by the commission.

(g) The commission shall have power to lay or construct, and to forever maintain, without compensation to the state, any part of said system of sewerage, or of its works, or appurtenances, over, upon or under any part of the bed of any river flowing through said cities, villages and towns, or of any land covered by any of the navigable waters of the state, the title to which is held by the state, and over, upon or under canals or

through waterways and under right of ways of railroad, interurban and street railway companies, and if the same be deemed advisable by the commission, the proper officers of the state are authorized and directed upon the application of the commission, to execute, acknowledge and deliver to the commission, such deeds, or other instruments, as may be proper for the purpose of fully confirming this grant.

(h) All persons, firms or corporations lawfully having buildings, structures, works, conduits, mains, pipes, tracks or other physical obstructions in, over or under the public lands, avenues, streets, alleys or highways of said cities, villages and towns which block or impede the progress of such sewer, when in process of construction, establishment or repair shall upon reasonable notice by the commission, promptly so shift, adjust, accommodate or remove the same at the cost and expense of such individuals and corporations, as fully to meet the exigencies occasioning such notice.

(i) Whenever necessary in order to promote the best results from the construction, operation and maintenance of the systems provided for in this section, and to prevent damage to the same from misuse, the commission, acting on behalf of the district, may make, promulgate and enforce such reasonable rules and regulations for the supervision, protection, management and use of said system as it may deem expedient, and such regulations shall prescribe the manner in which connections to main sewers and intercepting sewers shall be made, and may prohibit discharge into such sewers, of any liquid or solid waste deemed detrimental to the sewerage system herein provided for. Such rules and regulations shall be adopted and enforced as provided by ch. 336, laws of 1957.

(j) The commission may acquire by gift, purchase, lease or other like methods of acquisition or by condemnation, any land or property situated in said county outside of said city of the first class, and all tenements, hereditaments and appurtenances belonging or in any way appertaining, or in any interest, franchise, easement, right or privilege therein, which may be required for the purpose of projecting, planning, constructing and maintaining said main sewers, or any part or parts thereof, or that may be needed for the workings of said sewers when established, and when so often as resort shall be had to condemnation proceeding the procedure shall be that provided for by ch. 32, except that the powers therein granted shall be exercised by and in the name of said commission in the place and stead of the county board. Notwithstanding any other provision of law to the contrary, all property, real or personal, acquired by the metropolitan sewerage commission or by the sewerage commission of the city of the first class shall be taken in the name of either of such commissions for the benefit of and belong to the metropolitan sewerage district. Whenever the sewerage commission of the city of the first class acquires property by condemnation proceedings the procedure shall be that provided for by ch. 32 and all property so acquired shall be taken in the name of said commission for the benefit of and belong to the metropolitan sewerage district.

(k) Whenever the plans and specifications for any main sewer shall have been completed and approved by the sewerage commission of such city of the first class and by the state board of health as provided in sections 144.01 to 144.12, inclusive, and the commission shall have determined as provided in this section to proceed with the work of the construction thereof, it shall advertise by notice in such newspaper and technical press as it may deem proper, for bids for the construction of said main sewer and its appurtenances in part or as a whole, as in its judgment it may deem advisable. Contracts for such work shall be let to the lowest responsible bidder, or the commission may reject any and all bids and if in its discretion the prices quoted are unreasonable or the bidders irresponsible, or the bids informal, it may readvertise the work or any part of it. With the consent of all its members it may itself do any part of any such works, by any labor under such conditions in every respect as it may prescribe. All contracts shall be protected by such bonds, penalties and conditions as the commission shall require.

(l) The powers of the commission shall not extend to or apply to the territory of any city of the first class which may be constructing, building and operating its sewerage system under a commission provided by law.

(m) Said commission shall not construct any such main sewer nor alter or extend the same without having first submitted complete plans and specifications for the installation, alteration or extension, in writing, to the sewerage commission of such city of the first class and secured its approval thereof. All contracts entered into by said commission for the construction, alteration and extension of any such main sewers shall contain a provision that the final payment, amounting to at least fifteen per cent of the entire cost, shall not be made until the contractor files with the said commission the certificate of the sewerage commission of such city of the first class that said main sewer has been located and constructed in accord with the plan submitted and approved by it.

(n) Said contract shall also contain a provision that the work of constructing said sewers shall be done under inspection to be furnished by the sewerage commission of such

city of the first class, which inspection service shall be paid for at actual cost by the commission.

(o) Before any town, city or village or any private person or corporation shall be permitted to connect with or use any such main sewer provided for by this section, it shall obtain the approval of the sewerage commission of such city of the first class, which sewerage commission shall examine into it and hear all the parties in interest, and if it finds such sewer or system defective in construction, design, supervision or operation, it shall notify said metropolitan sewerage commission what alterations, new constructions or change in supervision or operation it shall require and deem necessary to correct existing and improper conditions and said metropolitan sewerage commission shall not permit such connection to be made or continued until such alterations, new constructions, change in supervision or operation shall have been made as provided in the determination of said sewerage commission of said city of the first class.

(p) Said metropolitan sewerage commission or said sewerage commission of said city of the first class, and their respective officers and agents are authorized to make examination of any and all sewers and sewerage systems within said county outside of the limits of said city of the first class for the purpose of determining if said systems are defective in operation, construction, design or supervision.

(q) When any such main sewer, or other disposal works, pumping or other plant shall be completed it shall thereafter be operated and kept in repair and in sanitary condition by the sewerage commission of said city of the first class, or by such authority as shall be charged by law with the duty of the operation and maintenance of the intercepting sewers and sewage disposal plant of said city.

(r) Nothing in this section shall be construed as restricting or interfering with any powers of the state board of health as provided by law, or with the powers granted to the sewerage commission of such city of the first class.

(7) FINANCING IMPROVEMENTS. (a) Whenever said metropolitan sewerage commission requires funds out of which to pay for the projection, planning, construction and maintenance of said main sewers, pumping and temporary disposal works and other plants or the improvement of watercourses (including the building of storm sewers) needed for this purpose in order to prevent surcharging of the sewer system or in other respects in connection therewith, it shall adopt a resolution stating the amount that it requires for such purposes and shall file with the county board of supervisors of such county a certified copy thereof, and thereupon such board of supervisors is required and directed to provide by resolution for the amount so required by tax levy or by issuing corporate bonds of such county, or by a combination of a tax levy and corporate bonds, and make such amount available within the period of time designated in the resolution of said metropolitan sewerage commission, which period shall not be less than 90 days from the date said resolution is filed with the county board of supervisors. Such bonds shall be payable at such time not longer than 20 years from the date of their issue as shall be determined by said resolution of the board of supervisors, provided that when any part of an issue shall have a maturity greater than 10 years, such resolution shall require payment of the principal in substantially equal annual instalments during the life of such issue. Such bonds shall be payable in lawful money of the United States, bearing interest at a rate to be determined in said resolution, and such bonds shall be in such form as may be prescribed by such resolution and shall be signed by the chairman of said board and by the clerk thereof and shall be called metropolitan sewerage bonds and shall be consecutively numbered and shall have interest coupons attached, and shall show on their face that the same are issued for the benefit of so much of the territory of said county as lies in the same drainage area as said city of the first class and there shall be annually levied by said county board a direct tax upon all taxable property in said drainage area sufficient to pay the annual interest thereon, and also to pay and discharge the principal thereof at maturity, and there shall be included in said tax levy an amount estimated by the board of supervisors to be sufficient to cover the loss and cost of the collection thereof, which tax shall be collected as provided in sub. (10). It shall not be necessary to submit any such bond issue to the vote of the people. The tax hereinabove provided to be levied shall not be included within the provisions of any county, town, city or village tax limitation statute.

(b) Upon the sale of any such bonds, the county board of such county shall pay the proceeds thereof to the county treasurer of said county for the credit of the said commission and said county treasurer shall, from time to time, against said fund, pay warrants or checks when authorized by said commission and signed by the chairman and secretary thereof.

(c) Whenever the sewerage commission of such city of the first class requires funds out of which to pay for the projection, planning, construction and maintenance of a sewerage system for the collection, transmission and disposal of house and other sewage, or the improvement of watercourses (including the building of storm sewers) needed for

this purpose in order to prevent surcharging of the sewer system within a city of the first class, and for constructing, building and maintaining its sewage disposal plant in connection therewith, it shall adopt a resolution stating the amount that it requires for such purposes and shall file with the county board of supervisors of such county a certified copy thereof, and thereupon such board of supervisors is required and directed to provide by resolution for the amount so required by tax levy or by issuing corporate bonds of such county, or by a combination of a tax levy and corporate bonds, and make such amount available within the period of time designated in the resolution of said sewerage commission, which period shall not be less than 90 days from the date said resolution is filed with the county board of supervisors. Such bonds shall be payable at such time not longer than 20 years from the date of their issue as shall be determined by said resolution of the board of supervisors, provided that when any part of an issue shall have a maturity greater than 10 years, such resolution shall require payment of the principal in substantially equal annual instalments during the life of such issue. Such bonds shall be payable in lawful money of the United States, bearing interest at a rate to be determined in said resolution and such bonds shall be in such form as may be prescribed by such resolution and shall be signed by the chairman of said board and by the clerk thereof and shall be called metropolitan sewerage bonds and shall be consecutively numbered and shall have interest coupons attached, and shall show on their face that the same are issued for the benefit of so much of the territory of said county as lies in the same drainage area as said city of the first class, and there shall be annually levied by said county board a direct tax upon all taxable property in such drainage area sufficient to pay the annual interest thereon, and also to pay and discharge the principal thereof at maturity, and there shall be included in said tax levy an amount estimated by the board of supervisors to be sufficient to cover the loss and cost of the collection thereof, which tax shall be collected as provided in sub. (10). It shall not be necessary to submit any such bond issue to the vote of the people. The tax hereinabove provided to be levied shall not be included within the provisions of any county, town, city or village tax limitation statute.

