57.14 History: 1955 c. 30; Stats. 1955 s. 57.14; 1969 c. 366.

CHAPTER 58.

Private Asylums, Hospitals and Societies.

58.01 History: R. S. 1858 c. 187; 1872 c. 146 s. 8; 1875 c. 325; 1877 c. 149; R. S. 1878 s. 1785, 1786; Stats. 1898 s. 1785, 1786; 1899 c. 351 s. 28; 1919 c. 616 s. 2; Stats. 1919 s. 58.01; 1923 c. 444 s. 1; 1929 c. 439 s. 11; 1955 c. 575 s. 20.

Editor's Note: The discharge of an inmate of a veterans' home was upheld, under sec. 1785, Stats. 1898, in Smith v. Board of Trustees, 138 W 628, 120 NW 403.

58.05 History: 1883 c. 171; 1887 c. 316; Ann. Stats. 1889 s. 1786a; Stats. 1898 s. 1786a; 1919 c. 616 s. 7; Stats. 1919 s. 58.05; 1943 c. 93; 1955 c. 506 s. 28; 1969 c. 366 s. 117 (1)(c).

58.06 History: 1917 c. 432; Stats. 1917 s. 1957 sub. 10; 1919 c. 616 s. 8; Stats. 1919 s. 58.06; 1929 c. 316 s. 1, 2; 1939 c. 233, 473; 1945 c. 104; 1949 c. 235; 1953 c. 430; 1957 c. 526 s. 26; 1957 c. 698; 1959 c. 555; 1961 c. 342; 1969 c. 366 s. 117 (1)(b), (c).

Under 58.06 (2), Stats. 1953, a philanthropic tuberculosis sanatorium approved by the state board of health may receive public patients at state and county expense notwithstanding that it leases the buildings and equipment from another non-profit corporation. The rent paid is a proper item of expense to be considered in calculating the per capita cost of maintenance, and the provisions of 50.07, relating to depreciation, have no application. The reasonableness of the rental charge is to be considered by the state board of health in determining whether to approve the sanatorium, but the use of the rent money by the owning corporation is immaterial. 44 Atty. Gen. 47.

See note to 50.09, citing 49 Atty. Gen. 191.

58.07 History: 1880 c. 179; Ann. Stats. 1889 s. 4445e; 1891 c. 292; Stats. 1898 s. 1636k; 1909 c. 65; 1911 c. 258; Stats. 1911 s. 1636k, 1636o; 1913 c. 106; 1919 c. 616 s. 9; Stats. 1919 s. 58.07; 1945 c. 158; 1947 c. 311, 540; 1949 c. 232; 1953 c. 193; 1969 c. 366 s. 117 (1)(c); 1969 c. 459.

A municipal humane officer has the powers of a constable; these do not extend beyond the limits of the county. 13 Atty. Gen. 134.

58.566 History: 1947 c. 93; 1947 c. 560.

CHAPTER 59.

Counties.

59.001 History: 1955 c. 651; Stats. 1955 s. 59.001.

59.01 History: R. S. 1849 c. 10 s. 1, 2; R. S. 1858 c. 13 s. 1, 2; R. S. 1878 s. 650; Stats. 1889 s. 650; 1919 c. 695 s. 3; Stats. 1919 s. 59.01; 1935 c. 212; 1955 c. 651 s. 2; 1969 c. 276 s. 610.

On legislative power generally see notes to sec. 1, art. IV; on uniform town and county government see notes to sec. 23, art. IV; on prohibition of special and private laws see notes to sec. 31, art. IV; on election, terms, and removal of county officers see notes to sec. 4, art. VI; on division of counties see notes to sec. 7, art. XIII; on removal of county seats see notes to sec. 8, art. XIII; and on the division of the state into counties, and their boundaries, see notes to various sections of ch. 2.

The right of a county to challenge acts of the legislature is sharply restricted, since the county is a creature of the state and exists in a large measure to help handle the state's burdens of political organization and civil administration. State v. Mutter, 23 W (2d) 407, 127 NW (2d) 15.

59.02 History: R. S. 1849 c. 10 s. 7; R. S. 1858 c. 13 s. 6; R. S. 1878 s. 652; Stats. 1898 s. 652; 1915 c. 385 s. 14; Stats. 1915 s. 652, 670m; 1919 c. 695 s. 4, 5; Stats. 1919 s. 59.02; 1943 c. 177; 1955 c. 651 s. 3, 5.

A county board may delegate to a committee of its members the power to purchase a poor farm for the county, but it cannot delegate powers legislative in their character. French v. Dunn County, 58 W 402, 17 NW 1.

This section states the common-law rule that a legal assembly of the members of a definite municipal governing body is made up of a majority of all its members. This is the universal rule applicable to all corporations, public or private. Wherever the common-law rule has been changed by statute, language uniformly occurs which is so plain as to leave very little, if any, room for judicial construction. Under this section it was held that a majority vote of a quorum but by less than a majority of all the members of the board constitutes the legal action of the whole board. St. Aemilianus Orphan Asylum v. Milwaukee County, 107 W 80, 82 NW 704.

Commissioners appointed by the county board to act with the town board in the building of a bridge cannot alone or acting with the board bind the county by contract for the construction of such bridge. Johnson v. Buffalo County, 111 W 265, 87 NW 240.

An oral motion when adopted by a county board or city council becomes a resolution. Meade v. Dane County, 155 W 632, 145 NW 239.

Sec. 652, Stats. 1911, contemplates that some powers of a county board may be exercised by a committee, but it does not attempt to define the extent of such power of delegation. First S. & T. Co. v. Milwaukee County, 158 W 207, 148 NW 22, 1093.

Where a motion to accept a bid for furnishing furniture for the courthouse is voted on, 7 voting in the affirmative, 5 in the negative, 2 not voting, it is not carried, the statute requiring a determination by a majority of those present. 2 Atty. Gen. 251.

The county board may delegate power to a committee to attend to the erection of an addition to the courthouse. 5 Atty. Gen. 652.

The county board is empowered to employ a graduate trained nurse. This may be done by the board direct or in pursuance of a resolution or an ordinance. 7 Atty. Gen. 613.

A county board may not adopt a rule requiring a larger vote than is required by statute to authorize expenditures by that body. 12 Atty. Gen. 24.

Even though rules of parliamentary proce-

dure are violated, in the absence of an appeal from a ruling of the chair, a county ordinance passed in the method set out in 59.02 (2), Stats. 1937, is valid. 27 Atty. Gen. 21.

A county board may adopt a rule for suspension of its rules when a quorum is present by majority vote or such other vote in excess of a majority as the board may deem desirable. 27 Atty. Gen. 309.

An ordinance duly enacted by a county board cannot be amended, repealed or suspended by a resolution. 28 Atty. Gen. 367.

One county board cannot by providing a method as to how a resolution may be amended or repealed require a succeeding or future county board to conform to the method provided. 28 Atty. Gen. 588.

Action of a county board in merely adopting a recommendation of a committee of the board, rather than a resolution to 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.

Resolutions adopted by the county board pursuant to powers granted by 59.02, Stats. 1961, are valid even though its own rules of parliamentary procedure were not followed. 52 Atty. Gen. 57.

59.03 History: R. S. 1849 c. 10 s. 42; R. S. 1858 c. 13 s. 25, 49, 63; 1869 c. 61 s. 1; 1870 c. 84, 85 s. 1, 2; 1871 c. 78 s. 3, 4; 1875 c. 259; R. S. 1878 s. 662, 663, 695; 1883 c. 111; 1885 c. 149; Ann. Stats. 1889 s. 662, 663, 695; 1895 c. 204 s. 2; Stats. 1898 s. 662, 663, 695; 1907 c. 398; 1909 c. 240; 1911 c. 220; Stats. 1911 s. 662, 663, 663a, 695; 1913 c. 170, 574; 1915 c. 251; 1917 c. 52, 254; 1919 c. 59; 1919 c. 362 s. 33; 1919 c. 494; 1919 c. 695 s. 11 to 14; 1919 c. 702 s. 54; Stats. 1919 s. 59.03; 1921 c. 238; 1921 c. 527; 1925 c. 421; 1927 c. 181; 1931 c. 86; 1931 c. 373 s. 3; 1935 c. 407; 1939 c. 45; 1943 c. 65; 1943 c. 334 s. 5; 1945 c. 133; 1947 c. 81; 1949 c. 95, 635; 1951 c. 43; 1955 c. 651 s. 3; 1957 c. 47, 103, 445; 1959 c. 97, 259; 1961 c. 573, 622; 1965 c. 20, 226; 1969 c. 126, 192.

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

Considering the legislative history of 59.03 (2) (f), Stats. 1943, fixing the compensation of members of the county board at $4 per day except that as prescribed therein the board may fix the compensation of members "to be elected at the next ensuing election" and of 59.15, authorizing the board to fix the annual salary of each "county officer" to be elected at the next ensuing election, 59.15 (1) (ef), created by ch. 94, Laws 1943, as emergency legislation expiring January 1, 1945, and providing that the county boards may increase the salary of any elective county officer for or during his term of office notwithstanding any other provision of the law to the contrary, did not authorize the county board to increase the compensation of its members during their term of office. Karnes v. Johnson, 246 W 92, 16 NW (2d) 435.

See note to sec. 1, art. I, on equality, citing State ex rel. Sonneborn v. Sylvester, 26 W (2d) 43, 132 NW (2d) 249.

A resolution of the county board fixing the salary of its members applies only to members subsequently elected. 4 Atty. Gen 456; 7 Atty. Gen. 240.

Which is the most usual traveled route is a question of fact to be determined by the county board. 10 Atty. Gen. 645.

Compensation provided by a county board to be paid to its members under this section is not inclusive of mileage allowance; such allowance may be paid members in addition to compensation for services. 12 Atty. Gen. 579.

The chairman of a town, declared elected by a canvassing board and qualified, may sit as a member of a county board, although a suit is pending in circuit court contesting his election. He is a de facto if not a de jure officer. 14 Atty. Gen. 274.

Salaries of supervisors as members of a county board fixed at a special meeting, but before beginning of terms of office of such officers, are legally fixed. 16 Atty. Gen. 145.

The number of days for which compensation may be paid a committee member of a county board in any one year (with statutory exceptions) is limited by this section and 59.06; the county board cannot by its act extend such limitation. 16 Atty. Gen. 147.

The offices of constable and member of a county board are incompatible. 18 Atty. Gen. 99.

A member of a county board is not eligible to be appointed custodian of public property by the county board. 18 Atty. Gen. 651.

The offices of member of a county board and justice of the peace are incompatible. 19 Atty. Gen. 510.

Under this section and 59.06, limiting the number of days for which members of a county board may receive per diem, a year is a member's official year and begins, as to him, when he qualifies in office. 20 Atty. Gen. 730.

Prior to amendment to 59.03 (2)(f) by ch. 407, Laws 1935, a resolution by a county board to reimburse chairman for expenses incurred in performance of his duties, in addition to per diem and mileage for attending sessions and per diem for maximum 30 days' committee service, was invalid. 21 Atty. Gen. 237.

A drainage district commissioner who is directly interested in sale of land in the district does not have the right to sit as a member of a county board while the question of sale of such land is voted on. 24 Atty. Gen. 549.

A member of a county board may act as conciliation commissioner. 25 Atty. Gen. 22.

The resignation of an officer who serves until a successor is elected and qualified takes effect upon qualification of his successor; he is entitled to compensation for serving in office until such successor has been appointed and qualifies. 26 Atty. Gen. 63.

A divorce counsel is ineligible for the office of member of a county board by reason of 59.03 (3). 27 Atty. Gen. 296.

Under 59.03 (3) a county board member may not serve as deputy sheriff even though he is willing to serve without pay. 28 Atty. Gen. 32.

The offices of mayor and member of a county board are compatible. 28 Atty. Gen. 138.

The number of days for which compensation may be paid to county board members is limited by 59.03 (2)(f) and this provision cannot be circumvented by having the board

meet as a committee of the whole. When so meeting board members are not entitled to compensation as members of a county board committee under 59.06 (1) and (2) and action taken as a committee of the whole is not the action of the county board. 36 Atty. Gen. 587.

Under 59.03 (2)(f) a county board member on annual salary cannot receive additional compensation by way of per diem or otherwise for services on a committee supervising the construction of a county building even though the committee duties are such as to require many more days of service than is true generally in the case of usual county board committees. 37 Atty. Gen. 164.

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.

A 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 59.03 (2)(i). Further payment of salaries under this resolution is not authorized. The 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 committee 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.

A county board member may be employed by the district attorney as investigator in a proper case, as no question of incompatibility of offices arises, provided the compensation does not exceed the statutory limit. 44 Atty. Gen. 159.

Under 59.03 (2), mileage of a county board member is in addition to salary and is not affected by the compensation limitations provided by 59.03 (2)(f). 45 Atty. Gen. 256.

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

A member of a county board is an officer of the city, village, or town in which elected rather than an officer of the county. 47 Atty. Gen. 302.

Under 59.03 (2)(g) a county board member is entitled to mileage at the rate established by the board under 59.15 (3) regardless of the fact that such board member received free transportation. The district attorney may not start a civil suit for recovery of money on behalf of the county without county board authorization. 47 Atty. Gen. 309.

County board members receiving annual salary under 59.03 (2)(i) cannot authorize county highway committee members per diem compensation while working on acquisition of rights of way for county highways. 52 Atty. Gen. 22.

The county board may not retroactively increase the number of days a supervisor may be compensated for committee work and thereby legalize excess payments already made, but it can increase the days for the current year after the services were performed if done before payment. Supervisors who were overpaid can be compelled to make refunds. 54 Atty. Gen. 191.

59.031 History: 1959 c. 327; Stats. 1959 s. 59.031; 1963 c. 510; 1967 c. 197.

See notes to sec. 23, art. IV, on uniform town and county government, citing State ex rel. Milwaukee County v. Boos, 8 W (2d) 215, 99 NW (2d) 139.

59.032 History: 1967 c. 306; Stats. 1967 s. 59.032; 1969 c. 214.

59.033 History: 1963 c. 420; Stats. 1963 s. 59.033; 1969 c. 214.

59.04 History: R. S. 1849 c. 10 s. 25, 29; R. S. 1858 c. 13 s. 25, 26, 34, 48; 1871 c. 78 s. 6; 1874 c. 150; R. S. 1878 s. 664, 665, 666; 1882 c. 199; 1883 c. 318; 1885 c. 274, 431; 1889 c. 403; Ann. Stats. 1889 s. 664, 665, 666; Stats. 1898 s. 664, 665, 666; 1917 c. 566 s. 13; 1919 c. 695 s. 16 to 18; Stats. 1919 s. 59.04; 1935 c. 235; 1945 c. 23, 46, 208; 1947 c. 301, 541; 1953 c. 627; 1955 c. 651 s. 4, 5; 1959 c. 96; 1969 c. 25.