(d) Upon the sale of any such bonds, the county board of such county shall pay the proceeds thereof to the city treasurer of said city of the first class to the credit of the said sewerage commission of said city and said city treasurer shall, from time to time, against said fund, pay warrants or checks when authorized by said commission and signed by the chairman and the secretary thereof.

(e) Bonds issued pursuant to pars. (a) and (c) of this subsection shall be combined into a single issue when the metropolitan sewerage commission and the sewerage commission of such city of the first class shall so request in the resolution specified in said pars. (a) and (c).

(8) APPOINTMENT OF COST. (a) Before February 1 in each year the sewerage commission of such city of the first class shall estimate and by resolution determine what sums in their judgment will be required to meet the expenses and disbursements of the sewerage commission of such city for the current fiscal year and shall include in such estimate and resolution as a part of the expense of the operation of such sewerage system all the expense of operation and of keeping in repair such sewerage system and disposal plant, including said main sewers, pumping and temporary disposal works and other plants, constructed by said metropolitan sewerage commission, and shall estimate and report the proportion thereof that will be due from each city, town or village in said drainage area in payment for the transmission and disposal of its sewage and for keeping in repair the intercepting sewers and disposal plant, including said main sewers, pumping and temporary disposal works and other plants, constructed by said metropolitan sewerage commission, and each city, town or village shall pay that proportion of the whole expense as the amount of sewage it contributes bears to the total amount of sewage disposed of by said city, in such disposal plants.

(9) TAX LEVY; POWERS OF TOWNS. Such sewerage commission of such city of the first class shall, on or before the first day of October of each year, certify in writing to the clerks of the several cities, towns and villages having territory in said drainage area, the total amount necessary to pay the expenses for the transmission and disposal of said sewage for said year and the share thereof that each such city, town and village must pay after the report has been made as herein provided.

(a) Upon the receipt of such report by each such clerk, he shall submit the same to the next regular or special meeting of the governing board of said city, town or village and such board shall, by resolution, levy and assess taxes sufficient to pay the same, against all of the taxable property included within the drainage area in his said town, city or village. Following such assessment and levy, the clerk of each such city, town or village shall place the same upon the tax roll to be collected as other taxes are collected upon all of the taxable property within such drainage area, and such moneys when

collected shall be paid by the treasurer of each such city, town or village, to the treasurer of such city of the first class to the credit of said sewerage commission of such city of the first class.

(b) There is imposed upon all towns in counties in which under the provision of this section a metropolitan sewerage commission is created and appointed, all of the powers vested in villages under chapter 61 of the statutes relating to the power of villages to finance, assess, build, construct and maintain sewerage systems, mains, laterals, drains and all appurtenances, and all of the duties by such provision imposed upon the village boards or villages, their several committees and village clerk, shall be performed in such towns by the town boards and town clerks thereof; provided, that the town board of any such town may lay sewers or water mains along either or both sides of any street or highway in the town, and in that event shall assess the cost thereof only against the property abutting and adjoining upon that side of the street or highway in which the sewer or water main may be laid; and all notices and specifications required thereby may be made and given by the towns in such work where no newspaper is published therein by posting five copies thereof in five public places in said town, and all duties by such provision imposed upon village clerk and village treasurer in extending upon the tax roll and collecting all assessments and taxes relating to such improvements, shall be performed in the same manner by town clerks and town treasurers of such towns.

(c) The metropolitan sewerage commission and the sewerage commission of a city of the first class are authorized and empowered, in their names, to contract with any town, village, city, sanitary district or metropolitan sewerage district organized under sections 66.20 to 66.209 in such county wholly or partly outside of the boundaries determined to be in the same drainage area as the sewerage system of such city of the first class, or wholly or partly outside of such county but in the same drainage area as the sewerage system of such city of the first class, for the transmission and disposal of sewage from any territory located in such town, village, city, sanitary district or metropolitan sewerage district organized under sections 66.20 to 66.209. Before such town, village, city, sanitary district or metropolitan sewerage district organized under said sections shall be permitted to connect its sewers with or use any main sewers, such sewers shall be approved as provided by s. 59.96 (6). (n). The government board of any such town, village, city, sanitary district or metropolitan sewerage district organized under sections 66.20 to 66.209 by a vote of three-fourths of its members is hereby authorized to enter into such contract and to levy irrepealable taxes for the term covered by such contract for the cost of such service as determined by such contract upon the whole town, village, city, sanitary district or metropolitan sewerage district organized under said sections, or upon such part thereof as the governing board determines by such vote to be benefited thereby.

(10) **LEVY AND COLLECTION OF METROPOLITAN SEWERAGE TAXES.** The taxes levied pursuant to subsection (7) (a) and (c) shall be apportioned to the several towns, villages and cities situated within the metropolitan sewerage drainage area in the manner provided by section 70.63, and may be spread upon the respective real estate and personal property tax rolls of said towns, villages and cities, combined with county taxes, and shall be treated for all purposes, including settlement with the treasurers of the towns, villages and cities in the same manner as county taxes but shall not be included within any limitation on county taxes.

(12) **INCONSISTENT LAWS REPEALED.** All laws or parts of laws inconsistent herewith are hereby repealed.

History: 1951 c. 358, 645; 1953 c. 196, 595, 597; 1957 c. 309.

Town board in a county having a metropolitan sewerage commission may finance, construct and maintain a sewerage system under 59.96 (9) (b) without reference to the requirements provided in 60.29 (19). 39 Atty. Gen. 46.

59.965 Expressways in populous counties. (1) **DEFINITIONS.** As used in this section, unless the context indicates otherwise, the following terms shall mean:

(a) "Expressway" is a divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections. "Full" control of access means that the authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at grade or direct private driveway connections. "Partial" control of access means that the authority to control access is exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections. The commission shall have power to determine whether full or partial control of access shall be exercised.

(b) "Commission" is the county expressway commission created by this section.

(c) "Expressway project" is an integral portion of the expressway that may be put to public use independently of other expressway projects.

(d) "Prior expressway project expenditures" are obligations incurred and expenditures financed from funds obtained from local tax levy sources, or from the proceeds of the sale of bonds, by a municipality in the county for the acquisition and clearing of the right of way and construction of expressway projects which are incomplete and have not been substantially put to public use at the time the county expressway commission is created and the transfer of the function to said commission has been effectuated, together with any funds so financed in the state treasury under control of the state highway commission to the credit of an expressway project, and any funds which the municipality may, subsequent to the creation of the county expressway commission, transmit to the state highway commission for credit to an expressway project authorized by the county expressway commission.

(e) "Expressway project budget" is the plan of financial operation embodying an estimate of proposed expenditures for the expressway project and the proposed means of financing them.

(f) "County board" is the county board of supervisors of the county wherein such county expressway commission is created.

(2) COUNTY EXPRESSWAY COMMISSION. (a) *Creation; appointment of commissioners.* In any county having a population of 500,000 or more, there is hereby created a county expressway commission which shall function as a part of the county government. Such commission shall consist of 5 members, and shall be appointed by the governor. The first appointees shall serve for terms of 1, 2, 3, 4 and 5 years, respectively. Thereafter each member shall be appointed for terms of 5 years each and until their successors are appointed and qualified. All appointees shall be and remain residents of such county. Appointments to fill vacancies and for terms after the initial terms shall be made in the same manner as provided in this paragraph. Certification of such appointments shall be filed with the county clerk.

(b) *Oath of office; expenses.* Each commissioner shall take and file the official oath and shall receive no salary, but shall be reimbursed his actual and necessary expenses in the performance of his duties.

(c) *Organization.* A majority of the commissioners shall constitute a quorum for the transaction of business. As soon as the commissioners first appointed under this subsection enter upon the duties of their office, they shall organize by electing one of their members chairman, who shall be removable at pleasure by the commissioners. The chairman shall preside over all meetings of the commission and shall perform such other duties as are imposed upon him by this section or may be assigned to him by the commission. The commission shall elect one of its members secretary.

(3) MEETINGS; REPORTS. The commission shall hold meetings for the transaction of business. All such meetings shall be open to the public. The commission shall prepare annually a report of its official transactions and expenditures and shall mail such statement to the governor, to the mayor of the largest city in such county and to the chairman of the county board of such county, and to the chief executive head of the governing boards of all cities, towns and villages in such county.