The rule that members of a legislative body are disqualified to vote on propositions in which they have a direct pecuniary interest adverse to the state applies to a board of supervisors. Members who are sureties upon the bond of the county treasurer are not qualified to vote upon a proposition to relieve him from his legal liability. Oconto County v. Hall, 47 W 208, 2 NW 291.

A request bearing the signatures of 4 more than the requisite majority of the supervisors and in terms requesting a special meeting to be called upon a certain day and hour is a valid request, although there was some confusion in interlining the date of meeting. A meeting held in pursuance of such request is presumptively legal and valid and the burden of proof is upon one who signs to overcome the presumption. Evidence showing that the time was written in by a supervisor circulating it does not exclude the possibility that the supervisor was expressly authorized to make such interlineation. The presence of the paper with the signatures raises the presumption of a due signing by all. Bartlett v. Eau Claire County, 112 W 237, 88 NW 61.

Where there were 10 members present at a meeting of the board and the record showed that 5 voted in favor of a resolution and 4 against it, the chairman not voting, and it was then declared carried, the chairman will have been held to have voted in favor of the resolution. Strange v. Oconto Land Co. 136 W 516, 117 NW 1023.

A special meeting of the county board being in the language of the statute a legal meeting, any of the powers which the board possesses may be exercised at such meeting as well as at a regular meeting unless otherwise specifically provided. Appleton v. Outagamie County, 197 W 4, 220 NW 393.

A county board may continue its annual meetings from time to time until it adjourns sine die; such continued meetings are lawful annual meetings. Dandoy v. Milwaukee County, 214 W 586, 254 NW 98.

The county board is a perpetual body, and a special meeting may be called by members who may not be members when the meeting occurs. At such special meeting the chairman may be elected if it is the first meeting after the spring election. 3 Atty. Gen. 731.

The petition need not recite the purpose for which a special meeting is called. 8 Atty. Gen. 396.

A county board has implied power to adjourn to a subsequent day. An adjournment must be to a time certain, or it is an adjournment sine die. 1 Atty. Gen. 385, 378; 8 Atty. Gen. 821.

Special meetings of the county board may not be called or provided for by ordinance or resolution; such meeting may be called only in the manner prescribed by 59.04 (2). 11 Atty. Gen. 233.

When a written request of a majority of the members of the county board is delivered to the county clerk, it is mandatory upon the clerk to serve notice of the special meeting. 11 Atty. Gen. 409.

A county board can adjourn their meeting to a date after election of new members; a county board is a continuing body; at that meeting new members elect a new chairman. 18 Atty. Gen. 240.

A county board member serving a jail sentence for fishing without a license is not legally incapacitated to participate in county board meetings, assuming he is permitted to attend meetings. 24 Atty. Gen. 705.

At its organization meeting the county board may increase the number of days allowed for committee meetings and exercise all powers which may be exercised at annual meeting. 27 Atty. Gen. 248.

The annual meeting of a county board may not be held on Armistice Day. 36 Atty. Gen. 520.

The county board chairman is to be elected annually at the organization meeting held in April each year. 38 Atty. Gen. 112.

See note to 83.015, citing 40 Atty. Gen. 158.

The annual April meeting of county board under 59.04 (1)(c), and any adjourned sessions thereof, may be held only at the county seat. 41 Atty. Gen. 280.

Under 59.04 (1)(c), Stats. 1957, it is permissible for the county board to elect the county highway committee at the April meeting next following the November meeting at which they have failed to elect, subject to further provisions of 83.015 (1). 46 Atty. Gen. 175.

59.05 History: R. S. 1849 c. 10 s. 30, 31; R. S. 1858 c. 13 s. 35, 36; 1859 c. 117; 1871 c. 78 s. 1; R. S. 1878 s. 667; Stats. 1898 s. 667; 1903 c. 110 s. 1; Supl. 1906 s. 667a; Stats. 1911 s. 667, 667a; 1919 c. 695 s. 19; Stats. 1919 s. 59.05; 1929 c. 17; 1943 c. 371; 1947 c. 226; 1955 c. 651; 1967 c. 197.

Where the chairman of a county board has been enjoined from payment for highway work done for the county, the countersigning of bonds for the same in violation of the injunction renders him liable to repayment, in a taxpayer's action, of the sums drawn from the county treasury on such orders. Webster v. Douglas County, 102 W 181, 77 NW 885, 78 NW 451.

On the resignation of the chairman of the county board the vice chairman discharges the duties of the chairman for the residue of the term. The chairman and vice chairman of the county board are chosen for a term ending upon election of their successors. Successors to these officers are elected at the first meeting of the next county board. 8 Atty. Gen. 134.

The de facto chairman of a county board may sign highway improvement bonds issued by the county. Upon resignation of the chairman of county board, the board has authority to elect a successor for the unexpired term. 20 Atty. Gen. 85.

Under 59.05 (1), Stats. 1945, a county board chairman is not required to countersign county orders unless required by county ordinance to do so. 35 Atty. Gen. 275.

59.06 History: 1874 c. 174; R. S. 1878 s. 668; 1895 c. 373; 1897 c. 196; Stats. 1898 s. 668; 1907 c. 14; 1915 c. 533 s. 2; 1919 c. 695 s. 20; Stats. 1919 s. 59.06; 1935 c. 235, 236; 1949 c. 426; 1955 c. 651; 1957 c. 536; 1969 c. 55.

Ministerial powers may be delegated by the county board to a committee. Duluth, S. S. & A. R. Co. v. Douglas County, 103 W 75, 79 NW 34.

A committee of the county board must consist of members thereof and one appointed on such committee who is not a member is not a de facto officer. Forest County v. Shaw, 150 W 294, 136 NW 642.

This section does not restrict the power of the committees appointed under its provisions to making investigation and reporting recommendations, nor does it undertake to define what power is conferred on committees. First S. & T. Co. v. Milwaukee County, 158 W 207, 148 NW 22 and 1093. See also 24 Atty. Gen. 326.

A county board is not empowered to authorize a committee of its members to settle and allow claims against county. That must be done by the board. 1904 Atty. Gen. 98.

Members of an investigating committee of the county board are entitled to per diem. 4 Atty. Gen. 49.

A county board member failing of reelection ceases to be a member of a committee of the board. 13 Atty. Gen. 241.

The power to appoint a county treasurer to fill a vacancy cannot be delegated by the county board to a committee composed of its own members. 15 Atty. Gen. 461.

A committee created under this section may not perform administrative functions with respect to highways. 20 Atty. Gen. 57.

A member of a committee of a county board may be allowed per diem for committee service rendered during a period of temporary adjournment of an annual meeting of the board, except where adjournment is merely one from day to day. "In session" as used in 59.06 (2), Stats. 1931, means in actual session. 22 Atty. Gen. 160.

59.06 (1) does not govern appointment of a committee after a meeting of the board. Except as provided in 59.06 (1) a county board

committee may be appointed in accordance with procedural rules of the board itself. 22 Atty. Gen. 997.

Per diem of members of a county park committee is limited by 59.06 (2), even though the committee may, as part of its duties, supervise erection of a county building. 24 Atty. Gen. 732.

Members of a county board pension advisory committee are entitled to per diem. The county board may appropriate money for assistance administration subject to release by its pension committee. 24 Atty. Gen. 768.

Members of a county board committee are entitled to mileage for each day of committee attendance. 25 Atty. Gen. 86.

The executive committee of a county board has no authority to expend money for replacement of wornout county highway department trucks until an appropriation has been made by the county board. 26 Atty. Gen. 613.

Under 59.06 (2)(b) the county board may by two-thirds vote increase the number of days for which compensation and mileage may be paid committee members subsequent to holding of additional committee meetings. 27 Atty. Gen. 181.

Under 82.05 (1), Stats. 1937, members of a county highway committee may be reimbursed for their actual and necessary expense in traveling to and from committee meetings each day. Unless otherwise provided by specific statute, members of other county board committees shall receive per diem and mileage for each day of official service under 59.06 (2). 27 Atty. Gen. 851.

A county board chairman who is an ex officio member of all committees of the board is entitled to per diem and expenses for committee service under 59.06 (2), notwithstanding that he has been voted additional $125 per year under 59.03 (2)(f), such additional compensation being intended to cover his statutory duties as chairman under 59.05. 29 Atty. Gen. 154.

See note to 59.03, citing 36 Atty. Gen. 587.

The county board cannot delegate to a committee of the board complete discretion as to whether legal action should be brought by the county to recover for loss it sustains by reason of damage to motor vehicles owned by it. It can adopt a resolution directing that as claims arise they be referred to a designated committee, and that it in turn refer them to the district attorney, and if in his judgment the county has a valid claim or cause of action for an amount in excess of the probable expense of collection, that he proceed forthwith to commence an action thereon in the name of the county. The county board cannot delegate to a committee of the board complete authority to compromise claims against the county arising from the operation of county-owned motor vehicles. It would be proper to authorize a designated committee to compromise and settle, for an amount not in excess of the probable expense of defending the county, any claim which in the opinion of the district attorney, if litigated, would probably result in a judgment against the county for a greater amount. The board could also direct such a committee to discuss the matter of settlement of claims against the county with claimants or their attorneys and to recommend settlements to it. 38 Atty. Gen. 54.

Members of a county board elected prior to the time county board increased per diem compensation as provided in 59.03 (2)(f), are entitled to be compensated for serving as members of committees of the county board at a per diem not to exceed that which they are entitled to receive as members of the board and are not entitled to compensation as members of said committees at the increased rate. 38 Atty. Gen. 238.

A 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, Stats. 1951, 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.

40.02 (4), 59.03 (2), and 59.06, Stats. 1961, do not authorize a county board member to collect 2 per diems on the same day. 50 Atty. Gen. 187.

59.06 (2), Stats. 1961, includes expenses of the county highway committee attending road schools and other meetings, as well as other county committees. 51 Atty. Gen. 183.

A county board of supervisors can increase the number of days a supervisor can be compensated for committee service, even after services have been rendered, but cannot validate excessive payments. 54 Atty. Gen. 191.

A county board supervisor is not entitled to per diem for appearing before a committee of which he is not a member unless he is directed by the county board to appear or unless he is appearing for another county board committee with its consent on a matter within the authorized concern of the committee of which he is a member. 57 Atty. Gen. 130.

59.07 (Intro. par.) History: 1955 c. 651; Stats. 1955 s. 59.07 (intro. par.).

Editor's Note: The notes to Bill No. 535, S., indicate that the substance of sections 59.07 through 59.08, Stats. 1953, was largely preserved in the new section 59.07 created by ch. 651, Laws 1955. For that reason, the history of 59.07 in this volume includes the history of the predecessor sections wherever that history can be ascertained.

On exercises of police power and taxing power see notes to secs. 1 and 13, art. I; on taking private property for public use see notes to sec. 13, art. I; on the public purpose doctrine and on delegation of power see notes to sec. 1, art. IV; on powers of county boards see notes to sec. 22, art. IV; on uniform town and county government see notes to sec. 23, art. IV; on salary changes see notes to sec. 26,

art. IV; on election, terms, and removal of county officers see notes to sec. 4, art. VI; on jurisdiction of circuit courts see notes to sec. 8, art. VII; on the rule of taxation (property taxes) see notes to sec. 1, art. VIII; on limitations of indebtedness and direct annual tax to pay debt see notes to sec. 3, art. XI; on acquisition of lands by the state and subdivisions see notes to sec. 3a, art. XI; on election or appointment of statutory officers see notes to sec. 9, art. XIII; on eminent domain see notes to various sections of ch. 32; on special schools see notes to 38.36—38.60; on veterans' affairs see notes to various sections of ch. 45; on public welfare see notes to various sections of ch. 46; on child welfare services see notes to 48.56—48.59; on public assistance see notes to various sections of ch. 49; on budgetary procedures see notes to 59.84 and 65.90; on detachment of farm lands from villages see note to 61.74; on county and city civil service see notes to various sections of ch. 63; on general municipality law see notes to various sections of ch. 66; on municipal borrowing and municipal bonds see notes to various sections of ch. 67; on land sold for taxes see notes to various sections of ch. 75; on the power to lay, alter and discontinue town highways see notes to 80.39; on county highways see notes to various sections of ch. 83; on miscellaneous highway provisions see notes to various sections of ch. 86; on regulation of places of amusement see notes to 175.20; on kinds of actions see notes to 260.05; on recovery of municipal forfeitures see notes to 288.10; and on powers of state and local authorities over traffic regulation see notes to various sections of ch. 349.

Resolutions and all proceedings of the board are to be liberally construed with the purpose of ascertaining the real intent. Hark v. Gladwell, 49 W 172, 5 NW 323.

The authority given by sec. 669, R. S. 1878, "to make such orders concerning the corporate property of the county" as the board may deem expedient, "to settle and allow all accounts, demands or causes of action against the county", and to "have the care of the county property and the management of the business and concerns of the county in all cases", empowers the boards of 2 counties to compromise and settle a matter of difference between them. Hall v. Baker, 74 W 118, 42 NW 104.

In the absence of statutory authority, neither the county board nor county officers have authority to incur liability for medical treatment of a pauper to cure him of inebriety as a disease. Putney Brothers v. Milwaukee County, 108 W 554, 84 NW 822.

A city cannot maintain an action to restrain its treasurer from paying over moneys in his hands belonging to the county on the ground that the taxes levied by the county were illegal. (State ex rel. Sheboygan v. County Board, 194 W 456, and In re Application of Racine, 196 W 604, applied.) Appleton v. Outagamie County, 197 W 4, 220 NW 393.

The county board has only such powers as are expressly conferred on it or necessarily implied from those expressly given. Dodge County v. Kaiser, 243 W 551, 11 NW (2d) 348.

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 has no authority to appropriate money to defray the expenses of a committee appointed to endeavor to secure the repeal of a law of general application throughout the state. 2 Atty. Gen. 268.

A county board may not establish a dental clinic. 9 Atty. Gen. 506.

A county board has no authority to appropriate money for arms and ammunition to equip members of so-called vigilance committee. 15 Atty. Gen. 479; 16 Atty. Gen. 2.

A county board has no authority to enact an ordinance regulating the sale of milk. The board may organize county health department and this department may, in turn, make rules and regulations regarding sale of milk. 21 Atty. Gen. 531.

A county board may not create the office of county supervisor of music. 24 Atty. Gen. 424.

A county board cannot by ordinance give exclusive jurisdiction of traffic law violations to the county court. 26 Atty. Gen. 100.

A county board may not pass an ordinance prohibiting sale and use of fireworks within the county. 27 Atty. Gen. 690.

A county may not buy tires for resale to employes. 39 Atty. Gen. 572.

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.

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

A county board does not have authority to enact a county-wide ordinance licensing peddlers. 46 Atty. Gen. 184.

A county has no power to engage in constructing roads and driveways on private lands or draining such lands. 46 Atty. Gen. 206.

Counties have no power to undertake excavating, filling, landscaping, or any other construction work in connection with the building of a school, public or private. 48 Atty. Gen. 231.

County boards (other than the Milwaukee county board) do not have authority to establish a children's home. 51 Atty. Gen. 184.

59.07 (1) History: Stats. 1953 s. 59.01, 59.07 (1), (2), (2m), (4), (17m), (24), 59.08 (26), (29), (34), (57), 59.67 (2); 1955 c. 236, 651; Stats. 1955 s. 59.07 (1); 1963 c. 345; 1967 c. 27; 1967 c. 92 s. 22; 1969 c. 276 ss. 588 (1), 610; 1969 c. 416.

An offer to purchase or a contract for the purchase of the property of a county, to be binding on either party, must be made with the county board of supervisors as such, except where there is some person expressly authorized to sell it. McCrossen v. Lincoln County, 57 W 184, 14 NW 925.

Under sec. 652 and 1523, R. S. 1878, a county board could delegate to a committee of its members the power to purchase a poor farm for the county. French v. Dunn County, 58 W 402, 17 NW 1.

The county board has no authority to lease, gratuitously, the office space in the office of the county judge, with his consent, to an abstract company operating its business for private gain. 12 Atty. Gen. 1.

A county board may authorize a committee composed of certain of its members and trustees of the county asylum to make preliminary arrangements for erection of a building for a county asylum, such committee to procure plans and solicit bids and let contract and chairman of county board and county clerk to execute such contract with successful bidder, at total cost of not to exceed specified sum appropriated for purpose. 13 Atty. Gen. 328.

A county may sell to the state, and the state may buy from the county, gravel for highway construction purposes from a pit owned or operated by the county. 14 Atty. Gen. 227.

When a county leases the courthouse as a commercial enterprise it is liable for torts occurring through negligence of its officers or agents. The county board has the right to permit use of the courthouse for nongovernmental functions provided such use is in the interests of public welfare, and does not interfere with use of the court rooms by the judiciary. 22 Atty. Gen. 404.

A county has only such powers as are given by statute and cannot purchase lands for the purpose of avoiding the cost of providing bridges, highways, etc., to such lands. A county may purchase land for park purposes under 27.065, Stats. 1935, and may borrow money therefor under 67.04 (1)(h), subject to limitations of 67.03. It may also acquire lands for forest reserves under 59.98. 25 Atty. Gen. 379.

A county board has authority to lease a county home to a private individual. 36 Atty. Gen. 515.

A county board has no authority to delegate to the superintendent of the county asylum power to put in effect a program to fireproof the asylum and to spend the money appropriated for this purpose. 36 Atty. Gen. 646.

The county board has authority to make new installations at a county asylum pursuant to this subsection. Such authority no longer rests in the board of trustees since amendment of 46.18 by ch. 268, Laws 1947. 37 Atty. Gen. 285.

Where a county owns a highway in fee the county board may sell interest required to permit a private individual to place footings for a building in right-of-way. 38 Atty. Gen. 175.

The county board has power to include restrictions on the use of premises in conveyances of county lands acquired by tax deed. 38 Atty. Gen. 386.

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

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.

Only the county board has the authority to lease county-owned land. 43 Atty. Gen. 10.

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.

See note to 27.015, citing 46 Atty. Gen. 168.

A county board has power to survey and plat county property as an aid to sale. 46 Atty. Gen. 216.

See note to 30.30, citing 50 Atty. Gen. 91.

Under 59.07 (1) and 59.875, Stats. 1963, the county has the power to lease space to the D. H. I. A. for milk-testing purposes. 52 Atty. Gen. 356.

See note to 59.23, citing 52 Atty. Gen. 377.

Under 59.07 (1) and 66.30, Stats. 1965, counties may appropriate funds for joint operation by public authority of a "youth camp". 54 Atty. Gen. 101.

59.07 (1m) History: 1957 c. 213; Stats. 1957 s. 59.07 (1m).

59.07 (2) History: Stats. 1953 s. 59.07 (4), (23), 59.08 (14), (14m); 1955 c. 651; Stats. 1955 s. 59.07 (2); 1959 c. 173, 490; 1961 c. 594.

The county board of supervisors, after having determined the amount of insurance to be carried, may delegate authority to the county training school board, to procure such insurance upon the county training school buildings in the name of the county. 3 Atty. Gen. 448.

This subsection authorizes the county board to insure county buildings in a mutual company. 9 Atty. Gen. 590.

59.07 (23), Stats. 1941, which empowers the county board of each county to provide by ordinance for the carrying of insurance, does not extend to workmen's compensation insurance. 31 Atty. Gen. 76.

Under this subsection a county board may provide insurance for only one county-owned motor vehicle and need not carry insurance for all county-owned vehicles. 35 Atty. Gen. 265.

Under 59.07 (2)(c) 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 employes. 39 Atty. Gen. 36.

A county board may insure its interest in property on which it has tax liens. 42 Atty. Gen. 225.

59.07 (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 payroll but is paid entirely by the state and is compen-

sated by the state for his traveling expenses. 45 Atty. Gen. 248.

59.07 (3) History: R. S. 1849 c. 10 s. 27 sub. 2; R. S. 1858 c. 13 s. 27 sub. 2; R. S. 1878 s. 669 sub. 2; Stats. 1898 s. 669 sub. 2; 1919 c. 695 s. 21; Stats. 1919 s. 59.07 (3); 1939 c. 348; Stats. 1939 s. 59.07 (3), 59.08 (38); 1955 c. 651; Stats. 1955 s. 59.07 (3); 1967 c. 23.

The word "account" refers only to demands arising out of some express or implied contract or of some fiduciary relation. Stringham v. Winnebago County, 24 W 594.

A claim to have taxes on land refunded on the ground that they were illegal and excessive, through fault of the assessor, is not such a claim as the county board can allow. Kellogg v. Winnebago County, 42 W 97.

The term "cause of action" is sufficiently broad to cover a right of action for tort. Bradley v. Eau Claire, 56 W 168, 14 NW 10; Hill v. Fond du Lac, 56 W 242, 14 NW 25.

A county board may compromise claims or judgments in favor of the county. 25 Atty. Gen. 397.

A county may avail itself of protection of the statute of limitations against claims, but it may also waive such defense. 26 Atty. Gen. 8.

Except as otherwise provided by law it is contemplated by this subsection, 59.17 (3) and 59.20 (2), that all claims against a county are to be audited by the county board before payment. 32 Atty. Gen. 347.

59.07 (3m) History: 1963 c. 528; Stats. 1963 s. 59.07 (3m).

59.07 (4) History: 1945 c. 156; Stats. 1945 s. 59.073; 1947 c. 362 s. 2; 1949 c. 262 s. 4; 1951 c. 617; Stats. 1951 s. 59.073, 59.08 (62); 1955 c. 651; Stats. 1955 s. 59.07 (4); 1957 c. 60.

59.07 (5) History: R. S. 1849 c. 10 s. 27 sub. 5, 6; R. S. 1858 c. 13 s. 27 sub. 5, 6; R. S. 1878 s. 669 sub. 5, 6; Stats. 1898 s. 669 sub. 5, 6; 1919 c. 695 s. 21; Stats. 1919 s. 59.07 (5), (6); 1955 c. 651; Stats. 1955 s. 59.07 (5).

Contracts within the authority of the county board are valid, but it cannot so contract as to divest the statutory authority of other officers. A contract by the county treasurer for the publication of the tax list is not affected by a contract with the board letting all the public printing. Beal v. St. Croix County, 13 W 500.

The law has not confided the management of criminal cases to the county board. Montgomery v. Jackson County, 22 W 70.

The legislature may authorize the board of a particular county to contract for publishing the tax list; but a contract made is subject to a repeal of the law, whereupon the power of the treasurer is restored. Pott v. Sheboygan County, 25 W 506.

The legislature may subsequently legalize any contract or agreement of the board which it could have authorized. Single v. Marathon County, 38 W 363.

A special contract by the board at the time of tax sales, with the purchasers or their assigns, to refund on demand the moneys paid thereon, if, through the failure of the officers to comply with the law, the certificates should be void, is invalid. Hyde v. Kenosha County, 43 W 129.

The county board has no power to take a note and mortgage for a fine imposed on a person with a view to his release from imprisonment; such note and mortgage are void. Manitowoc County v. Sullivan, 51 W 115, 8 NW 12.

It does not follow as an incident of the county's ownership of delinquent taxes that the board can remit or give away such taxes, and no such power can be inferred from this section. Crandon v. Forest County, 91 W 239, 64 NW 847.

Where a county has obtained a judgment and failed to collect the same on execution, the duty devolves upon the county board to represent the county and conduct its business in regard to such further efforts to collect the claim as in the judgment of the board were proper. Washburn County v. Thompson, 99 W 585, 75 NW 309.

A county is liable for taxes collected of a town by mistake. Milwaukee v. Milwaukee County, 114 W 374, 90 NW 447.

The county has no power to donate county funds, by appropriating money as a charity to a claimant whose claim was disallowed. Only the county can sue to recover it back, a taxpayer's right to sue being confined to injunction to prevent payment. Kircher v. Pederson, 117 W 68, 93 NW 813.

Where a member of the county board reported to the board that an amount of money belonging to the county was in the possession of the sheriff by reason of excessive charges, and urged that action be taken to collect the amount from the sheriff, the board's response, by adopting a motion that the sheriff's bills already allowed and paid be accepted by the board, amounted to a refusal to bring an action and showed that any demand on the board for action would be futile, so that the member in question, as a taxpayer, was entitled, without further resorting to the board, to bring an action to recover the amount from the sheriff for the county. Yates v. Helstern, 235 W 88, 292 NW 311.

Under this section the county board may determine that the office of the county pension department be kept at a designated place other than the county seat. Linden v. Babcock, 241 W 209, 5 NW (2d) 759.

The county board may appropriate money for the county school of agriculture and domestic science or the county training school at any legal meeting of the board. 2 Atty. Gen. 259.

A county board has no power to borrow money in anticipation of taxes levied to build county roads, the cost thereof not being a current expense. 3 Atty. Gen. 62.

The county board has power to appoint a committee, to hire experts to aid the county board in making the county assessment. 1912 Atty. Gen. 210; 4 Atty. Gen. 59.

A provision of a contract made by a county board with a corporation or other person for the giving of a bond by the other party for its performance which is not a statutory requirement may be modified by subsequent agreement so as to relieve such party from obligation or to permit the filing of a substitute bond. The county board has power to mod-

ify a contract requiring giving of a surety company bond to secure performance thereof (such requirement being solely a creature of contract), so as to relieve from obligation to give bond or to substitute for the surety company bond one with another kind of surety. 13 Atty. Gen. 129.

A resolution adopted by a county board providing that all resolutions calling for appropriation of money shall be presented to the county clerk at least 10 days prior to opening day of the annual meeting, and that no such resolution shall be received by the board without unanimous consent of the board after that time, is a mere resolution of the board for its own proceedings and may be changed, ignored or suspended by action of the board. 18 Atty. Gen. 268.

A county board is without power to appropriate money to pay off a mortgage existing against real estate conveyed to the county by an inmate of county home. 23 Atty. Gen. 86.

See note to 26.13, citing 25 Atty. Gen. 532.

A county board may supply the district attorney's office with law library equipment although not obliged to do so. 26 Atty. Gen. 12.

An appropriation to employ a private attorney to resist application by railroad before interstate commerce commission for permission to abandon branch running through the county is within the power of a county board under 59.07 (6) and 59.08 (28), Stats. 1937. 27 Atty. Gen. 162.

A county board has power to determine the location of county offices, including that of the county agent, at least where housing is at county expense. 28 Atty. Gen. 339.

A county is without power, emergency or otherwise, to provide by resolution that it will not continue a husband and wife on its payroll at the same time nor employ any man whose wife is gainfully employed nor any woman whose husband is gainfully employed. 28 Atty. Gen. 446.

The power of a county to bargain collectively with labor unions and to make agreements as to hours, wages, nondiscrimination, etc., is discussed in 29 Atty. Gen. 82.

As to county furnishing supplies for circuit court reporter, see note to 252.18, citing 31 Atty. Gen. 222.

A county board is not authorized to appropriate public funds to private organizations for the purpose of furnishing welfare services and entertainment to members of the armed forces of the United States. 33 Atty. Gen. 51.

A county has no authority to appropriate funds to towns to make up a deficit resulting from the sale of county forest crop lands. 35 Atty. Gen. 226.

A county board does not have authority to provide a police radio for a state conservation warden. 35 Atty. Gen. 259.

A county board is not authorized to provide for per diem and expenses of town, city and village clerks attending meetings called by county clerk for the purpose of instructing them in their duties and to discuss local problems. 35 Atty. Gen. 386.

Counties are not authorized to enact ordinances prohibiting operation of certain types of motor boats. 36 Atty. Gen. 201.

See note to 29.174, citing 36 Atty. Gen. 589.

A county board may not donate money to help pay off the indebtedness of a private hospital. 37 Atty. Gen. 100.

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

A county cannot build up unappropriated sinking fund. 39 Atty. Gen. 367.

Depreciation of building and equipment used for the aged may be fixed by the county board. 43 Atty. Gen. 338.

59.07 (6) History: R. S. 1849 c. 10 s. 38; 1872 c. 170; R. S. 1878 s. 669 sub. 7; Stats. 1898 s. 669 sub. 7; 1919 c. 240; 1919 c. 695 s. 21; Stats. 1919 s. 59.07 (7); 1929 c. 69; 1931 c. 220; 1935 c. 150; 1939 c. 87; 1941 c. 87; 1943 c. 56; 1951 c. 217; 1955 c. 651; Stats. 1955 s. 59.07 (6).

59.07 (7) History: R. S. 1849 c. 10 s. 38; 1872 c. 170; R. S. 1878 s. 669 sub. 7; Stats. 1898 s. 669 sub. 7; 1919 c. 240; 1919 c. 695 s. 21; Stats. 1919 s. 59.07 (7); 1929 c. 69; 1931 c. 220; 1935 c. 150; 1939 c. 87; 1941 c. 87; 1943 c. 56; 1951 c. 217; 1955 c. 651.