(4) TRANSFER OF PRIOR EXPRESSWAY STUDIES AND REPORTS. Upon the organization of such commission, the governmental authorities of the largest city in such county shall transfer and deliver to the commission the original or certified copy of all maps and engineering studies and reports pertaining to an expressways system in such city and county, together with all contracts pertaining to the creation and construction of such expressways. Upon demand by the commission the city with the approval of the common council shall execute and deliver to such county quitclaim deeds of all lands acquired or dedicated or owned by the city and needed for the purpose of right of way for such expressways, provided the cost thereof was included in the determination of prior expressway expenditures.

(5) POWERS AND DUTIES. The commission is charged with the duty and vested with all powers necessary to plan, acquire the right of way for and construct an expressway system in such county and to administer each expressway project until it shall be certified as completed, subject to the general supervision of the county board except as hereinafter provided, including without limitation by reason of enumeration, the power to contract. In the exercise of the foregoing duties and powers, the commission shall:

(a) *Plans for expressways.* As soon as possible after its organization, consider and devise a general plan of expressways to serve the entire county. Such plan shall be presented to the governing body of each municipality through which a part of the expressway system is routed for its consideration and approval. The commission may in its discretion, prior to its presentation of such general plan to the county board as hereinafter provided, by formal action modify such general plan to meet objections raised by the governing body of any municipality through which a route of such expressway passes.

If the approval of such governing body is not granted within 60 days from the date of submission, the commission shall present the general plan to the state highway commission, which shall hold a public hearing on that part of the plan which is located in such municipality. After such hearing, the state highway commission shall make recommendations to the commission with reference to the matters objected to by the municipal governing body. Thereafter the commission shall incorporate such recommendations in its general plan. When the approval of the necessary local governing bodies has been obtained or the recommendation of the state highway commission has been obtained in lieu thereof, the general plan shall be presented to the county board of such county. The county board upon receipt of such general plan shall promptly consider the same and approve or reject such plan. If the plan is rejected, the commission shall devise a revised plan with such modifications or changes as to it seem proper, secure the approval thereof by the governing bodies of the municipalities affected or the recommendations of the highway commission as hereinbefore provided and submit such revised plan to the county board, and thereupon the county board shall again consider and approve or reject such plan. This procedure shall continue until some general plan has been approved by the county board. Thereafter, upon request of the commission, such general plan may be amended by the county board in conformity with such request, provided that a deviation of not to exceed 1,000 feet from any expressway route in the approved general plan may in the discretion of the expressway commission be authorized and shall not be an amendment requiring approval by the county board.

(b) *Procedure upon approval of plan.* When a general plan has been approved by the county board, the commission shall prepare and submit to the county board tentative expressway project budgets for such units of the comprehensive plan and in order of construction as the commission deems proper. Each such budget shall give reasonably detailed estimates of expenditures required to complete such expressway project and shall also give an estimate of the state and federal aid which will become available for such project. The county board shall determine the amount of the county's share of the cost of such project and the financing thereof, either from the authorization of county expressway bonds pursuant to s. 67.04 (1) (v), or by determining the amounts to be included in the budgets during the construction years, or by transfer from unappropriated surplus pursuant to s. 59.84 (7), or by any combination of the foregoing. When the county board determines that county funds for an expressway project shall be financed in whole or in part from current budgets, the county auditor shall include such amounts in the proper proposed budget pursuant to s. 59.84 (3). The county board shall adopt expressway project budgets with such changes as it may deem proper. When so adopted, the county contribution to the expressway project shall constitute a legal appropriation and shall be expendable to the extent that expressway bonds have been authorized or money otherwise provided. At the request of the commission, the county board may amend any expressway project budget and may transfer appropriations from one expressway project to another.

(c) *Acceptance of gifts.* To accept, in the name of the county, grants, conveyances and devises of land, improvements thereon and any and all interests whatsoever therein and bequests and donations of money to be used for expressway purposes.

(d) *Acquisition of lands and interests therein.* 1. To acquire in the name of the county or in the name of the state when so directed by the state highway commission, after the county board has adopted an expressways project budget, or in advance thereof with the general approval of the county board as hereinafter provided, by donation, purchase, condemnation or otherwise, such lands, including any improvements thereon, and any interests, easements, franchises, rights and privileges in or pertaining to lands, of whatever nature and by whomsoever owned, as the commission deems are necessary and required for expressway purposes, and to dispose of the same. The use of expressway lands for the location or relocation of any facility for mass transportation, including private or public utilities, is authorized when so determined by the expressway commission and approved by the county board. The commission may purchase or accept donation of remnants of tracts or parcels of land remaining at the time or after it has acquired by condemnation or after or coincident with its acquisition by purchase or donation portions of such tracts or parcels for expressway purposes where in the judgment of the commission such action would assist in rendering just compensation to a land owner, a part of whose lands are required for expressway purposes, and would serve to minimize the over-all cost of such necessary taking by the public. The county may dispose of such remnants. No lands or interest of any kind therein acquired as hereinabove provided shall be disposed of by the county without the consent of the commission, and all moneys received for any such lands, improvements thereon or interests of any kind therein, so disposed of, shall be credited to the land acquisition account as an abatement of expense. No lands acquired by the commission, as provided in this subsection, in the name of or in trust for the state, shall be disposed of by the county without prior approval of the state, and the proceeds

of such sale shall be remitted to the state or retained and used for expressway purposes when so directed by the state highway commission.

2. The commission may also, for specific approved highway projects or otherwise, with the general approval of the county board once given and after the general plan of expressways has been adopted by the county board, as the same may be amended, acquire lands and interests therein of the nature and in the manner specified in this paragraph for the right of way of such expressways in advance of the time of the adoption of an expressway project budget including such lands and interests. Such power may be exercised when in the judgment of the commission the public interest will be served and economy effected by forestalling development of such lands which will entail greater acquisition costs at a later date. Upon such acquisition the commission may improve, use, maintain or lease such lands until the same are required for expressway construction. It is recognized that there may necessarily be a period of time between the acquisition of needed lands for right of way and the commencement of actual site clearance and construction, but such fact shall not minimize the public purpose of such acquisition. The owners of such lands at the time of such acquisition shall have the first right to enter into lease thereof with the county acting by the commission until such lands are needed for expressway construction. Any lands so leased for more than one year shall be subject to general property taxation during the term of the lease. All rentals shall be credited to the project or to the expressway land acquisition account. On request of the commission, the county board shall provide out of funds acquired by bond issue or otherwise a land acquisition fund in an amount specified by the commission from time to time, but not in excess of \$5,000,000 of expendable funds at any one time, to be used primarily for the acquisition of lands, improvements thereon and interests therein as specified in this subsection prior to the approval of the specific expressway project for which such lands or interests will be required. Such fund shall be adjusted to reflect acquisition costs for lands and interests therein thereafter incorporated in specific approved expressway projects by transferring both the appropriations and the acquisition costs therefor to the proper expressway improvement expenditures account.

3. When an expressways project for which lands, improvements thereon and any or all interests therein have been paid for from any expressway land acquisition fund or account becomes activated, upon request of the commission and subject to the approval of the county board, the state highway commission is authorized to reimburse the expressway land acquisition fund by allocation of funds which may be made available under any state or federal statute to reimburse prior disbursements from such land acquisition fund to acquire said lands, improvements thereon or interests therein or appurtenant thereto. All state or federal funds thus received shall be used for expressway purposes.

4. The commission, in acquiring lands, improvements thereon and interests therein and appurtenant thereto as hereinabove specified in this subsection, may acquire the same in fee simple or by easement for highway purposes as it may by order determine. In any such acquisition, the commission is authorized to and shall when requested by the state highway commission, act in the name of the state as the agent of the state highway commission and in other cases shall act in the name of the county. The commission in making such acquisition may proceed under ch. 32 or ss. 83.07, 83.08 and 84.09, and when so proceeding shall have the same powers and duties as are vested by said statutes in the state highway commission or the county highway committee and the expressway commission or the land owner shall have the same right of appeal as is granted by said sections.

5. Whenever, prior to actual expressway project construction, a saving is shown to be probable in the cost of constructing a proposed new municipal or privately-owned public utility (which, if presently installed in a public way in a proposed normal manner, would ultimately be interfered with by expressway construction) by initially constructing such municipal or privately-owned public utility in other than a normal manner to accommodate future expressway construction, the commission may, after receiving county board approval, and in order to effect savings by avoiding reconstruction and relocating at a later date, contract with the municipal government or utility company involved for the construction of the public utility in such other than normal manner and to pay to it the portion of the cost of such special construction in excess of the cost if constructed in the proposed normal manner. Funds for such purpose may be taken from the land acquisition fund authorized in subd. 2.

6. When the commission has acquired title to lands in fee either for the county or the state, the county shall have power to use and develop any portion of said lands not directly needed for expressway-roadway purposes and which do not interfere with the primary expressway purpose, and without exclusion because of enumeration the power to use the subsoil beneath the ground, the ground level area or air space above the ground, for parking, storage or building purposes, subject to municipal land use zoning regulations except as to parking, provided that where the expressway right of way area in question is either

on the federal interstate system or on a state trunk highway, the consent of the state highway commission to such development and use shall be obtained prior to construction or initiation of such use, and the state shall receive a share of the rentals or sale price derived from such use in the proportion that the amount of federal or state funds used in the purchase of the site bears to the total cost of the land and improvement which is the subject of such sale or rental. Such sharing shall not be made until the county has been reimbursed for all sums expended by it, in the developments herein above referred to and such sharing shall terminate when the fair proportion of the federal and state funds allocable to the purchase of the area so developed has been reimbursed. No supplies or service for motor vehicles at retail, other than the parking thereof, shall be dispensed or rendered at, on or in connection with any portion of such lands developed or used for parking, storage, building or any other purpose.

(e) *Contracts.* To construct and administer projects under its jurisdiction, to contract in the name of the county with the state highway commission as may be necessary under state and federal statutes to secure state and federal aid on expressway projects.

(f) *Vacation, relocation, reconstruction of streets, alleys, etc.* 1. Whenever the commission determines that it is necessary for the proper construction of an expressway project that streets or alleys shall be vacated in whole or in part, or be dead-ended at the expressway right of way line; that existing streets or alleys be relocated; that new streets or alleys be laid out and opened; that accessory streets or ramps to serve as approaches to the expressway be constructed; that existing streets, leading to or off from expressway ramps, be designated as "one-way" streets for such distance as the commission and the municipality wherein such streets are located shall agree is necessary for such purpose; that the grade of existing streets be changed or that the traveled portion of existing streets be widened and improved so as to facilitate entrance to the expressway, it shall formulate a tentative order evidencing such requirement and file a certified copy thereof with the clerk of each town, city or village affected by such tentative order for consideration thereof by the governing body of such town, city or village.

2. Said governing body or such committee thereof as said governing body shall designate shall hold a public hearing in considering such tentative order and shall give notice of such hearing by publication once a week for 2 successive weeks in such newspaper, published in the county, as such governing body may designate.

3. If such tentative order is not approved within 90 days from the date of such filing, the commission shall present the tentative order to the state highway commission, which shall hold a public hearing thereon, of which hearing the municipality in question shall be given notice. The highway commission shall have jurisdiction to pass upon the necessity and reasonableness of the proposed tentative order, and it may approve, modify and approve or disapprove of the order, and its decision thereon shall be final, with no review allowed under ch. 227.

4. If such tentative order is approved by the governing body of the municipality affected, or if it is approved or modified and approved by the state highway commission, the county expressway commission may thereafter issue a final order identical with the original tentative order as the same may be modified by the state highway commission's decision. A certified copy of such final order shall be filed with the clerk of the town, village or city affected. Notice of the making of such order shall be published once a week for 2 successive weeks in such newspaper published in the county as the county board shall designate to publish official county notices.

5. The governing body of such town, village or city shall within 30 days after such filing take the necessary action to comply with such order and in so doing shall not be limited by the objections of any abutting owner; and the provisions of s. 80.32 (4) shall not be applicable to any vacation or discontinuance required by such order and any such town, village or city may act upon the initiative of its governing body without the necessity of obtaining the consent of any abutting owners, notwithstanding any provisions of chs. 60, 61, 62 and 66 and s. 80.32 (4) and any and all other provisions of law to the contrary.

6. If the town, village or city does not comply with the order within a reasonable time, the commission may perform the work required by the order with its own forces or by contract and in so doing and for such purpose shall have the same powers and freedom from limitations as are vested by the above specified chapters and this subsection in the governing body of the town, village or city.

7. The plans, specifications, proposed contracts and the appraisal of damages, if any, caused to abutting owners by compliance with such order shall be subject to approval by the commission prior to the commencement of any work under such order but such requirement for approval of such order shall not affect the abutting property owners' rights of appeal from the determination of damages by the commissioner of public works of the city or by any other authorized person or body.

8. The cost of performing such work as may be required by any order of the commission under this subsection, including damages granted for changes of legally established grade or necessary acquisition of lands, shall be paid by the county from expressway funds as an item of the particular expressway project budget upon presentation of vouchers which have been approved for payment by the governing body of such town, village or city and the commission. If the payment made by the county has been increased by reason of the town, city or village requesting an expenditure in excess of replacement or termination costs, the said town, village or city shall reimburse the county for such excess cost. Said reimbursement shall be credited by the county to abatement of the respective expense for which it was received.

(g) *Relocation of municipal utilities.* 1. The commission, subject to approval by the public service commission after public hearing to all interested parties in such cases in which the public service commission would have jurisdiction, may by order require any town, village or city through which an expressway project is to be constructed to remove, relocate and replace in kind or with equal facilities, or if the town, village or city shall so request by enlarged facilities, any sewer, street lighting or other like utility service the location of which interferes with construction of an expressway project, provided that in the event of such request the town, village or city shall bear that part of the cost of such improvement which exceeds the cost of the replacement of the existing facility in kind or with equal materials or facilities, provided further that the commission shall bear such excess cost where the installation of such enlarged facility is caused by designed construction and use of the expressway. A certified copy of such order shall be filed with the clerk of each town, village or city affected and upon such filing each such town, village or city shall within 30 days thereafter take the necessary action to comply with such order, provided that all plans, specifications and contracts for any of such work shall be subject to approval by the commission. In any event, when the work under specific contracts has been completed and approved by the governing body of such town, village or city and the commission, the same shall be paid by the county from expressway funds as an item of the particular expressway project budget. If the payments made by the county exceed the replacement costs and such additional cost was incurred at the specific request of the town, village or city, the said town, village or city shall reimburse the county therefor. Said reimbursement shall be credited by the county as an abatement of the respective expenses for which it is received. If deemed feasible and desirable by the commission any work provided for in this paragraph may be performed by commission forces or directly by contract, in which event the town, village or city in which such work is performed shall afford the co-operation necessary and required by the commission.

2. With respect to any water utility of any city, town or village which utility, in addition to providing water for human consumption, performs governmental functions in the way of providing water for fire protection, sewerage operation, street sanitation, park bathing pools and the like, the commission shall have the same powers and be subject to the same obligations as are provided in subd. 1, provided that water storage tanks, water pumping stations and water reservoirs shall not be included in any order of the commission and may be removed, relocated and replaced only with the consent and approval of the city, town or village owning and operating such facilities.

(h) *Private occupancy of streets; relocation.* 1. All persons other than those mentioned in par. (g) lawfully having buildings, structures, works, conduits, mains, pipes, wires, poles, tracks or any other physical facilities in, over or under the public lands, streets, highways, alleys, parks or parkways of the county, or of any town, village or city therein, which in the opinion of the commission in any manner interfere with the construction of any expressway project or the relocation or maintenance thereof, shall upon order by the commission promptly so accommodate, relocate or remove the same as may be ordered by the commission so as to remove such interference.

2. Whenever the commission proposes to submit an expressway project to the county board for its approval it shall give notice thereof to each privately owned public utility or other person affected by such project indicating in such notice the action which it desires such utility or person to take, and such utility or person shall within 90 days after receipt of such notice furnish to the commission its plan to comply with such request.

3. When the utility pursuant to the commission's order proceeds with the work in a manner satisfactory to the commission, the county by the commission shall pay the utility from expressways funds upon monthly estimates of work performed and submitted for payment by the utility, two-thirds of the net cost incurred by the utility in performing such work, after deducting reasonable and fair credits for items salvaged, for any betterments made at the option of the company and for the value as carried on the utility's books, of the used life of a facility retired from use if the service life of the new facility will extend beyond the expectancy of the one removed. The county shall not be liable to pay any value whatever for utility facilities where use of the same has been abandoned.

for reasons other than the construction or proposed construction of an expressway project even though the installation is intact.

4. The commission and any utility required to accommodate, relocate or remove a utility facility described in subd. 1 may by agreement provide for the respective amounts of the cost to be borne by each so as to resolve any dispute as to the allowance of charges and credits as hereinabove set forth. When such agreement has been concluded, the county by the commission shall pay out of expressway funds its share of such cost upon monthly estimates of work performed and submitted for payment by the utility.

5. If the commission and any privately owned public utility are unable to agree as to the division of such costs, either may appeal to the public service commission, which body shall determine the proper amounts of reimbursement according to the provisions expressed in this paragraph. Either party may have a review of the public service commission's decision in the manner provided in ch. 227. If it be determined upon such review that the county has paid more than two-thirds of the net cost of compliance by a utility with the commission's order, any overage shall be reimbursed to the county by the utility.

6. No such appeal shall delay construction of the expressway project nor compliance by the privately owned public utilities with the orders of the expressway commission, provided that such compliance shall not prejudice the rights of either the commission or the utilities in any pending appeal.

7. If any person refuses to comply with an order of the commission as promulgated in accordance with this paragraph, the commission may have a writ of assistance from the circuit court to compel compliance, and such person shall be liable for all damages caused to the commission by such delay.