A county officer appointed as purchasing agent may be paid compensation for acting as such agent in addition to his regular salary as a county official. 31 Atty. Gen. 27.

A central purchasing agency may be set up under 59.07 (7), Stats. 1957, to handle all purchases of supplies and equipment for the county except those purchases authorized pursuant to 83.015 (1) or 59.08 (2). 47 Atty. Gen. 323.

59.07 (8) History: R. S. 1849 c. 10 s. 38; R. S. 1849 c. 55 s. 2; R. S. 1858 c. 13 s. 45; R. S. 1858 c. 82 s. 1; R. S. 1878 s. 669 sub. 8; Stats. 1898 s. 669 sub. 8; 1919 c. 21; Stats. 1919 s. 59.07 (8); 1955 c. 651.

If the county clerk in executing a tax deed affixes a seal formerly used by the board of supervisors it will be presumed, in the absence of proof, to be the only seal the county has. Dreutzer v. Smith, 56 W 292, 14 NW 465.

A tax deed bearing the signature of the county clerk with a scroll after it as his seal and on the left of his signature a device like a seal stamped into the paper, inclosing the words "County clerk Lincoln Co. Wis." was valid. Brown v. Cohn, 85 W 1, 54 NW 1101.

Mere irregularity in describing the seal attached to a tax deed as the seal of the county board of supervisors instead of the seal of the county is immaterial. Where the seal itself was named the seal of the county, it was a good seal of the county, having been adopted as such by the county board. Laughlin v. Kieper, 125 W 161, 103 NW 264.

59.07 (11) History: 1955 c. 651 s. 10; Stats. 1955 s. 59.07 (11); 1963 c. 543; 1965 c. 238.

59.07 (12) History: Stats. 1898 s. 670 sub. 13; 1917 c. 566 s. 15; 1919 c. 695 s. 34; Stats. 1919 s. 59.07 (12); 1955 c. 651; 1969 c. 285.

59.07 (13) History: 1913 c. 70; Stats. 1913 s. 670 sub. (18); 1919 c. 695 s. 36; Stats. 1919 s. 59.07 (13); 1931 c. 233; 1933 c. 377; Stats. 1933 s. 59.07 (13), (20); 1941 c. 136; 1947 c. 586; Stats. 1947 s. 59.07 (13), (20), 59.076; 1951 c. 84; 1955 c. 651; Stats. 1955 s. 59.07 (13).

An appropriation made pursuant to 59.07 (13) is discretionary with the county board. An appropriation so made is to be raised by a general tax on the county. 20 Atty. Gen. 986.

The words "each year" used in 59.07 (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 calendar year, even though appropriation for one town was omitted by mistake. 41 Atty. Gen. 117.

59.07 (14) History: 1911 c. 192; Stats. 1911 s. 670 sub. (16); Stats. 1919 s. 45.23; 1921 c. 422 s. 19; 1921 c. 590 s. 44; Stats. 1921 s. 59.07 (14a); 1955 c. 651; Stats. 1955 s. 59.07 (14).

59.07 (15) History: 1917 c. 301; Stats. 1917 s. 670 sub. (25); 1919 c. 79; 1919 c. 695 s. 40; Stats. 1919 s. 59.07 (15); 1955 c. 651.

59.07 (16) History: 1927 c. 328; Stats. 1927 s. 59.07 (18); 1949 c. 590; 1955 c. 651; Stats. 1955 s. 59.07 (16).

59.07 (16m) History: 1957 c. 256; Stats. 1957 s. 59.07 (16m).

59.07 (17) History: 1951 c. 350; Stats. 1951 s. 59.07 (29); 1955 c. 651; Stats. 1955 s. 59.07 (17).

59.07 (18) History: 1923 c. 222; Stats. 1923 s. 59.08 (9); 1925 c. 66; 1931 c. 77, 344; Stats. 1931 s. 59.08 (9), (9b), (15); 1933 c. 187 s. 4; Spl. S. 1933-34 c. 4; 1955 c. 651; Stats. 1955 s. 59.07 (18); 1969 c. 271.

Editor's Note: 59.08 (9), Stats. 1929, which authorized county boards to enact ordinances providing for the regulation, control, prohibition and licensing of dance halls, etc., was construed and applied in State ex rel. Pumplin v. Hohle, 203 W 626, 234 NW 735; and 59.08 (9), Stats. 1935, on the same subject, was construed and applied in Stetzer v. Chippewa County, 225 W 125, 273 NW 525. See also: 12 Atty. Gen. 377; 14 Atty. Gen. 168; 14 Atty. Gen. 494; 20 Atty. Gen. 7; 20 Atty. Gen. 179; 23 Atty. Gen. 536; 25 Atty. Gen. 693; 27 Atty. Gen. 439; 27 Atty. Gen. 550; 28 Atty. Gen. 347; 28 Atty. Gen. 392; and 30 Atty. Gen. 25.

59.07 (18m) History: 1969 c. 487; Stats. 1969 s. 59.07 (18m).

59.07 (19) History: 1935 c. 291; 1935 c. 462 s. 2; Stats. 1935 s. 59.08 (22); 1941 c. 332; 1949 c. 370; 1951 c. 47; 1953 c. 61; 1955 c. 651; Stats. 1955 s. 59.07 (19); 1967 c. 58.

59.07 (20) History: 1943 c. 186; 1943 c. 490 s. 10; Stats. 1943 s. 59.074; 1947 c. 206; 1951 c. 524; 1953 c. 61; 1955 c. 651; Stats. 1955 s. 59.07 (20); 1959 c. 659 s. 76.

A county veteran's service officer, elected pursuant to 45.43, Stats. 1945, is eligible to come within a county civil service system as defined by 59.074. 35 Atty. Gen. 69.

A county civil service ordinance containing provisions similar to 16.24 (1) (a) prohibiting the discharge of employe for political reasons does not prevent the discharge of an employe who runs for political office if his campaign activities are conducted during work hours and interfere with performance of his duties. "Just cause" for discharge would not exist if he campaigned for office exclusively on his own time and it did not interfere with the performance of his duties. If an ordinance contains provision for leaves of absence, such a leave might be granted to an employe to enable him to run for political office. 37 Atty. Gen. 312.

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

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

Where a county civil service system established pursuant to 59.074, Stats. 1951, includes a 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.

59.07 (21) History: 1927 c. 536 s. 2; Stats. 1927 s. 59.075; 1939 c. 143, 178; 1943 c. 360, 526; 1945 c. 435; 1947 c. 178; 1949 c. 600; 1951 c. 109, 224; 1955 c. 651; Stats. 1955 s. 59.07 (21); 1963 c. 565; 1965 c. 458; 1967 c. 92.

Under 59.075 (1), Stats. 1941, county school aids are raised by levy on all taxable property in the county and reduction in such aids resulting from national forest income will therefore be reflected in the levy as a whole rather than merely in the levy on those particular properties located in school districts situated in national forests. 30 Atty. Gen. 115.

The words "previous school year" in 59.075 (1), Stats. 1945, refer to the school year ending in the spring or summer immediately before the November meeting of the county board also referred to in said subsection. There is no specific date fixed by statute at the present time (January, 1947) by which the certificate of the county or city superintendent of schools referred to in (2) must be made and delivered as therein provided. Such certificate should be made and delivered to the county clerk as soon as possible in advance of the November meeting of the county board and preferably early in October. 36 Atty. Gen. 26.

59.07 (22) History: R. S. 1849 c. 10 s. 28 sub. 1; R. S. 1858 c. 13 s. 28 sub. 1, 7; 1876 c. 110, 171; R. S. 1878 s. 670 sub. 1, 5; Ann. Stats. 1889 s. 670 sub. 1, 5; Stats. 1898 s. 670 sub. 1, 5; 1919 c. 695 s. 23, 27; Stats. 1919 s. 59.08 (1), (3); 1933 c. 187 s. 4; 1955 c. 651; Stats. 1955 s. 59.07 (22); 1963 c. 216; 1969 c. 148.

The county board may abolish a town, attach different parts of it to other towns, and provide that one of the latter shall succeed to the rights of the old town in specified property. La Pointe v. O'Malley, 47 W 332, 2 NW 632.

See notes to secs. 4 and 5, art. IV, citing Chicago & Northwestern R. Co. v. Oconto, 50 W 189, 6 NW 607.

The same ordinance may provide for vacating a town and for extending town government over the territory which constituted the vacated town. State ex rel. Hiles v. Wood County, 61 W 278, 21 NW 55.

It will be assumed, at least in the absence of a clear showing to the contrary, that a county board, in the exercise of its power to create towns, was controlled by proper mo-

tives and sufficient reasons. A town 110 miles long, and in places 2 or 3 miles wide was lawfully formed. Grunert v. Spalding, 104 W 193, 80 NW 589.

The action of a county board in detaching territory from certain towns and creating from such territory 3 new towns, without the matter having been submitted to vote of the electors of the towns so divided, was invalid. When a town is divided and a new town created, the officers of the old town, residing in the territory constituting the new town, lose their offices. Where, by division of a town, a school district formerly wholly within town becomes partly located in 2 towns, it becomes a joint district. 10 Atty. Gen. 541.

Where territory is detached from one town and attached to another pursuant to 59.07 (22) it is not necessary that an election be held. 29 Atty. Gen. 42.

59.07 (23) History: Spl. S. 1919 c. 2; Stats. 1919 s. 59.08 (7); 1955 c. 651; Stats. 1955 s. 59.07 (23).

Carving names and records of those in the armed services upon a granite plaque is a publication of war records within the meaning of this subsection. 34 Atty. Gen. 66.

59.07 (24) History: 1927 c. 257; Stats. 1927 s. 59.08 (7m); 1955 c. 579, 651; Stats. 1955 s. 59.07 (24).

59.07 (25) History: 1965 c. 134; Stats. 1965 s. 59.07 (25).

59.07 (26) History: 1935 c. 108; Stats. 1935 s. 59.08 (20); 1955 c. 651; Stats. 1955 s. 59.07 (26).

59.07 (27) History: 1935 c. 392; Stats. 1935 s. 59.08 (21); 1955 c. 651; Stats. 1955 s. 59.07 (27).

59.07 (28) History: 1939 c. 166; Stats. 1939 s. 59.08 (21m); 1955 c. 651; Stats. 1955 s. 59.07 (28).

59.07 (29) History: 1935 c. 101; Stats. 1935 s. 59.08 (23); 1937 c. 315; 1945 c. 550; 1955 c. 651; Stats. 1955 s. 59.07 (29).

A county board has no power or authority to appoint either a committee composed entirely of members of veterans' organizations not members of the county board or a committee consisting of members of the county board and members of veterans' organizations with authority to aid and assist the county service officer. A county board has no power to delegate any authority to such committee or to appropriate any money for its expenses. 33 Atty. Gen. 113.

59.07 (30) History: 1937 c. 28; Stats. 1937 s. 59.08 (28); 1955 c. 651; Stats. 1955 s. 59.07 (30); 1961 c. 41; 1965 c. 34; 1967 c. 195.

An industrial development committee may be appointed under 59.07 (30). 46 Atty. Gen. 196.

59.07 (31) History: 1937 c. 412; Stats. 1937 s. 59.08 (30); 1949 c. 52; 1955 c. 651; Stats. 1955 s. 59.07 (31).

59.07 (32) History: 1945 c. 89; Stats. 1945 s. 59.08 (48); 1955 c. 651; Stats. 1955 s. 59.07 (32).

59.07 (33) History: 1939 c. 34; Stats. 1939 s. 59.08 (33); 1955 c. 651; Stats. 1955 s. 59.07 (33); 1967 c. 135.

59.07 (34) History: 1939 c. 29; Stats. 1939 s. 59.08 (31); 1955 c. 651; Stats. 1955 s. 59.07 (34).

59.07 (35) History: 1939 c. 51; Stats. 1939 s. 59.08 (37); 1955 c. 651; Stats. 1955 s. 59.07 (35).

59.07 (36) History: 1939 c. 356; Stats. 1939 s. 59.08 (39); 1955 c. 651; Stats. 1955 s. 59.07 (36).

59.07 (37) History: 1941 c. 14; Stats. 1941 s. 59.08 (40); 1945 c. 588; 1955 c. 651; Stats. 1955 s. 59.07 (37).

59.07 (38) History: 1941 c. 145; Stats. 1941 s. 59.08 (41); 1955 c. 651; Stats. 1955 s. 59.07 (38).

59.07 (39) History: 1943 c. 195; Stats. 1943 s. 59.08 (46); 1955 c. 651; Stats. 1955 s. 59.07 (39).

59.07 (40) History: 1945 c. 143; Stats. 1945 s. 59.08 (49); 1955 c. 651; Stats. 1955 s. 59.07 (40); 1969 c. 276 s. 616.

59.07 (41) History: 1947 c. 68; Stats. 1947 s. 59.08 (58); 1955 c. 482, 651; Stats. 1955 s. 59.07 (41).

A tax must be spent at the level at which it is raised, and a county providing ambulance service under 59.08 (58), Stats. 1951, may not arbitrarily exclude any portion of the county from the area to be served. 42 Atty. Gen. 18.

59.07 (42) History: 1953 c. 506; Stats. 1953 s. 59.08 (52); 1955 c. 651; Stats. 1955 s. 59.07 (42).

59.07 (43) History: 1945 c. 192; Stats. 1945 s. 59.08 (51); 1949 c. 462; 1955 c. 651; Stats. 1955 s. 59.07 (43).

A county agricultural agent or representative employed pursuant to 59.87 may serve as a member of a county park commission and may be compensated under 59.07 (43). 45 Atty. Gen. 253.

59.07 (44) History: 1949 c. 186; Stats. 1949 s. 59.08 (61); 1955 c. 651; Stats. 1955 s. 59.07 (44); 1961 c. 155; 1963 c. 506 s. 8; 1969 c. 276 s. 608.

Under 59.07 (44) the county corporation counsel must be charged with the duty of acting as legal adviser to the county board, its committees, and county officers. He may not be limited to serving the county welfare department. 49 Atty. Gen. 97.

59.07 (46) History: 1949 c. 66; Stats. 1949 s. 59.08 (59); 1955 c. 651; Stats. 1955 s. 59.07 (46).

59.07 (47) History: 1947 c. 519; Stats. 1947 s. 59.081; 1955 c. 651; Stats. 1955 s. 59.07 (47).

59.07 (48) History: 1967 c. 143; Stats. 1967 s. 59.07 (48).

59.07 (49) History: 1919 c. 204; 1919 c. 695 s. 40a; 1919 c. 702 s. 33; Stats. 1919 s. 59.07 (16); 1955 c. 651; Stats. 1955 s. 59.07 (49).