8. Whenever any steam or electric railroad tracks shall cross or be crossed by an expressway project ss. 195.28 to 195.291 shall be applicable.

9. The reimbursement to private utilities provided in this paragraph shall be limited to expressway projects as provided in this section.

(i) *Entry on private lands.* The commission, its agents or servants, may enter upon any land in the county for the purpose of making surveys, test borings or any other type of examination necessary in the performance of its duties and shall be liable to restore the surface of said lands to the same or as good condition as existed at the time of such entry and for any other actual and demonstrable damage caused to said lands by such entry.

(j) *Traffic types and speed limits.* After an expressway project has been certified as completed, the public body having jurisdiction over the maintenance thereof shall have the power to regulate the type of vehicular use of such portion of the expressway except as limited by federal and state laws and regulations, and the power to fix speed limits thereon not in excess of the maximum speed limits for state trunk highways, and to provide and enforce reasonable penalties for infraction of such vehicular use regulation or speed limits.

(k) *Building permits on lands in expressway routes.* Each town, village or city through which a route of the approved expressway plan, as amended from time to time, shall pass, shall be given a formal notice of such route and a map thereof. Thereafter, when an owner of land within the right of way of an expressway indicated on such map shall make application for a building permit affecting such lands, final action on such application shall be deferred for a reasonable time not exceeding 60 days and the municipality shall within 5 days after receipt of such application notify the commission thereof.

(l) The commission may in its discretion use its own forces to construct expressway projects in whole or in part or may with the approval of the county board use county highway forces for such purposes.

(m) *Rules and regulations.* The commission shall have power to make all rules and regulations concerning its work.

(6) **REIMBURSEMENT FOR PRIOR EXPRESSWAY FINANCING.** Municipalities shall be reimbursed for prior expressway project expenditures. Any expressway projects under construction at the time the commission is created and the transfer of functions to the commission has been effectuated shall be completed by the commission. Such municipalities shall be reimbursed for such prior expressway expenditures and obligation incurred for the cost of right of way acquisition and clearance, construction engineering, and actual construction to the extent of such municipalities' contribution from tax levy or bond funds. Each such municipality shall calculate such contribution and certify same with full data to the commission. It shall then be subject to consideration, audit and approval by the commission. Upon such approval, reimbursement shall be effected on a 10-year instalment basis by levying a tax against all the municipalities of the county on an equalized valuation basis, and offsetting the amount thereof to the municipalities entitled to reimbursement.

(7) **AGREEMENTS FOR USE OF FEDERAL AID TO RETIRE MATURITIES.** The state highway commission and any county having a population of 500,000 or more are authorized to

enter into an agreement providing that when the proceeds of bonds issued by such county are expended in the improvement of a portion of the federal aid highway system as a part of the comprehensive expressway system in such a county, and are so expended under the provisions of ch. 84, and in compliance with section 5 of the federal aid highway act of 1950, or acts amendatory of or supplementary to such section, and regulations applicable thereto, such sum of money derived from federal aid for highways which may be authorized by the congress and apportioned to this state for any fiscal year as shall be stipulated in the aforesaid agreement may be applied to aid in retirement of annual maturities of the principal indebtedness of such bonds, and that to the extent that such federal aid can be claimed and received by the state for such purpose, it will upon receipt be paid to the county. Any money so paid shall be deposited by the county in the sinking fund provided for the retirement of the bond issue of which such bonds formed a part.

(8) **AGREEMENTS FOR STATE AID TO RETIRE MATURITIES.** The state highway commission is authorized to enter into a contract with a county containing a population of 500,000 or more providing that, to the extent that the proceeds of bonds issued by such county are expended under the provisions of ch. 84 in the improvement of state trunk highways or connecting streets, in addition to the agreed county share of such improvement and for which the county has not been or will not be reimbursed with federal funds, such sum as may be approved by the state highway commission in any fiscal year will be paid to such county to aid in retirement of the annual maturities of the principal indebtedness of such bonds from funds appropriated and available to the commission for the improvement of state trunk highways or connecting streets. Payments may be made pursuant to such agreement, before or after the bonds mature, from funds appropriated and available to the commission for the improvement of state trunk highways or connecting streets after making provision for adequate maintenance and traffic service, but this section or such agreement shall not constitute a commitment on the part of this state or the county to provide such funds. Any money so paid shall be deposited by such county in its sinking fund created for the purpose of payment of the bond issue of which such bonds formed a part.

(9) **STAFF.** (a) *Other departments and officers.* The staff of the county highway department, under the direction of the county highway commissioner, shall perform all technical work required by the commission. Any municipality having an expressway staff shall, upon request of the commission, and upon approval by the county board, transfer such staff to the county, and such agents and employes of such municipal staff shall thereupon become integrated into county civil service in the county highway department. The commission with the approval of the county board may hire upon a contract basis such expert consultant services as it may deem necessary to assist the commission in the planning of the expressway system.

(b) *Commission rooms and equipment.* The county board shall provide suitable offices where the maps, plans, documents, and records of the commission shall be kept, subject to public inspection at all reasonable hours and under such reasonable regulations as the commission may prescribe.

(10) **MAINTENANCE AND OPERATION.** (a) *Same.* Whenever any expressway project has been completed the commission shall file a certification of such fact with the county clerk, the clerk of the municipality in which such project is located and with the state highway commission. Thereafter the portion of the expressway system included in such project shall be operated and maintained by the county, provided that where any such expressway project shall be selected and designated by the state highway commission as a state trunk highway that portion of the expressway shall be maintained by the state. Connecting ramps constructed as a part of the expressway system shall be included in such maintenance to the curb lines of the streets with which they connect. When such project is completed, the municipality in which such expressway is located shall maintain the pavement and all municipal utilities on any street passing over or under such expressway, and the approaches to such bridges.

(b) *Policing of expressways.* Expressways shall be policed by the police department of the municipalities in which expressways are located.

(11) **MAINTENANCE ALLOTMENT.** From the appropriation made by s. 20.420 (81), the state highway commission shall allot annually on March 10 to each county for the maintenance and operation of expressways within its limits constructed pursuant to this section, which are opened, maintained and used for public travel, and which are not state or county trunk highways or connecting streets, the sum of \$520 per mile of such expressways; provided that the length of connecting ramps to be maintained by the county as part of the expressway shall be included in the total mileage.

History: 1953 c. 673; 1955 c. 10, 574, 652; 1957 c. 28, 329.
The highway commission should cooperate with the expressway commission for expenditures, and to obtain federal funds to compensate for relocation of utilities. 46 Atty. Gen. 58.

59.97 Zoning power. (1) **EXTENT OF POWER.** For the purpose of promoting the public health, safety and the general welfare the county board of any county may by ordinance effective within the areas within such county outside the limits of incorporated villages and cities establish districts of such number, shape and area, and adopt such regulations for each such district as the county board shall deem best suited to carry out the purposes of this section. The powers granted by this section shall be exercised through an ordinance which may determine, establish, regulate and restrict:

(a) The areas within which agriculture, forestry, industry, trades, business and recreation may be conducted.

(b) The areas in which residential uses may be regulated or prohibited.

(c) The areas in and along or in or along natural watercourses, channels, streams and creeks in which trades or industries, filling or dumping, erection of structures and the location of buildings may be prohibited or restricted.

(d) Trailer camps, or tourist camps and motels or both and mobile home parks.

(e) Designate certain areas, uses or purposes which may be subjected to special regulation.

(f) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered.

(g) The location, height, bulk, number of stories and size of buildings and other structures.

(h) The location of roads and schools.

(i) Building setback lines.

(j) The density and distribution of population.

(k) The percentage of lot which may be occupied, size of yards, courts and other open spaces.

(2) **FORMATION OF ZONING ORDINANCE; PROCEDURE.** (a) The county board shall designate the county park commission, rural planning board, county highway committee, or a special zoning committee which it may create, as its agency in all matters pertaining to county zoning. When such agency shall be directed by the county board to draft a proposed zoning ordinance for its consideration, the agency shall do all things necessary to comply with such direction, including the collection and analysis of pertinent data, the drafting of a tentative ordinance and the layout of tentative districts either by maps or words of description, holding public hearings, preparation of a proposed final draft, and its submission to the county board for its consideration prior to adoption. In any county in which a zoning ordinance has been finally adopted and is in force, the zoning agency designated by the county board shall oversee the administration of such ordinance and to this end such agency shall meet at least once each year.

(b) When the county zoning agency shall have completed a draft of a proposed zoning ordinance, it shall hold a public hearing or hearings thereon, following notice of such hearing by publication at least once each week for 3 successive weeks in the official newspaper of the county, or if there be none, in a newspaper of general circulation in the county. After such hearing the agency may make such revisions in the draft as it shall deem necessary, or it may submit the draft without revision to the county board with recommendations for adoption. Proof of publication of the notice of the public hearing held by such agency shall be attached to its report to the county board.

(c) When the draft of such ordinance, recommended for adoption by the zoning agency, is received by the county board, it may adopt the ordinance as submitted, or reject it, or return it to the agency with such recommendations as the county board may see fit to make. In the event of such return subsequent procedure by the agency shall be as if the agency were acting under the original directions. When adopted, duplicate copies of the ordinance shall be submitted by the county clerk by registered mail to each town clerk for consideration by the town board.

(d) A county ordinance adopted as provided by this section shall not be effective in any town until it has been approved by the town board. If the town board approves an ordinance adopted by the county board, as provided by this section, a certified copy of the approving resolution attached to one of the copies of such ordinance submitted to the town board shall promptly be filed with the county clerk by the town clerk. Such ordinance shall become effective in such town as of the date of such filing, which filing shall be recorded by the county clerk in his office, reported to the town board and the county board, and printed in the proceedings of the county board. Such ordinance shall supersede any prior town ordinance in conflict therewith or which is concerned with zoning, except as provided by section 60.74 (7).

(3) **AMENDMENTS; CHANGES.** (a) The county board may amend the regulations of an ordinance or change the district boundaries. The procedure with reference to such amendments or changes shall be as follows:

(b) A petition for amendment of any county zoning ordinance may be made by any property owner in the area to be affected by the amendment, by the town board of any town wherein the ordinance is in effect; by any member of the county board or by the agency designated by the county board to consider county zoning matters as provided in subsection (2) (a). Such petition shall be filed with the county clerk who shall present it to the county board at its next succeeding meeting.

(c) At such meeting of the county board the petition shall be referred directly to the agency designated by the county board to consider county zoning matters as provided in subsection (2) (a) for its consideration, report and recommendations.

(d) Upon receipt of such petition by such agency it shall call a public hearing thereon. Notice of the time and place of such hearing shall be given by publication thereof once each week for 3 successive weeks in the official newspaper of the county or if there be none in a newspaper of general circulation in the county. A copy of such notice shall be mailed by registered mail to the town clerk of each town affected by the proposed amendment at least 10 days prior to the date of such hearing.

(e) As soon as possible after such public hearing, the agency shall act on such petition either approving, modifying and approving, or disapproving of the same. If its action is favorable to granting the requested change or any modification thereof, it shall cause an ordinance to be drafted effectuating its determination and shall submit such proposed ordinance directly to the county board with its recommendations. If the agency after its public hearing shall recommend denial of the petition it shall report its recommendation directly to the county board with its reasons for such action. Proof of publication of the notice of the public hearing held by such agency and proof of the giving of notice to the town clerk of such hearing shall be attached to either such report.

(f) Upon receipt of such agency report the county board may adopt the ordinance as drafted by the zoning agency or with amendments, or it may deny the petition for amendment, or it may refuse to deny the petition as recommended by the agency in which case it shall re-refer the petition to the agency with directions to draft an ordinance to effectuate the petition and report the same back to the county board which may then adopt or reject such ordinance. In case a protest against a proposed amendment be filed with the county clerk at least 24 hours prior to the date of the meeting of the county board at which the report of the zoning agency is to be considered, duly signed and acknowledged by the owners of 20 per cent or more of the area proposed to be altered, or by the owners of at least 20 per cent of the frontage immediately in the rear or along the side boundaries thereof within 300 feet of the area proposed to be changed, or by the owners of at least 20 per cent of the frontage directly opposite and across a public street, highway or alley, from the area proposed to be altered, action on such ordinance may be deferred until the zoning agency shall have had a reasonable opportunity to ascertain and report to the county board as to the authenticity of such ownership statements. Each signer shall state the amount of area or frontage owned by him and shall include a description of the lands owned by him. If such statements are found to be true, such ordinance shall not be adopted except by the affirmative vote of three-fourths of the members of the county board of supervisors present and voting. If such statements are found to be untrue to the extent that the required frontage or area ownership is not present such protest may be disregarded.

(g) Any such amendatory ordinance when so adopted shall within 7 days thereafter be submitted in duplicate by the county clerk by registered mail to the town clerk of each town in which lands affected by such ordinance are located. If after 40 days from the date of such adoption a majority of such towns have not filed certified copies of resolutions disapproving such amendment with the county clerk, or if, within a shorter time a majority of the towns in which the ordinance is in effect have filed certified copies of resolutions approving the amendment with the county clerk, the amendment shall thereupon be in full force and effect in all of the towns affected by the ordinance. Any such ordinance relating to the location of boundaries of districts shall within 7 days after adoption by the county board be transmitted by the county clerk by registered mail only to the town clerk of the town in which the lands affected by such change are located and shall become effective 40 days after the adoption of the ordinance by the county board unless such town board shall prior to such date file a certified copy of a resolution disapproving of such ordinance with the county clerk provided that if such town board shall approve of such ordinance, said ordinance shall become effective upon the filing of the resolution of the town board approving same with the county clerk. The county clerk shall record in his office the date on which such ordinance becomes effective and he shall notify the town clerk of all towns affected by such ordinance of such effective date and also make such report to the county board, which report shall be printed in the proceedings of the county board.

(h) When any lands previously under the jurisdiction of a county zoning ordinance

shall have been finally removed from such jurisdiction by reason of annexation to an incorporated municipality, and after the regulations imposed by the county zoning ordinance have ceased to be effective as provided in s. 59.97 (4a), the county board may, on the recommendation of its zoning agency, adopt such amendatory ordinances as shall remove or delete such annexed lands from the official zoning map or written descriptions without following any of the procedures provided in pars. (b) to (g), and such amendatory ordinances shall become effective upon passage and publication. A copy of such ordinance shall be forwarded by the county clerk to the clerk of each town in which the lands affected were previously located. Nothing in this paragraph shall be construed to nullify or supersede the provisions of s. 80.64.

(4) **OPTIONAL ADDITIONAL PROCEDURES.** Nothing in this section shall be construed to prohibit the zoning agency or the county board or a town board from adopting any procedures, formal or informal, in addition to those prescribed in this section and not in conflict therewith. Such procedures may, but are not required to, provide for public hearings before the county board. The public hearing provided by subs. (2) (b) and (3) (d) is deemed to be sufficient for the requirements of due process whether or not the county board holds a further public hearing thereafter.

(4a) **CONTINUED EFFECT OF ORDINANCE.** Whenever any area which has been subject to a county zoning ordinance petitions to become part of a village or city, the regulations imposed by such county zoning ordinance shall continue in effect, without change, and shall be enforced by such village or city until such regulations have been changed by official action of the governing body of such village or city, except that in the event an ordinance of annexation is contested in the courts, the county zoning shall prevail and the county shall have jurisdiction over the zoning in the area affected until ultimate determination of the court action.

(5) **EXCHANGE OF TAX DEEDED LANDS.** When any county acquires lands by tax deeds, the county board may exchange any such lands for others lands in the county for the purpose of promoting the regulation and restriction of agricultural and forestry lands.

(6) **ZONING OF COUNTY OWNED LANDS.** The county board may by ordinance zone and rezone any lands owned by the county without necessity of securing the approval of the town boards of the towns wherein such lands are situated and without following the procedure outlined in subsections (2) and (3), provided that the county board shall give written notice to the town board of the town wherein such lands are situated of its intent to so rezone and shall hold a public hearing on the proposed rezoning ordinance and give notice of such hearing by posting in 5 public places in the town.

(7) **NONCONFORMING USES.** (a) An ordinance under this section shall not prohibit the continuance of the lawful use of any building or premises for any trade or industry for which such building or premises is used at the time such ordinances take effect, but the alteration of, or addition to, or repair in excess of 50 per cent of its assessed value of any existing building or structure for the purpose of carrying on any prohibited trade or new industry within the district where such buildings or structures are located, may be prohibited. The continuance of the nonconforming use of a temporary structure may be prohibited.

(b) The county board shall designate an officer to administer the zoning ordinance, who may be the secretary of the zoning agency or other appropriate person. The officer thus designated shall cause a record to be made immediately after the approval of an ordinance or amendment thereto, or change in district boundary, approved by the town board, of all lands, premises and buildings in the town used for purposes not conforming to the regulations applicable to the district in which they are situated. Such record shall include the legal description of the lands, the nature and extent of the uses therein, and the names and addresses of the owner or occupant or both. Promptly on its completion such record shall be published for 3 successive weeks in the official county newspaper, or if there be none, in a newspaper having general circulation in the county. Such record, as corrected, shall be on file with the register of deeds 60 days after the last publication and shall be prima facie evidence of the extent and number of nonconforming uses existing on the effective date of the ordinance in the town. Corrections prior to the filing of the record with the register of deeds may be made on the filing of sworn proof in writing, satisfactory to the officer administering the zoning ordinance.

(c) The county board shall prescribe a procedure for the annual listing of nonconforming uses, discontinued or created, since the previous listing and for all other nonconforming uses. Discontinued and newly created nonconforming uses shall be recorded with the register of deeds immediately after the annual listing.

(d) Paragraphs (b) and (c) shall not apply to those counties issuing building permits or occupancy permits as a means of enforcing the zoning ordinance or to counties which have provided other procedures for this purpose.