Powers of counties to regulate the erection and location of billboards under 59.07 (49) and 59.97, Stats. 1955, are discussed in 46 Atty. Gen. 148.

59.07 (50) History: 1947 c. 249; Stats. 1947 s. 59.08 (55); 1955 c. 651; Stats. 1955 s. 59.07 (50).

59.07 (51) History: 1929 c. 487; Stats. 1929 s. 59.996; 1955 c. 651; Stats. 1955 s. 59.07 (51); 1967 c. 87; 1969 c. 154.

59.07 (52) History: 1929 c. 314; Stats. 1929 s. 59.08 (13); 1953 c. 570; Stats. 1953 s. 59.07 (31), 59.08 (13); 1955 c. 539, 651; Stats. 1955 s. 59.07 (52); 1957 c. 328; 1965 c. 22, 252.

See notes to secs. 1 and 23, art. IV, citing West Allis v. Milwaukee County, 39 W (2d) 356, 159 NW (2d) 36.

59.07 (52) (b) deals with a grant of power to counties; it does not restrict or limit any municipality in the ownership, construction, and operation of incinerator facilities and dump sites or require them to use or contract for the use of facilities which may be constructed by the county. West Allis v. Milwaukee County, 39 W (2d) 356, 159 NW (2d) 36.

59.07 (53) History: 1947 c. 128; Stats. 1947 s. 59.07 (27); 1951 c. 564; 1953 c. 53; 1955 c. 651; Stats. 1955 s. 59.07 (53); 1957 c. 340.

An ordinance of a city located in Milwaukee county, in prohibiting burning of tires, upholstery, or other parts of junked motor vehicles, is not superseded as being within the subject matter of a prohibitory ordinance of the county embracing only the subject of smoke, fumes and odors resulting from burning of material. The city ordinance can be sustained on the basis that it curtails a fire hazard. Highway 100 Auto Wreckers v. West Allis, 6 W (2d) 637, 96 NW (2d) 85, 97 NW (2d) 423.

59.07 (54) History: 1939 c. 148; Stats. 1939 s. 59.08 (36); 1943 c. 308; 1955 c. 651; Stats. 1955 s. 59.07 (54).

59.07 (55) History: 1949 c. 390; Stats. 1949 s. 59.08 (60); 1955 c. 651; Stats. 1955 s. 59.07 (55); 1957 c. 97.

59.07 (56) History: 1965 c. 537; Stats. 1965 s. 59.07 (56).

59.07 (57) History: 1955 c. 291, 651; Stats. 1955 s. 59.07 (57).

59.07 (58) History: 1969 c. 433; Stats. 1969 s. 59.07 (58).

59.07 (59) History: 1965 c. 574; Stats. 1965 s. 59.07 (59); 1969 c. 276 s. 588 (8).

59.07 (60) History: 1955 c. 169, 651; Stats. 1955 s. 59.07 (60); 1957 c. 610; 1961 c. 40.

Under 59.07 (60) Wood county is authorized to appropriate money to the soil and water conservation district of Portage county for a watershed protection project beneficial to Wood county but carried out in Portage county. 52 Atty. Gen. 231.

59.07 (61) History: 1955 c. 269, 651; Stats. 1955 s. 59.07 (61); 1957 c. 380; 1963 c. 419 s. 3.

59.07 (62) History: 1955 c. 390, 651; Stats. 1955 s. 59.07 (62).

59.07 (63) History: 1955 c. 259, 651; Stats. 1955 s. 59.07 (63).

59.07 (64) History: 1955 c. 651; Stats. 1955. s. 59.07 (64).

Under 59.07 (64), Stats. 1955, 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.

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

A county curfew ordinance would not apply in cities and villages within the limits of the county. 56 Atty. Gen. 126.

59.07 (65) History: 1957 c. 23; Stats. 1957 s. 59.07 (65).

59.07 (66) History: 1955 c. 695; Stats. 1955 s. 59.07 (66).

59.07 (67) History: 1957 c. 494; Stats. 1957 s. 59.07 (67).

59.07 (68) History: 1957 c. 422; Stats. 1957 s. 59.07 (68).

59.07 (69) History: 1957 c. 129; 1957 c. 610 s. 20; Stats. 1957 s. 59.07 (69).

59.07 (70) History: 1957 c. 82; 1957 c. 610 s. 21; Stats. 1957 s. 59.07 (70).

59.07 (71) History: 1961 c. 95; Stats. 1961 s. 59.07 (71).

59.07 (73) History: 1961 c. 447, 496; Stats. 1961 s. 59.07 (73).

59.07 (74) History: 1961 c. 447, 496; Stats. 1961 s. 59.07 (74); 1963 c. 345.

59.07 (75) History: 1959 c. 643; Stats. 1959 s. 59.07 (75); 1961 c. 325; 1969 c. 276 s. 588 (6).

59.07 (76) History: 1961 c. 540; Stats. 1961 s. 59.07 (76).

59.07 (77) History: 1961 c. 217; Stats. 1961 s. 59.07 (77).

59.07 (80) History: 1961 c. 552; Stats. 1961 s. 59.07 (80).

59.07 (84) History: 1969 c. 210; Stats. 1969 s. 59.07 (84).

59.07 (85) History: 1961 c. 508; Stats. 1961 s. 59.07 (85); 1967 c. 83.

59.07 (86) History: 1963 c. 222; Stats. 1963 s. 59.07 (86).

59.07 (87) History: 1965 c. 159; Stats. 1965 s. 59.07 (87).

59.07 (89) History: 1965 c. 306; Stats. 1965 s. 59.07 (89).

59.07 (90) History: 1969 c. 308; Stats. 1969 s. 59.07 (90).

59.07 (91) History: 1965 c. 281; Stats. 1965 s. 59.07 (91).

59.07 (92) History: 1969 c. 482; Stats. 1969 s. 59.07 (92).

59.071 History: 1965 c. 90; 1965 c. 659 ss. 23 (2), 24 (9); Stats. 1965 s. 59.071; 1967 c. 279.

See note to sec. 1, art. IV, on public purpose doctrine, citing State ex rel. Bowman v. Barczak, 34 W (2d) 57, 148 NW (2d) 683.

59.075 History: 1967 c. 250; Stats. 1967 s. 59.075.

59.08 History: 1945 c. 456; Stats. 1945 s. 59.07 (4) (c); 1949 c. 98, 280; 1955 c. 651 s. 11; Stats. 1955 s. 59.08; 1957 c. 539, 680; 1959 c. 628.

Under 59.07 (4) (c), Stats. 1951, the county may not accept a combination bid covering both the heating and 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.

Where a bidder's proposal, which contained an offer to do certain refrigeration work at a reduction of $500 if a certain type of equipment were substituted, was expressly made a part of the final contract, the county was entitled to a deduction when the bidder obtained permission and did substitute the other equipment although the bidder's act in inserting the offer to reduce the price if the substituted equipment were used was unauthorized. Richardson v. Green County, 6 W (2d) 321, 94 NW (2d) 689.

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

59.07 (4) (c), Stats. 1945, does not require that an FM radio which will cost in excess of $1,000 be purchased by a county through competitive bidding in the manner therein provided. 35 Atty. Gen. 88.

59.07 (4) (c), Stats. 1945, requires that all contracts for the construction, execution, repair, remodeling or improvement of any public work or building or for the furnishing of supplies or material of any kind whatsoever by a county, be let by competitive bidding as provided by 66.29, where the estimated cost exceeds $1,000, excluding the highway contracts mentioned in said (4) (c). The fact that the contracts are to be entered into by the board of trustees of a county institution appointed under 46.18 would not justify disregarding the requirements of 59.07 (4) (c). 36 Atty. Gen. 229.

Where a contract for construction of public works has been entered into by a county, pursuant to 59.07 (4) (c), 66.29 and 289.16, Stats. 1945, partial payments may be made to the contractor as the work progresses in accordance with the provisions of the contract without audit by the entire county board under 59.07 (3). 36 Atty. Gen. 601.

Additional work on a 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, chairs and dressers. 40 Atty. Gen. 22.

Construction of a new boiler room and installation of a boiler furnace is an improvement and not within authorization to county highway committee to use machinery rental fund for general maintenance of a 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 accomplish 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.

A county by a three-fourths vote of its board of supervisors may authorize direct construction or repair of a county-owned building and may purchase materials for said construction without taking bids where the estimated cost of such public work exceeds $1,000. 46 Atty. Gen. 232.

Farm machinery is "equipment" and not "material" or "supplies" and 59.08 (1), Stats. 1957, requiring competitive bidding is not applicable. 47 Atty. Gen. 69.

A proposed contract for providing office space for the public welfare department of a county, which would be negotiated without obtaining bids, would be violative of 59.08, Stats. 1967. 56 Atty. Gen. 181.

59.083 History: 1927 c. 437; Stats. 1927 s. 59.083; 1935 c. 450; 1965 c. 666 s. 22 (26).

Exercise of home-rule powers by Milwaukee county under this section depends upon the request or approval of its constituent municipalities and possibly the electors therein. (32 Atty. Gen. 370 modified.) 37 Atty. Gen. 608.

59.09 History: 1852 c. 429 s. 1, 3, 4; R.S. 1858 c. 13 s. 30 to 32; 1873 c. 200; R. S. 1878 s. 674, 675; 1883 c. 54; Ann. Stats. 1889 s. 674, 675; Stats. 1898 s. 674, 675; 1901 c. 298 s. 1, 3; Supl. 1906 s. 674a, 674c; Stats. 1911 s. 674, 674a, 674c, 675; 1919 c. 695 s. 41, 42, 44, 45; 1919 c. 702 s. 34; Stats. 1919 s. 59.09; 1921 c. 526 s. 1; 1965 c. 252.

The statutory provision requiring publication (sec. 30, ch. 13, R. S. 1858) is mandatory. The legal effect of the order of the board is not lessened because its clerk did not distribute papers containing it to the town clerks. State ex rel. Hawes v. Pierce, 35 W 93.

Under secs. 30 to 32, ch. 13, R. S. 1858, publication of an ordinance changing town boundaries as part of, and with, the proceedings

of the board, and not otherwise, was sufficient. Haseltine v. Simpson, 58 W 579, 17 NW 332.

An ordinance dividing a town cannot be called in question after the expiration of 2 years from its date on the ground either that it was not published or that the consent of the commissioners of public lands was not obtained. Spooner v. Minong, 104 W 425, 80 NW 737.

The publication of the proceedings provided for in 674a, Stats. Supl. 1906, cannot be made in a foreign language. Hyman v. Susemihl, 137 W 296, 118 NW 837.

See notes to 889.04, citing Jefferson County v. Timmel, 261 W 39, 51 NW (2d) 518.

A county board need not advertise for bids to publish its proceedings, but whether it does or not the board can let a contract to the newspaper which it considers best, based on price and circulation. 17 Atty. Gen. 325.

Publication by a county board of its proceedings is mandatory. Refusal or neglect of a member of the board to comply, without just cause therefor, with such mandate subjects such member to the forfeiture prescribed in 59.10, Stats. 1927. Restriction of cost of such publication is limited to rate per folio, only. Rate per folio fixed by the county board (not in excess of $1) must be such as will be acceptable to at least one qualified newspaper published in the county, for publication of such proceedings, and thus enable the board to comply with mandate. Publication, in pamphlet form, of proceedings of the county board and general distribution thereof does not relieve the board from complying with the mandate of 59.09 (2). 17 Atty. Gen. 611.

The official county newspaper need not be physically printed in entirety in the county when its news and editorial matter is prepared therein and it is issued and published therein. 19 Atty. Gen. 409.

A publication issued by merchants of a city to advertise their merchandise and wares, which contains some news items, is not a "newspaper" within the meaning of 59.09 (2). 22 Atty. Gen. 108.

A newspaper having no circulation whatever in 85% of the area of a county does not qualify under 59.09 (2) as one having general circulation in the county. 22 Atty. Gen. 295.

Publication of proceedings of a county board in a supplement to a weekly newspaper distributed with the regular edition of such paper to all paid subscribers thereof is a legal publication. A newspaper of general circulation is one published for dissemination of local or telegraphic news of general character having bona fide subscription list and distributed among all classes. 23 Atty. Gen. 408.

Publication of ordinances pursuant to 59.09 (1) should be separate and independent of publication of county board proceedings pursuant to 59.09 (2). 27 Atty. Gen. 21.

For discussion of regulations governing publication of county board proceedings and type of media in which published, see 52 Atty. Gen. 293.

59.10 History: R. S. 1858 c. 13 s. 50; R. S. 1878 s. 697; Stats. 1898 s. 697; 1919 c. 695 s. 46; Stats. 1919 s .59.10.

The county board cannot refuse to perform their duties because they cannot be compensated therefor without incurring the penalty provided for the neglect of duty. 5 Atty. Gen. 403.

59.11 History: 1872 c. 89 s. 1, 2; 1876 c. 407; 1878 c. 308; R. S. 1878 s. 654, 655; 1882 c. 257; 1887 c. 35; Ann. Stats. 1889 s. 654, 655; Stats. 1898 s. 654, 655; 1919 c. 695 s. 47, 48; Stats. 1919 s. 59.11.

On control over corporations and nonjudicial officers see notes to sec. 3, art. VII; on removal of county seats see notes to sec. 8, art. XIII.

An act creating a new county need not provide for a county seat; that may be done by the board thereof at its first regular meeting. Cathcart v. Comstock, 56 W 590, 14 NW 833.

If the names of the signers of the petition are found on some one of the poll lists the presumption is that they are genuine. But because a sufficient petition is jurisdictional the board must have a reasonable time to examine the poll lists and ascertain whether the requisite number of voters have signed it. In order to determine whether that is the fact a committee may be appointed to compare the petition with the poll lists and may adjourn to give time for making the examination. La Londe v. Barron County, 80 W 380, 49 NW 960.

If there are variations in the signatures from the names as given on the poll list the board may be compelled by mandamus to receive evidence by affidavit or otherwise as to the identity of the petitioners with the persons named on such lists. If there are 2 petitions signed by different qualified voters they should be considered and acted upon as one, notwithstanding the second is presented while the first is under consideration by the board. The petition must contain the requisite number of names at the time the county board takes final action upon it. Until then the board may allow persons who had signed the petition to withdraw their names therefrom, in which event such names cannot be counted. State ex rel. Hawley v. Polk County, 88 W 355, 60 NW 266.

59.12 History: R. S. 1849 c. 10 s. 135, 141; R. S. 1858 c. 7 s. 97, 99; R. S. 1858 c. 13 s. 160; 1862 c. 65; 1863 c. 155 s. 86; 1874 c. 342; R. S. 1878 s. 698; 1879 c. 205; 1880 c. 87; Ann. Stats. 1889 s. 698; Stats. 1898 s. 698; 1903 c. 307; Supl. 1906 s. 698; 1909 c. 433; 1911 c. 663 s. 67; 1915 c. 531 s. 1, 2; 1917 c. 14 s. 43, 52; 1917 c. 578 s. 1; 1919 c. 695 s. 49; Stats. 1919 s. 59.12; 1959 c. 259; 1963 c. 375; 1965 c. 217; 1969 c. 499.

On election, terms, and removal of county officers see notes to sec. 4, art. VI; on eligibility for office see notes to sec. 3, art. XIII; and on eligibility for the office of county treasurer see notes to 59.18.

A person who is an alien and not a qualified elector of the county in which he resides is not eligible to enter upon and hold an elective county office. State ex rel. Off v. Smith, 14 W 497.

An alien may be elected to the office of clerk of the county board of supervisors and, in case his disability is removed before the commencement of the term of office for which he was elected, he will be entitled to enter upon

and hold such office. State ex rel. Schuef v. Murray, 28 W 96. See also State v. Trumpf, 50 W 103, 6 NW 512.

See note to sec. 1, art. IV, on legislative power generally, citing State ex rel. Barber v. Circuit Court, 178 W 468, 479, 190 NW 563, 567.

59.13 History: R. S. 1849 c. 10 s. 44, 54, 62, 76, 77, 78, 97, 103, 104, 118, 127, 138, 139; R. S. 1858 c. 13 s. 54, 64, 81, 95, 96, 97, 118, 122, 123, 137, 146, 157, 158; 1863 c. 155 s. 88; 1865 c. 402; 1866 c. 84; 1869 c. 128; R. S. 1878 s. 701, 702, 705, 710, 720, 735, 740, 749, 755, 765; 1880 c. 215; Ann. Stats. 1889 s. 701, 702, 705, 710, 720, 735, 740, 749, 755, 765; 1895 c. 169 s. 3; 1897 c. 347, 349; Stats. 1898 s. 701, 702, 705, 710, 720, 735, 740, 749, 755, 765; 1899 c. 3 s. 2; 1903 c. 376 s. 1; 1905 c. 204 s. 1; Supl. 1906 s. 701, 702; 1907 c. 231; 1909 c. 122, 266, 326; 1911 c. 61, 405; Stats. 1911 s. 701, 702, 705, 710, 720, 735, 740, 749, 755, 762m, 765; 1913 c. 72; 1915 c. 271; 1919 c. 362 s. 15; 1919 c. 695 s. 51; Stats. 1919 s. 59.13; 1949 c. 134; 1955 c. 366, 439; 1965 c. 20; 1969 c. 499.

A bond not naming the sureties in the body of it, and omitting all the statutory provisions except those in regard to the faithful performance of the duties of the officer, is probably a valid security, upon which any person aggrieved by a breach of its conditions may maintain an action in his own name. Wheeler v. McDill, 51 W 356, 8 NW 169.

When the county clerk is removed by the county board and another person is appointed to fill the vacancy, such person must qualify within the time prescribed by sec. 701, R. S. 1878. State ex rel. Prince v. McCarty, 65 W 163, 26 NW 609.

A bond by the terms of which the treasurer and his sureties "are each severally held and firmly bound," and which binds them "severally and firmly by these presents," is several as well as joint, and binds the sureties though their principal does not sign it. Douglas County v. Bardon, 79 W 641, 48 NW 969.

The word "qualified," when applied to any person elected or appointed to office means the performance by such person of those things which are by law required to be performed by him previous to his entering upon the duties of his office. State ex rel. Warden v. Knight, 82 W 151, 50 NW 1012, 51 NW 1137; Warden v. Bayfield County, 87 W 181, 58 NW 248.

The fact that a bond of a county judge was not recorded in the office of the register of deeds until 3 months after it was executed and filed did not vacate the office. State ex rel. Dithmar v. Bunnell, 131 W 198, 110 NW 177.

An elected county officer may not be required to furnish a corporate surety bond except as provided in 59.13 (3), Stats. 1929. 20 Atty. Gen. 3.

A vacancy exists in the office of county treasurer when the person elected fails to file his bond within the time required by law, but the committee on bonds should approve the bond when filed late if the form and sureties are satisfactory. 24 Atty. Gen. 196.

The county board may not require the county judge to furnish a surety bond or pay the premium thereon. 26 Atty. Gen. 617.

If a county requires a corporate surety bond of the county treasurer and pays the premium thereon, as provided in 59.13 (3), Stats. 1949, there is no requirement of letting by advertised bidding. 40 Atty. Gen. 1.

59.14 History: R. S. 1849 c. 97 s. 1; R. S. 1858 c. 13 s. 156; 1878 c. 133; R. S. 1878 s. 700; 1891 c. 157; Stats. 1898 s. 700; 1919 c. 695 s. 52; Stats. 1919 s. 59.14; 1923 c. 48; 1929 c. 86; 1951 c. 606; 1959 c. 309; 1965 c. 139; 1969 c. 499.

On uniform town and county government see notes to sec. 23, art. IV.

If an office is provided at the county seat and the officer keeps his office elsewhere the county is not liable to him for money paid as rent. He may be compelled to occupy the office provided by the county. Waldo v. Manitowoc County, 54 W 71, 11 NW 252.

Any person may enter the register of deed's office during the usual business hours and, under his reasonable supervision and control, examine and take minutes, notes and copies of books and records therein for use in making abstract books for private purposes. Hanson v. Eichstaedt, 69 W 538, 35 NW 30.

Abstract books kept by a county are a part of the public records and any person has a right to copy them. Rock County v. Weirick, 143 W 500, 128 NW 94.

59.14 (1), Stats. 1967, which imposes the duty on designated officers, including the clerk of a circuit court, to open for examination all books and papers required to be kept in his office "by any person", and permitting "any person" so examining the same to take notes and make copies thereof, is a legislative declaration independent and in substitution of the common law, and poses no requirement that such person have a special interest in the subject matter of the document, such right being subject to no limitation other than those in the statute itself. In using the term "any person" the statute does not require that the person seeking the inspection be a citizen, but, as provided in 990.01 (26), includes all partnerships, associations, and bodies politic and corporate. State ex rel. Journal Co. v. County Court, 43 W (2d) 297, 168 NW (2d) 836.

It is sufficient compliance with the requirements of 59.14 (1) for the sheriff to have his undersheriff reside at the county seat and to keep open the sheriff's office provided there. 21 Atty. Gen. 842.

The register of deeds can require persons desiring to examine chattel mortgages filed in her office to consult the index and ask for the mortgage desired. 22 Atty. Gen. 69.

Notwithstanding 18.01, 59.14 (1) and 59.23, Stats. 1951, the public enjoys no right of inspection of telephone and radio logs, criminal complaint reports, criminal investigation reports, automobile accident reports, or other papers, documents, and physical evidence relating to law enforcement activities in the office of the sheriff or of a city police department. 41 Atty. Gen. 237. See also 52 Atty. Gen. 242.

59.15 History: R. S. 1849 c. 10 s. 66; R. S. 1858 c. 13 s. 85; 1862 c. 135; 1863 c. 220 s. 1, 3, 4; 1867 c. 75 s. 1, 2; 1868 c. 121; R. S. 1878 s. 694, 708, 714, 751; 1881 c. 53; 1883 c. 180; 1885 c. 260; Ann. Stats. 1889 s. 694, 694a, 708, 714, 751; 1895 c. 169; Stats. 1898 s. 694, 694a, 708, 714, 751; 1899 c. 151 s. 1, 2; 1901 c. 217, 410

s. 1, 411; 1903 c. 134 s. 1; Supl. 1906 s. 694a, 747a, 751, 764b; 1907 c. 376, 596; 1909 c. 19; 1911 c. 400; 1913 c. 245, 361, 735; 1915 c. 242 s. 2; Stats. 1915 s. 694, 708, 714, 751, 764b; 1919 c. 296; 1919 c. 618; 1919 c. 695 s. 53; 1919 c. 702 s. 40; Stats. 1919 s. 59.08 (6), 59.15; 1921 c. 422 s. 20; 1921 c. 590 s. 10; 1923 c. 190; 1929 c. 362; 1939 c. 254, 425, 533; 1941 c. 323; 1943 c. 93, 94, 168, 275, 342; 1945 c. 37, 559, 588; 1947 c. 483; 1949 c. 289; 1951 c. 247 s. 17; 1951 c. 725; 1953 c. 61; 1955 c. 651 s. 13; Stats. 1955 s. 59.15; 1961 c. 311, 442, 495; 1969 c. 366 s. 117 (2) (b).

1. General.
2. Elective officials.
   a. Treasurer.
   b. Sheriff.
   c. Coroner.
   d. Clerk of court.
   e. District attorney.
   f. Register of deeds.
   g. Surveyor.
   h. County judge.
3. Appointive officials, etc.
4. Reimbursement.

1. General.

The prohibition in sec. 694, R. S. 1878, against increasing salaries during the term of office cannot be evaded by allowance for clerk hire, expenses, for the performance of some act really belonging to the duties of the office, or by any other device. Quaw v. Paff, 98 W 586, 74 NW 369.

In the case of salaried public officials who are required to turn in all fees of office, fees for work done during office hours and incidentally in connection with their official duties, belong to the public and not to the employe unless there is a clear valid direction to the contrary. Gregory v. Milwaukee County, 186 W 235, 201 NW 246.

In computing a salary for part of a month, Sundays and legal holidays should be counted. 4 Atty. Gen. 152.

Annual salaries of county officers are paid in 12 equal installments. The first payment falls due one calendar month from the commencement of the term and so on, each calendar month. 8 Atty. Gen. 616.

No law requires that a resolution fixing the salaries of county officers shall be adopted by a roll call vote. 11 Atty. Gen. 11.

The political year commences on first Monday in January which was January 7 in 1935. Outgoing county officers who have been paid in full for their term are entitled to no extra compensation for first 6½ days of January, 1935, nor may there be any corresponding deductions from salaries of incoming officers. 24 Atty. Gen. 127.

On the power of a county to bargain collectively see 29 Atty. Gen. 82 and 39 Atty. Gen. 48.

A county has authority to make payroll 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.

The county board has power to fix the number of deputies that a county clerk shall employ. 39 Atty. Gen. 579.

A county board may authorize the 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.

On salary increases and decreases see 27 Atty. Gen. 248 and 45 Atty. Gen. 166.

2. Elective Officials.

a. Treasurer.

Where the county treasurer receives a fixed compensation for receiving and paying out money he is not entitled to charge for the manual labor of making out a receipt for the money. Jones v. Grant County, 14 W 518.

The county board cannot allow the treasurer any sum in addition to his salary for the performance of any duty. If he performs services not required by his duty he cannot receive compensation therefor. Kewaunee County v. Knipfer, 37 W 496.

An act requiring the county board to allow the treasurer a specified sum in addition to the salary fixed for his then current term, "for the purpose of enabling him to employ such clerks and assistants" as might be necessary in his office, but not requiring him to employ clerks, increased his compensation and was void. Rooney v. Milwaukee County, 40 W 23.

The treasurer's right to the salary fixed for him is not affected by the payment of it to one who is not entitled to the office, he being ready and willing to discharge the duties devolving upon him. Warden v. Bayfield County 87 W 181, 58 NW 248.

b. Sheriff.

The salary fixed for the sheriff pursuant to ch. 53, Laws 1881, is in lieu of all fees which might, but for the action of the board, be due him and his deputies for attending the circuit court on the trial of cases the venue of which is changed from other counties. It is immaterial to the rights of such officers that the county has received from the counties whence the cases came the amount of such fees. Cutts v. Rock County, 82 W 17, 51 NW 881.

A salary provided for a sheriff is in lieu of such fees or charges as the county would be liable for if no salary was fixed, with the single exception of compensation for keeping and maintaining prisoners in the common jail. Parsons v. Waukesha County, 83 W 288, 53 NW 507.

The word "manner" includes "time," and the salary of the sheriff must be fixed before he is elected and cannot be changed thereafter. State ex rel. Banks v. McClure, 91 W 313, 64 NW 992.

The county board is at liberty to fix the salary which should be in addition to lawful disbursements of the sheriff as well as his salary which should include such lawful disbursements. A resolution of the county board to the effect that the present method of paying the sheriff his salary be changed in pursuance of this chapter, and that thereafter the sheriff should be paid a certain salary for work of every kind, applied to the sheriff who was in office at the time the resolution was passed. State ex rel. Sommer v. Erickson, 120 W 435, 98 NW 253.

The compensation of a sheriff, including care and maintenance of prisoners in the

county jail, may be part salary and part fees. 12 Atty. Gen. 594.

Where compensation of a sheriff has been fixed before his election by the county board at a stated sum per annum, plus compensation for keeping and maintaining prisoners in the county jail, a contract subsequently attempted to be entered into after his election by a committee of the county board appointed merely to draw up a contract with the sheriff-elect, providing for additional compensation, is invalid. When a sheriff is placed on a salary basis, his salary covers all fees, per diem, and expenses authorized by statutes to which he would otherwise be entitled. 15 Atty. Gen. 350.

A sheriff on salary is not entitled to be reimbursed for expenses incurred in taking a person to a charitable or penal institution. A sheriff, undersheriff or deputy sheriff is not entitled to any expenses for performance of his duties either within or without the county, except that the sheriff may receive compensation for acting as an agent of the state in extradition matters. 17 Atty. Gen. 314.

When a county board resolution fixing the salary of the sheriff in lieu of fees does not reserve any fees to him, he is not entitled to the fees or special compensation provided for by 51.06 (2), 53.04 (1), 59.28 (27) or 59.29, Stats. 1947, for performing various duties enumerated in said sections. 36 Atty. Gen. 328.

On maintenance of prisoners see note to 53.33, citing 39 Atty. Gen. 218.

Under 59.15 (1), where the sheriff is on a straight salary basis he may not be paid in addition the per diem allowance provided by 59.29 (1). 43 Atty. Gen. 237.

59.15 (1) (a) prohibits a decrease in the 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.

As to sheriff's fees and expenses and action of county board relative thereto, see 53 Atty. Gen. 137.

c. Coroner.

An ordinance enacted by the county board in May, 1942, fixing only a nominal salary for the office of coroner, was unreasonable and void as to the coroner elected in November, 1942, and taking office in January, 1943, in view of the existing duties of the office, so that, since the office could not be divided nor the salary thereof changed during the term, an annual salary of $5,000, as fixed by an early valid ordinance, applied for the full 2-year term. Schultz v. Milwaukee County, 250 W 18, 26 NW (2d) 260.

d. Clerk of Court.