(8) PROCEDURE FOR ENFORCEMENT OF COUNTY ZONING ORDINANCE. The county board shall prescribe such rules and regulations and administrative procedures, and provide such administrative personnel as it may deem necessary for the enforcement of the provisions of this section, and all ordinances enacted in pursuance thereof. Such rules and regulations and the districts, setback building lines and regulations authorized by this section, shall be prescribed by ordinances which shall be declared to be for the purpose of promoting the public health, safety and the general welfare. Such ordinances shall be enforced by appropriate fines and penalties. Compliance with such ordinances may also be enforced by injunctive order at the suit of such county or the owner or owners of real estate within the district affected by such regulation.

(9) PRIOR ORDINANCES EFFECTIVE. Nothing in this section shall invalidate any county zoning ordinance adopted pursuant to statutes in effect prior to July 20, 1951.

(10) CONSTRUCTION OF SECTION. The powers herein granted shall be liberally construed in favor of the county exercising them, and this section shall not be construed to limit or repeal any powers now possessed by any such county.

(12) LIMITATION OF ACTIONS. A land owner, occupant or other person affected by a county zoning ordinance or amendment, who claims that such ordinance or amendment is invalid because procedures prescribed by the statutes or the ordinance were not followed shall be forever barred unless the court action is commenced within 6 months after adoption. Provided, this subsection shall not apply unless there has been at least one publication of a notice of a zoning hearing in a local newspaper of general circulation and unless there has been held a public hearing on the ordinance or amendment at the time and place specified in such notice.

History: 1951 c. 490; 1953 c. 61, 366, 563; 1955 c. 10, 203.

The evidence established that the town board of the town in which the defendant's premises were located had complied with the requirement of 59.97, as to filing a written approval with the county board in order to make the county zoning ordinance in question operative in such town. What became of such filed written approval afterward was immaterial. 59.97, Stats. 1947, did not require that a public hearing be held in each town as a condition precedent to the town board's voting approval of a county zoning ordinance, or an amendment thereto, but only that the one county-wide hearing be held. The approval of a town board is required only as a condition precedent to a county zoning ordinance being operative in such town, and in the absence of an express statutory provision permitting a town to withdraw or rescind a prior approval once given to a county zoning ordinance, neither the town nor the town board possesses such power of withdrawal or rescission. *Jefferson County v. Timmel*, 261 W 39, 51 NW (2d) 518.

This section, in granting to counties the power to establish restrictive areas along water courses, and not specifically stating that the same power may be exercised along highways, but conferring the general power to determine areas anywhere in the county in which trade and industries may be restricted, does not preclude a county, in enacting a zoning ordinance, from establishing restrictive areas along highways. *Jefferson County v. Timmel*, 261 W 39, 51 NW (2d) 518.

The fact that the legislature by 84.103 has conferred on the state highway commission the power to restrict the use of land along certain highways does not preclude a county from doing so by a proper zoning ordinance enacted pursuant to 59.97, in the absence of the highway commission's exercise of such power in such a way as to conflict with the county zoning ordinance. *Jefferson County v. Timmel*, 261 W 39, 51 NW (2d) 518.

If a zoning ordinance provides for an appeal to a board of adjustment created pursuant to a statute similar to 59.99 from an adverse ruling of an administrative officer or board in administering the ordinance, and court review of the decision or order of the board of adjustment is specifically provided for by statute, such remedy is exclusive of all other remedies and must be exhausted before a party can resort to the courts for other relief, except in cases where the validity of the ordinance itself is attacked. An assertion of prior nonconform-

ing use in itself does not constitute an attack on the validity of the zoning ordinance. *Jefferson County v. Timmel*, 261 W 39, 51 NW (2d) 518.

A county zoning ordinance, establishing a restrictive or conservancy district, which included therein a partly obscured highway intersection at which the defendant owned premises which he wished to operate as a tavern and filling station, along a state trunk highway constituting the most direct thoroughfare between the cities of Milwaukee and Madison, permitting the use of premises in such district only for residence and farming purposes and barring their use for business purposes, was in the interest of the general welfare as promoting safety on a main-traveled highway, and valid as a reasonable exercise of the police power. Such ordinance was not invalidated as spot zoning for placing the defendant's premises, located at a highway intersection, in a restricted district in which business uses were prohibited while permitting business uses at certain other intersections in the county along the same highway, since there was a reasonable basis for such different treatment, in that the view of motorists approaching the intersection at which the defendant's premises were located was obscured from one direction by a hill, whereas the view of the intersections zoned for business purposes was open from either direction. If there is any reasonable basis for the exercising of legislative discretion by the zoning authority, the same cannot be disturbed on judicial review. *Jefferson County v. Timmel*, 261 W 39, 51 NW (2d) 518.

Where a property owner makes application for a building permit for the erection of a building for a business use in a district in which business uses are prohibited by a zoning ordinance, and such permit is denied and the property owner does not appeal such ruling to the board of adjustment but instead files an application for and secures a permit to erect a building for residential use, he should be deemed thereby to have waived the right later to assert, as a defense in an action to enjoin him from using the property for a use prohibited by the ordinance, that he is entitled to use the new building for business purposes because of some prior nonconforming use. A successor in title stands in his shoes and is in no better position to assert the defense of nonconforming use. A prior nonconforming use of the premises for the sale of surplus gasoline from a pump would not permit of an enlarged use of the premises as a tavern and filling station in a new building erected

thereon. Jefferson County v. Timmel, 261 W 39, 51 NW (2d) 518.

Town board may rescind its previous attempted approval of a proposed county zoning ordinance relating to the location or boundaries of districts if such rescinding action is taken prior to the adoption of ordinance by the county board. 38 Atty. Gen. 572. An ordinance to repeal an existing county zoning ordinance is not valid unless it complies with the requirements therein provided for the amendment of such an ordinance. 42 Atty. Gen. 91.

A county must use the method of amending a zoning ordinance set forth in (3), and any ordinance establishing a different method is void. 43 Atty. Gen. 73. See note to 59.07, citing 46 Atty. Gen. 148.

59.99 County zoning, adjustment board. (1) **APPOINTMENT, POWER.** The county board may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of section 59.97 may provide that the said board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

(2) **PERSONNEL.** (a) In counties of less than 500,000 population, the board of adjustment shall consist of 3 members, who shall be appointed or elected as herein provided. The chairman of the county board shall appoint, with the approval of the county board, 3 members for terms of 1, 2 and 3 years, respectively, dating from July 1, 1927. Successors shall be appointed or elected in like manner at the expiration of each term and their terms of office shall be 3 years in all cases, beginning July 1 in the year in which they are appointed or elected and until their successors are appointed or elected.

(b) In counties having a population of 500,000 or more, the board of adjustment shall consist of 3 members who are residents of towns within the county, elected by the county board for terms of 1, 2 and 3 years, respectively, and until their successors are elected and qualify. Each town wherein the county zoning ordinance is in effect shall have at least one member on the board. The terms of the members of the board existing on April 10, 1957 shall expire on that date.

(c) The members of the board shall all reside within the county and outside of the limits of incorporated cities and villages; provided, however, that no 2 members shall reside in the same town. The board shall choose its own chairman. Office room shall be provided by the county board, and the actual and necessary expenses incurred by the board in the performance of its duties shall be paid and allowed as in cases of other claims against the county. The county board may likewise compensate the members of said board and such assistants as may be authorized by said county board. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(3) **RULES, MEETINGS, MINUTES.** The county board shall adopt rules for the conduct of the business of said board of adjustment, in accordance with the provisions of any ordinance or ordinances adopted pursuant to section 59.97. The board of adjustment may adopt further rules as necessary to carry into effect the regulations of the county board. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(4) **APPEALS TO BOARD.** Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the building inspector or other administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(5) **STAYS.** An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken shall certify to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

(6) **HEARING APPEALS.** The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(7) **POWERS OF BOARD.** The board of adjustment shall have the following powers:

(a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of section 59.97 or of any ordinance adopted pursuant thereto.

(b) To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

(c) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

(8) **ORDER ON APPEAL.** In exercising the above-mentioned powers such board may, in conformity with the provisions of this section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(9) **MAJORITY RULE.** In counties having a population of less than 500,000, the concurring vote of 2 members of the board, and in counties having a population of 500,000 or more, the concurring vote of a majority of the board, shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

(10) **COURT REVIEW.** Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.

(11) **CERTIORARI.** Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment, and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(12) **RETURN TO WRIT.** The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(13) **COURT DECISION.** If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(14) **COSTS.** Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from. All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

History: 1953 c. 61, 240; 1955 c. 651; 1957 c. 24.

59.997 Consolidation of counties; procedure; referendum. (1) Any two or more adjoining counties in the state may consolidate into a single county by complying with the requirements and procedure herein specified.