A clerk of court was entitled to tax for certificates of attendance issued to court officers under sec. 733, R. S. 1898, as a proper charge against the county but not for quarterly statements. St. Croix County v. Webster, 111 W 270, 87 NW 302.

A clerk of court on an all-salary basis is not entitled to fees collected in cases from other counties. 4 Atty. Gen. 6, 89, 152, 329; 5 Atty. Gen. 106.

A clerk of court is compensated by fees and may be allowed additional compensation. Such additional compensation, once fixed, remains the compensation of the officer, until changed by the county board. 4 Atty. Gen. 201; 11 Atty. Gen. 53.

The clerk of court of Sawyer county is not entitled to fees in criminal cases as compensation, under the resolution of county board. 11 Atty. Gen. 104.

In a county where the clerk of circuit court is compensated by fixed salary and "all fees" he is entitled to $3 per day for each day's attendance upon session of the circuit court. 14 Atty. Gen. 497.

As to the effect of ch. 315, Laws 1959, governing court reorganization, on fees and compensation of the clerk of circuit court, see 50 Atty. Gen. 183.

e. District Attorney.

The county board has no power to appropriate a contingent fund to the district attorney. 6 Atty. Gen. 229.

The district attorney is entitled to reimbursement of actual and necessary expenses incurred in traveling in the performance of his duties, in addition to his salary. A claim for such reimbursement is to be passed on by county board as are other claims against the county. 10 Atty. Gen. 438.

The county board may not, during the district attorney's term, allow him any sums, in addition to his salary, for clerk hire or office rent. The county is not required to furnish the district attorney with an office or to equip or maintain the same. 11 Atty. Gen. 389.

A district attorney is not authorized to accompany the sheriff on trips outside the county or state to bring back fugitives from justice and charge to the county mileage fees or other necessary expenses incurred; he is not entitled to charge the county for use of his car in traveling to places within his county on trials or examinations nor fee for use of his car in carrying state's witnesses to such trial or examination. 16 Atty. Gen. 50.

A resolution of the county board which puts the office of district attorney on a full-time basis and fixes the compensation therefor for the next 2 years, adopted after the earliest date for filing nomination papers, is contrary to 59.15 (1) (a), Stats. 1945, and is void. 35 Atty. Gen. 121.

f. Register of Deeds.

A county board had no power to provide for a temporary change in the method of compensating the register of deeds. Where the register of deeds was placed upon a salary in lieu of fees and the salary was once fixed, it was not necessary to fix it at each meeting prior to the election of the register of deeds but the salary once fixed continued. Burgess v. Dane County, 148 W 427, 134 NW 841.

g. Surveyor.

The county board is not required to furnish fuel or stationery to the county surveyor, although he has an office in the courthouse.

Towsley v. Ozaukee County, 60 W 251, 18 NW 840.

h. County Judge.

A resolution of the county board affecting the compensation of the county judge, adopted in November of 1929, when the election for county judge was not to occur until the spring of 1931, was not so premature as to be invalid under the provision that the county board at its annual meeting shall fix the annual salary of the county judge. Tardiness, not prematurity, in fixing salaries of county officers is the vice aimed at, the purpose of the statute being to avoid partisan bias and personal feeling and to give prospective candidates seasonable knowledge of the amount of compensation. Axelberg v. Bayfield County, 233 W 533, 290 NW 276.

The office of county judge may not be abolished or its functions transferred under 59.15 (2), Stats. 1947. 36 Atty. Gen. 438.

3. Appointive Officials, Etc.

When the county board fixes a salary for register of probate and includes the same in the tax levy for the year it cannot thereafter order that no salary or allowance be paid to such register. Roberts v. Erickson, 117 W 324, 94 NW 29.

While a municipal officer may be elected or appointed for a specific term he is not bound and cannot be compelled to serve for the entire term; hence his election or appointment cannot be considered a contract for hire for a stipulated term, and the reduction of his salary during his term is not a violation of a contract. The salary of a deputy county clerk may be changed at any meeting. Dandoy v. Milwaukee County, 214 W 586, 254 NW 98.

A county board of supervisors, which had entered into collective-bargaining agreements with a labor union representing public welfare employes and other county workers, providing that all employes would receive across-the-board wage increases and other cost-of-living increments, had no authority to raise or lower salaries of welfare department employes without the consent of the board of county welfare which by 46.22 (3) had been granted such wage prerogatives as part of the legislature's overall plan to coordinate the administration of welfare aids. Kenosha County C. H. Local 990 v. Kenosha County, 30 W (2d) 279, 140 NW (2d) 277.

A county board may change the number and salaries of deputies and clerks at any meeting of the board; it may change the salary of an undersheriff at an adjourned annual meeting of said board. 16 Atty. Gen. 189.

The county board may change the salary of the deputy sheriff at any time. 6 Atty. Gen. 739; 7 Atty. Gen. 77; 16 Atty. Gen. 416.

A county pension commissioner and county engineer are subject to removal at any time by the present or any future county board, even though the county board has passed a resolution that their terms shall be for a definite period of time. 26 Atty. Gen. 313.

A county board may not abolish the board of trustees provided for in 41.47 and vest the functions of the board in a committee of the county board. (21 Atty. Gen. 1036 disapproved.) 30 Atty. Gen. 15.

A county board may abolish the county park commission created pursuant to 27.02, but probably cannot transfer the functions of the commission to a committee of the county board. 30 Atty. Gen. 340.

This section does not authorize the county board of Winnebago county to change the compensation of the clerk of the municipal court for the city of Oshkosh and the county of Winnebago. Under sec. 20 (1), ch. 43, Laws 1935, the county board of Winnebago county may change the annual compensation of such clerk as fixed by said section, but said board may not deprive the clerk of any clerk's fees granted to him by sec. 22 of that act. 36 Atty. Gen. 78.

A county board may fix the salaries of the superintendent, visiting physician and subordinate employes of the county home and county asylum under 59.15. The board may not delegate authority to fix such salaries to trustees and superintendent of the respective institutions. Notwithstanding the provisions of 46.19 and 51.25, the board may decline to fix such salaries, in which case they may be fixed by the board of trustees of the institution under 59.15 (2) (d). 36 Atty. Gen. 539.

A county board lacks authority under 59.15 (2) (b), or otherwise, to create the office of mining inspector. 37 Atty. Gen. 221.

A county board fixing an annual salary for a register in probate, under 59.15 (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 59.15 (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.

On the power of the county board to hire and fire county employes under 59.15 (2), see 44 Atty. Gen. 262.

59.15 (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.

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

Under stated conditions, employment of a non-veteran as "Administrative Secretary" in office of county service officer does not violate 45.43. A county board has power to make employment regulations under 59.15 (2). 47 Atty. Gen. 256.

A county board has the power to decrease the salary of an undersheriff without limit and without regard to the tenure of the appointing sheriff and may abolish the position if its action is not based on fraud, and is not arbitrary. 49 Atty. Gen. 26.

By virtue of 27.015, 27.02, 59.15 (2) and 114.14, Stats. 1961, county parks and airports may be operated through committees of the county board. 52 Atty. Gen. 69.

4. Reimbursement.

The allowance of bills for apprehending and returning fugitives from justice from without the state, without obtaining required certificates of the district attorney before the services are rendered, is an abuse of the power of the county board. Douglas County v. Sommer, 120 W 424, 98 NW 249.

A contract of a sheriff for board of prisoners is not assignable, since his duty to feed prisoners does not rest upon contract but upon statute, and in any event does not involve an obligation which passes to his personal representatives upon his death. Prielipp v. Sauk County, 215 W 16, 254 NW 369.

The duty to keep prisoners confined in county jail is imposed upon the sheriff, and the county is liable to him for actual disbursements made for such purpose, except that the county board may prescribe diet and fix maximum compensation, but may not hire a cook or purchase supplies necessary for such maintenance. 14 Atty. Gen. 430.

Under 59.15 (1) (c), Stats. 1943, a part-time district attorney who maintains a part-time office at the county seat but who lives in another city where he also maintains an office, may charge for travel in the performance of his official duties whether such trip begins in his home city or at the county seat, although he may not charge for travel between his home or private office and the county seat. 34 Atty. Gen. 172.

Salary of the sheriff, his assistants and county veterans' service officer may include a mileage allowance. 59.15 (1) prohibits the county board from passing a resolution giving a sheriff a new mileage allowance, because it would result in increasing his compensation. A county board may pass a resolution providing for reimbursement to the sheriff for any out-of-pocket expense incurred by him in the discharge of his duties. When a county board resolution fixing the salary of the sheriff in lieu of fees does not reserve any fees to him, he is not entitled to the fees or special compensation provided for by 51.06 (2), 53.04 (1), 59.28 (27) or 59.29 for performing various duties enumerated in said sections. A county board may pass a resolution giving increased mileage allowance to the sheriff's assistants and county veterans' service officer as part of their respective salaries. 36 Atty. Gen. 328.

Under 59.15 (3), Stats. 1955, a county board may in its discretion reimburse county officials for membership dues in such organizations as the Wisconsin district attorneys association. 45 Atty. Gen. 51.

59.16 History: R. S. 1849 c. 10 s. 45, 46; R. S. 1858 c. 13 s. 55, 56; R. S. 1878 s. 706, 707; Stats. 1898 s. 706, 707; 1899 c. 155 s. 1; 1901 c. 57 s. 1; Supl. 1906 s. 706; 1907 c. 195; 1909 c. 13, 205; 1915 c. 2; 1919 c. 362 s. 33; 1919 c. 695 s. 54, 55; Stats. 1919 s. 59.16.

In the absence or disability of the county clerk his deputy may execute a tax deed, either by signing his own name as deputy or by writing the clerk's name and adding by himself as deputy. Gilkey v. Cook, 60 W 133, 18 NW 639.

The deputy of a deceased county clerk, pending appointment and qualification of a county clerk to fill the unexpired term, may sign official documents on behalf of the county as "deputy and acting county clerk," "acting county clerk," or "county clerk" with equal legal effect. 16 Atty. Gen. 261.

When a county clerk is disabled from performing the duties of his office, the county board can appoint a person to perform all duties of the office during disability of the clerk, in which case the appointee is entitled to the salary fixed for the office; but if the county board, under 59.15 (2), fixes the number of deputies or assistants and fixes an annual salary for such officer, the appointee draws the salary so fixed, and the clerk is entitled to his salary until and unless removed from office for failure to perform duties or until the person is appointed to discharge such duties under 59.16 (3). 16 Atty. Gen. 752.

The offices of deputy county clerk and deputy county treasurer are incompatible. 22 Atty. Gen. 707.

A minor cannot hold the office of deputy county clerk. 28 Atty. Gen. 591.

The offices of deputy county clerk and justice of the peace are not incompatible at common law nor is the incumbent of one office ineligible to hold the other under the constitution and statutes of this state. 29 Atty. Gen. 143.

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

A 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 History: R. S. 1849 c. 10 s. 20, 47 to 51; 1854 c. 95 s. 2; R. S. 1858 c. 13 s. 20, 32, 58 to 61, 89; R. S. 1858 c. 13 s. 57 sub. 1 to 5; R. S. 1858 c. 18 s. 167; 1859 c. 22 s. 12; 1860 c. 21; 1865 c. 532; 1866 c. 96; 1867 c. 145; 1870 c. 134; 1872 c. 15 s. 4; 1874 c. 399 s. 1, 2, 4; R. S. 1878 s. 708, 709; 1885 c. 42; 1889 c. 71; Ann. Stats. 1889 s. 708, 709; Stats. 1898 s. 708, 709; 1903 c. 451 s. 4; Supl. 1906 s. 11—4 sub. 5; 1907 c. 552, 666; Stats. 1911 s. 11—4 sub. 5, 708, 709; 1913 c. 266; 1913 c. 773 s. 26; 1915 c. 381 s. 5; 1915 c. 619 s. 2; Stats. 1915 s. 5.04 (5), 708, 709; 1917 c. 178 s. 2; 1917 c. 222; 1919 c. 695 s. 56 to 60; Stats. 1919 s. 5.04 (5), 59.17; 1921 c. 133; 1923 c. 11; 1937 c. 421; 1943 c. 275 s. 1, 24; Stats. 1943 s. 59.17; 1949 c. 274; 1953 c. 145; 1955 c. 10; 1967 c. 276 s. 39; 1969 c. 255; 1969 c. 276 ss. 589 (1) (b), 596.

On election, terms and removal of county officers see notes to sec. 4, art. VI; on hunting, trapping and fishing licenses see notes to 29.09; and on land sold for taxes see notes to various sections of ch. 75.

It is the duty of the county clerk to execute a proper deed to the owner of a valid certificate of lands sold for taxes, to whom a deed fatally defective in form has been issued, and who has never been in actual possession of the land. State ex rel. White v. Winn, 19 W 304.

Where the county board has audited and ordered payment of an account, the duty of the county clerk is simple and peremptory, purely ministerial—to make, sign and deliver the orders to the person to whom allowance was

made. Orders cannot be issued without the previous recorded authority of the board. State ex rel. Treat v. Richter, 37 W 275.

A receipt for taxes is not invalid because not countersigned by the county clerk. Randall v. Dailey, 66 W 285, 28 NW 352.

The clerk is a public trustee. Webster v. Douglas County, 102 W 181, 77 NW 885, 78 NW 451.

The record kept by the county clerk cannot be contradicted or assailed by oral testimony. Bartlett v. Eau Claire County, 112 W 237, 88 NW 61.

The county clerk must furnish the secretary of state copies of poll lists, in his office, on demand, without receiving any fee. The general law concerning fees does not apply to the state. 1912 Atty. Gen. 367.

A county clerk cannot charge a fee for taking the oath of an applicant for a hunting license or a marriage license, nor charge more than the statutory fees. 7 Atty. Gen. 561; 27 Atty. Gen. 187.

The county clerk must register a county highway bond upon request by the owner under the provisions of 67.09. 13 Atty. Gen. 628.

On the authority of the county clerk to issue orders without a resolution from the county board, see 20 Atty. Gen. 416.

A county clerk may not issue county orders in payment for road machinery in absence of a resolution or recorded vote by the county board authorizing same. 22 Atty. Gen. 393.

A county board may not require the county clerk to render notarial services in matters unconnected with county business, but if such services are rendered and fees are collected they belong to the county. 27 Atty. Gen. 187.

A county clerk has no implied authorization to convey county lands by warranty deed. 28 Atty. Gen. 478.

59.17 (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.

The county clerk must make the report required by 59.17 (16) at the annual November meeting of the county board. 39 Atty. Gen. 372.

On the liability of a county clerk who signs orders for unauthorized payments, see 39 Atty. Gen. 519.