(2) The county boards of commissioners or county boards of supervisors of any two or more adjoining counties desiring to consolidate their respective counties into a single county may enter into a joint agreement for the consolidation of such counties, setting forth in such consolidation agreement:

(a) First, the names of the several counties which they propose to be consolidated;

(b) Second, the name under which it is proposed to consolidate the said counties, which name shall be such as to distinguish it from the name of any other county in Wisconsin, other than the consolidating counties;

(c) Third, the property, real and personal, belonging to each county, and the fair value thereof in current money of the United States;

(d) Fourth, the indebtedness, bonded and otherwise, of each county;

(e) Fifth, the proposed name and location of the county seat of the consolidated county;

(f) Sixth, if the said counties have different forms of county organization and government, the proposed form of county organization and government of the consolidated county;

(g) And seventh, the terms of agreement.

(3) The county board of commissioners or county board of supervisors of each of the said counties may appoint an advisory committee composed of three persons to assist the said board in the preparation of such agreement.

(4) The original of the consolidation agreement, together with a petition on behalf of the several county boards of commissioners or county boards of supervisors, signed by the chairman of each of said boards, asking that a referendum on the question of consolidation of the several counties be ordered, shall be filed with the clerk of the circuit court of one of such counties and a copy of such consolidation agreement and of the petition shall be filed with the clerk of the circuit court of each of the other such counties.

(5) The qualified electors of each county involved in the consolidation proposal whose county board of commissioners or county board of supervisors has not taken the initiative under subsection (2) may, by filing with the county board of commissioners or county board of supervisors of the said county a petition, signed by not less than twenty per centum of the qualified electors of said county, based on the total vote cast for governor at the last general election, asking the said board to effect, in accordance with subsection (2), a consolidation agreement with such county or counties as shall be named in the said petition, and asking for a referendum on the said question, require the said board to so proceed. A copy of the petition of the electors shall also be filed with the clerk of the circuit court of the county. If the said county board of commissioners or county board of supervisors is able within six months thereafter to effect such consolidation agreement, the procedure shall be the same as hereinbefore set forth. If the said board within the said period of time is unable or for any reason fails to perfect such consolidation agreement, then the judge of the circuit court of the said county shall appoint a committee of five representative citizens of the county, to act for and in lieu of the said county board of commissioners or county board of supervisors in perfecting the said consolidation agreement and in petitioning for a referendum.

(6) The county board of commissioners or county board of supervisors shall cause a copy of the said consolidation agreement thereafter to be published in each county which it is proposed to consolidate, at least once a week for two successive weeks in two or more newspapers having a general circulation in the said counties, and a copy of the said agreement shall be posted at the front door of the courthouse of each county.

(7) When the publication of the said consolidation agreement in each of the said counties is completed, of which the certificate to the judge of the circuit court of the said counties from the owner-editor or manager of each newspaper publishing the same shall be proof, the judge or judges of the circuit courts of the said counties shall, by order entered of record in each of such counties, require the several county clerks of the counties included in the consolidation agreement to submit such question to a vote of the qualified electors of such counties at the next election to be held on the first Tuesday in April, or the next regular election, or at a special election to be held on the day fixed in said order, which day shall be the same in each of the counties proposing to consolidate. A copy of said order shall be filed with the county clerk of each of such counties. If such question is submitted at a special election, it shall be held not less than thirty days nor more than sixty days from the completion of the consolidation agreement, but not within sixty days of any April or general election.

(8) The county clerk shall notice such election as other elections. The ballots shall be provided by the county clerk and shall be in substantially the following form:

OFFICIAL REFERENDUM BALLOT

If you desire to vote for the consolidation of (insert names of counties proposing to consolidate) counties pursuant to consolidation agreement, make a cross (X) or other mark in the square after the word "Yes," underneath the question; if you desire to vote against consolidation, make a cross (X) or other mark in the square after the word "No," underneath the question.

Shall (here insert names of counties proposing to consolidate) counties consolidate pursuant to consolidation agreement?

YES

NO

(9) Such ballot shall have on the back or reverse side thereof the indorsements provided by law for ballots for general elections and shall be marked by the voter and counted and canvassed as other ballots cast on questions in the county are counted and canvassed. The election shall be conducted by the same officers and in the same manner as are other

elections in the county. The results of the election shall be certified to the judge or judges of the circuit court of said counties.

(10) If a majority of the votes cast in each county upon such question are in favor of the consolidation of such counties, the judge or judges of said circuit court shall enter such fact of record in each such county. If in any one of such counties less than a majority of the votes cast upon such question are in favor of the proposed consolidation, said consolidation shall be declared to have failed for all purposes. If a majority of the votes cast upon such question in any county are opposed to consolidation, the question of consolidation shall not be again submitted to the electors of such county for a period of two years.

(11) At the next succeeding regular November election, held at least sixty days after the election at which consolidation is approved by the voters, there shall be elected for the consolidated county all county officers provided for by law, except as provided in subsection (12), and such officers shall be nominated as provided in chapter 5. Their terms shall begin on the first Monday of January next succeeding their election, at which time they shall replace all elective county officers of the counties consolidated into the consolidated county whose terms shall on such day terminate. All appointive county officers shall be appointed by the person, board or authority upon whom the power to appoint such officers in other counties is conferred. The terms of such officers shall commence on the first Monday of January next succeeding the first election of officers for the consolidated county, and shall continue, unless otherwise removed, until their successors have been appointed and qualified. The successors of all such officers whose first election or appointment is herein provided for shall thereafter be elected or appointed at the time, in the manner and for the terms provided by law.

(12) Consolidation effected under this section shall not affect the county courts or county superintendent of schools of the several counties until the expiration of the terms of the respective county judges and superintendents of schools holding office at the time of consolidation.

(a) Each county court shall continue to exercise the jurisdiction prescribed by law at the time of consolidation in the territory within which his jurisdiction then extends. In the judicial election held in April in the year prior to the expiration of the terms of the respective county judges, there shall be elected by the voters of the new consolidated county a county judge for such county who shall take office on the first Monday in January following the election. Thereafter the county courts of the several counties embraced in the consolidation shall cease to exist and the county court of the new consolidated county shall have jurisdiction in the entire county.

(b) Each county superintendent of schools in the several counties shall continue to exercise jurisdiction over the territory embraced in his district at the time of consolidation, but at the termination of his term the new consolidated county shall constitute but one superintendent district. In the election held in April prior to the expiration of such term, a county superintendent of schools shall be elected for the entire consolidated county, to take office on the first Monday in July following the election.

(13) Upon the first Monday of January following the first election of county officers for the consolidated county, the several counties shall thereafter for all purposes be treated and considered as one county, under the name and upon the terms and conditions set forth in the said consolidation agreement; and all rights, privileges, and franchises of each of the said several counties, and all records, books, and documents, and all property, real and personal, and all debts due on whatever account, as well as other things in action, belonging to each of such counties, shall be deemed as transferred to and vested in the said consolidated county, without further act or deed. All property, all rights of way, and all and every other interest shall be as effectually the property of the consolidated county as they were of the several counties prior to said consolidation; and the title to real estate, either by deed or otherwise, under the laws of this state vested in any of the said counties, shall not be deemed to revert or be in any way impaired by reason of this consolidation; but the rights of creditors and all liens upon the property of any of the said counties shall be preserved unimpaired; and the respective counties shall be deemed to continue in existence to preserve the same and all debts, liabilities and duties of any of the said counties shall henceforth attach to said consolidated county and be enforced against it to the same extent as if the said debts, liabilities and duties had been incurred or contracted by it, unless by the terms of said agreement the outstanding bonded indebtedness of the said counties shall not be transferred and attached to said consolidated county, but shall remain as obligations of the said counties which for such purpose shall be deemed to continue in existence.

(14) Suits may be brought and maintained against such consolidated county in any of the courts of this state in the same manner as against any other county. Any action or proceeding pending by or against either of the counties consolidated may be prosecuted to judgment as if such consolidation had not taken place; or the consolidated county may be substituted in its place. The townships, school districts, election districts and voting

places in the consolidated county shall continue as in the several counties prior to consolidation, unless and until changed in accordance with law.

(15) Until changed by law, the same circuit courts shall continue, though it may result in the consolidated county being a part of two or more circuits. All such courts shall, however, be held at the place designated as the county seat of the consolidated county, and each such court and the judge thereof shall continue to have and exercise the same jurisdiction as it or he had and exercised before such consolidation. If two or more judges have jurisdiction in any consolidated county they or a majority of them shall exercise the power to appoint officers and fill vacancies as is vested in judges of circuit courts of other counties.

(16) For the purpose of representation in congress and in the legislature the existing congressional, senatorial and assembly districts shall continue until changed in accordance with law. Such consolidated county shall in all respects, except as otherwise provided herein, be subject to all the obligations and liabilities imposed, and shall possess all the rights, powers and privileges vested by law in other counties.

(17) The provisions of this section shall be deemed cumulative and the authority herein granted to counties shall not be limited or made inoperative by any existing statute.

History: 1951 c. 261 s. 10.

59.100 to 59.136. [These sections, created by ch. 155, Laws 1937, providing annuity and benefit funds for the sheriff's department in Milwaukee county, are of local application and are not properly numbered for insertion in the statutes, and for these reasons are not printed. These sections have frequently been amended.]