59.175 History: 1937 c. 119; Stats. 1937 s. 59.175; 1943 c. 93; 1947 c. 472; 1959 c. 659 s. 79; 1967 c. 291 s. 14; 1969 c. 366 s. 117 (2)(b).

59.18 History: 1857 c. 66; R. S. 1858 c. 13 s. 126; 1865 c. 264; R. S. 1878 s. 713; 1893 c. 35; Stats. 1898 s. 713; 1915 c. 131; 1919 c. 695 s. 62; Stats. 1919 s. 59.18.

The office of county treasurer and the office of town chairman are incompatible, even though the county has the commission form of government. 20 Atty. Gen. 1217.

A member of a county board is eligible to the office of county treasurer during the term for which he was elected, provided he resigns from the county board and is elected county treasurer by vote of the electors. 21 Atty. Gen. 800.

59.19 History: R. S. 1849 c. 10 s. 105, 106; R. S. 1858 c. 13 s. 124, 125; R. S. 1878 s. 711, 712; 1897 c. 75; Stats. 1898 s. 711, 712; 1899 c. 455 s. 2; Supl. 1906 s. 711; 1919 c. 362 s. 33; 1919 c. 695 s. 63, 64; Stats. 1919 s. 59.19; 1957 c. 271.

A treasurer who absconds from the state and is a fugitive from justice is incapable of discharging his official duties, and the county board is authorized to appoint another in his place. The failure, on lawful demand and without excuse, to pay over money received by him virtute officii, would also create a vacancy, such failure showing incapacity to discharge the duties of his office. Washington County v. Semler, 41 W 374.

Where taxes are paid to one authorized by the treasurer to receive them, the fact that the receipt is signed only by a stamp with a facsimile of the treasurer's signature and is not countersigned by the clerk does not affect the taxpayer's rights as against a subsequent tax-sale purchaser. Randall v. Dailey, 66 W 285, 28 NW 352.

The person who holds the office of deputy treasurer cannot deny or contest the title of his principal to the office of treasurer. Payment of the latter's salary to the former while he was usurping the office of treasurer is not payment to an officer de facto, and does not affect the treasurer's right to his salary, at least where the county board is a party to the deputy's wrongdoing. Warden v. Bayfield County, 87 W 181, 58 NW 248.

The county treasurer cannot be reimbursed for payment made to one doing his work as county treasurer after services have been rendered unless this section is complied with. 10 Atty. Gen. 150.

The county clerk and county treasurer are liable personally if they pay money from county funds to a bankers' association for purpose of paying part of the cost of arming and equipping special deputy sheriffs to protect banks. 18 Atty. Gen. 409.

If an ordinance establishing a county civil service system as provided by 59.074, Stats. 1947, gives civil service status to the position of deputy county treasurer, it conflicts with powers given the county treasurer to appoint a deputy by 59.19 (1) and to that extent supersedes such powers. 38 Atty. Gen. 21.

59.20 History: R. S. 1849 c. 10 s. 108 to 111, 114, 116; R. S. 1858 c. 13 s. 127 to 130, 133, 135; 1859 c. 42; 1865 c. 532; 1866 c. 96; 1872 c. 15 s. 4; 1872 c. 43 s. 1, 3; 1873 c. 61; 1875 c. 146; R. S. 1878 s. 715, 719; 1895 c. 229; Stats. 1898 s. 715, 719; 1907 c. 552; 1913 c. 773 s. 26; 1915 c. 619 s. 2; 1917 c. 178 s. 2; 1919 c. 695 s. 65 to 70; Stats. 1919 s. 59.20; 1929 c. 287; 1935 c. 400; Stats. 1935 s. 59.07 (22), 59.20; 1941 c. 206; 1943 c. 277; 1949 c. 158; 1951 c. 302; 1955 c. 311; 1955 c. 651 s. 13a; Stats. 1955 s. 59.20; 1957 c. 260 s. 10; 1963 c. 427, 430.

On election, terms, and removal of county officers see notes to sec. 4, art. VI; on jurisdiction of circuit courts see notes to sec. 8, art. VII; on collection of taxes see notes to various sections of ch. 74; on land sold for taxes see notes to various sections of ch. 75.

The mere addition to a county order of the words "for jail purposes" does not destroy its character as such, nor affect the right of its holder to priority of payment. There is

no legal authority for the creation of separate funds out of county moneys; all such moneys, exclusive of trust funds, constitute one fund, from which all its liabilities are to be discharged. The holder of county order, before judgment and execution returned nulla bona, is a mere general creditor, and cannot interfere by injunction with the right of the county to control and dispose of its funds. Montague v. Horton, 12 W 599.

The right of the county treasurer to be allowed in his account for moneys refunded by him to purchasers of void tax certificates is an account or claim proper to be allowed by the county board; and the remedy for its disallowance is by appeal and not by mandamus. State ex rel. Wolff v. Sheboygan County, 29 W 79.

The specified statement must be transmitted to the state treasurer whether or not any moneys have been collected for fines. State ex rel. Guenther v. Miles, 52 W 488, 9 NW 403.

Where school moneys were paid into the county treasury by mistake, on the supposition that they belonged to the county, the right of the school district was against the county for money received to its use; the remedy being by presentation of the claim under 59.76 and following sections, that procedure being the equivalent of a legal action. State ex rel. Board of School Directors v. Nelson, 105 W 111, 80 NW 1105.

Under 59.20 (13) a town treasurer cannot distribute national forest money to a school district until the town board determines the equitable shares. Tracy v. Johnson, 3 W (2d) 359, 88 NW (2d) 337.

The county treasurer must decide whether a judgment creditor or a prior assignee of the sheriff is entitled to his salary. 4 Atty. Gen. 1111.

The offices of town clerk and county treasurer are compatible. 5 Atty. Gen. 786.

The county chairman may countersign county orders by stamping his name with a rubber stamp thereon. 7 Atty. Gen. 419.

A county treasurer is not the bookkeeper of the county; if he keeps books required by statute to be kept by him he is not charged with liability for an overdraft against a particular fund or account on payment, without knowledge of such overdraft, of orders drawn by the county clerk, who is county accountant. 13 Atty. Gen. 196.

Where state school funds are paid to the county treasurer for payment to several town treasurers and the county treasurer makes distribution by depositing funds in a local bank and drawing checks on such fund payable to several town treasurers for the amount of such orders, funds in the bank remain at his risk until reasonable time after check has been delivered to the town treasurer, such reasonable time being not later than closing time of the bank on the day following delivery of the check. 13 Atty. Gen. 569.

A county treasurer is liable for tax misinformation furnished by his deputy to prospective purchaser of land who relies upon information furnished to his damage. 27 Atty. Gen. 544.

A county treasurer's responsibility for funds in his possession is in nature of that of an insurer and he is liable for all losses even though he has exercised due diligence. 27 Atty. Gen. 844.

A county treasurer may not properly certify his conclusion based upon an examination of records in his office as to the state of tax payments on a particular parcel of land. (25 Atty. Gen. 52 disapproved.) 34 Atty. Gen. 13.

The office of a city councilman and that of county treasurer are not incompatible. 37 Atty. Gen. 624.

The county treasurer may adopt a rule or policy that he will accept only cash or a certified check from county officers or department heads. Such units may maintain separate checking accounts. The treasurer has no authority to require the county public welfare department to maintain checking account and has responsibility for mailing aid payments. 52 Atty. Gen. 439.

59.201 History: 1969 c. 434; Stats. 1969 s. 59.201.

59.21 History: R. S. 1849 c. 10 s. 79, 81, 82, 98; R. S. 1858 c. 13 s. 98, 99, 100, 101, 117; 1870 c. 27; 1872 c. 50, 79; R. S. 1878 s. 722, 723, 724; Stats. 1898 s. 722, 723, 724; 1919 c. 695 s. 71; Stats. 1919 s. 59.21; 1933 c. 279; 1935 c. 349; 1937 c. 253; 1943 c. 194; 1945 c. 188; 1947 c. 483; 1951 c. 15, 524; 1953 c. 61 s. 44; 1953 c. 272; 1955 c. 40; 1957 c. 562; 1959 c. 368; 1959 c. 659 s. 76; 1963 c. 436; 1967 c. 276; 1969 c. 107.

On election or appointment of statutory officers see notes to sec. 9, art. XIII; and on eligibility for office see notes to sec. 3, art. XIII, and notes to 66.11.

The appointment of a special deputy to serve a particular writ containing a proviso that he shall take a sufficient bond of indemnity for the protection of the sheriff confers no authority unless the bond is taken. Eaton v. White, 2 W 292.

After a sale made under a decree has been confirmed it will be presumed that the person who made it was regularly appointed. Courts will not inquire into the regularity of his appointment in a collateral action. Eaton v. White, 18 W 517.

The requirement that an appointment be recorded is directory. Sprague v. Brown, 40 W 612.

A return signed "Matt. Birchard, by J. L. Rewey, Deputy Sheriff," is presumptively valid. Martin v. C. Aultman & Co. 80 W 150, 49 NW 749.

A deputy sheriff is not appointed pursuant to this section for a definite term within the meaning of the county civil service law, 16.31 to 16.44, Stats. 1919. State ex rel. Milwaukee County v. Buech, 171 W 474, 177 NW 781.

Sheriff is liable for the value of the services of a wrecking company employed by his deputy to remove heavy machinery in the execution of a writ of restitution, because the sheriff is allowed by 59.28 (24) and (25), Stats. 1919, to charge for such expense in his fee bill. A deputy sheriff acts as the general agent of the sheriff, and may bind the latter in incurring such expense. A sheriff waives prepayment of his fees and expenses when he undertakes to serve a writ without demanding such prepayment. American W. Co. v. McManus, 174 W 300, 181 NW 235, 183 NW 250.

Where a sheriff acts in good faith and in obedience to a mandate proceeding from a court having jurisdiction of the subject matter of the suit and nothing appears in the process to apprise the sheriff of any want of jurisdiction over the person affected by the process, the sheriff is justified in proceeding thereunder. Kalb v. Luce, 234 W 509, 291 NW 841.

Under 59.21 (1), Stats. 1953, 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 59.21 (1), Stats. 1953, 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.

The offices of supervisor and deputy sheriff are incompatible. 1904 Atty. Gen. 421.

A person not a citizen of the United States or the state of Wisconsin may nevertheless hold the office of undersheriff. 2 Atty. Gen. 658.

The public may deal with the under or deputy sheriff as with the sheriff. The sheriff may prescribe the duties of the deputies. If they disregard his instructions his remedy is to remove them from office. 4 Atty. Gen. 399.

Upon the death of the sheriff, the undersheriff is entitled to the salary of the sheriff. 5 Atty. Gen. 181.

Special deputies appointed by a sheriff to guard private property have no claim against the county for compensation. 6 Atty. Gen. 390.

Special deputies appointed by the sheriff, in the absence of prior authorization by the county board, have no claim for compensation against the county. 9 Atty. Gen. 316.

A minor, male or female, may be appointed and act as deputy sheriff. 9 Atty. Gen. 444.

A mail carrier is an employe, not an officer. He is eligible to the office of deputy sheriff. The positions are compatible. 10 Atty. Gen. 21.

The offices of justice and undersheriff are not compatible. 11 Atty. Gen. 243.

Federal officers may aid a sheriff in execution of a search warrant. 11 Atty. Gen. 937.

A president of a state bank and the treasurer of a village may be a deputy sheriff. 12 Atty. Gen. 442.

A sheriff is required to appoint deputies in certain villages, cities and districts, and may appoint them in others. It is duty of sheriff, his undersheriff and his deputies, as well as that of constables, marshals and police officers to enforce state laws regulating speed of vehicles on public highways; they may make arrests for violation of such laws under same situation as for violation of other criminal laws of state. 13 Atty. Gen. 347.

A minor may be appointed deputy sheriff. The county is the employer and the deputy sheriff is an employe under the workmen's compensation act. 16 Atty. Gen. 811.

Hiring of deputies by the sheriff on recommendation of the chairman of the county board to guard desperate prisoners in county jail which is not considered adequate does not create a valid claim against the county where the chairman was not authorized by the county board to make such recommendations. 17 Atty. Gen. 258.

A county board has authority to change the number of deputy sheriffs at any time. A discharged deputy sheriff has no claim against the county for violation of alleged contract due to his discharge. A sheriff may appoint as many deputies as he deems proper, but compensation of such deputies not authorized by the county board will be made by the sheriff. 18 Atty. Gen. 335.

The offices of deputy sheriff or undersheriff and constable are compatible. A sheriff on salary basis cannot, by having papers which are delivered to him served by a constable, evade a law which requires such sheriff to serve all papers delivered to him for service and to collect and pay into the county all fees therefor. Where papers are delivered to an undersheriff or deputy sheriff for service, he must serve them in his official capacity and may not serve them as an individual. 20 Atty. Gen. 296.

Under 59.21 (4), Stats. 1935, a deputy sheriff or undersheriff holding over until his successor is appointed and qualified is entitled to collect the fees of his office. 25 Atty. Gen. 588.

Where a county civil service ordinance for selection of deputy sheriffs is in conflict with the provisions of 59.21 (8), Stats. 1935, a sheriff is not bound thereby in appointing deputies. 25 Atty. Gen. 747.

In counties which have adopted a civil service ordinance for deputy sheriffs pursuant to 59.21 (8), Stats. 1937, only one examination needs to be given where more than one vacancy exists provided the vacancy to be filled has no relation to residence in town, city or village. In such cases separate examination must be held to fill such positions. 27 Atty. Gen. 244.

A deputy sheriff, by accepting the office of sheriff, abandons the office of deputy sheriff. 29 Atty. Gen. 247.

When a county has adopted the civil service system for deputy sheriffs under 59.21 (8), Stats. 1939, the ordinance must apply to all future appointments, and the system may not be part civil service and part not civil service. A county board may not by ordinance establish qualifications for the position of deputy sheriff. 29 Atty. Gen. 312, 482.

59.21 (8), Stats. 1943, provides for the removal of deputy sheriffs appointed under a county civil service ordinance enacted pursuant to the provisions of that section. The provision is exclusive. 16.38 is not applicable to such removals. 34 Atty. Gen. 33.

A county board cannot create the office of investigator with powers of deputy sheriff although it may make provision for hiring an additional deputy sheriff to be assigned to investigational work. 35 Atty. Gen. 474.

A traffic division of the sheriff's department can be established only in connection with an ordinance placing deputies under civil service. A county highway committee has authority to appoint traffic patrolmen until they are placed under civil service. 36 Atty. Gen. 174.

The term "honorary deputies" as used in 59.21 (8), Stats. 1947, is a title conferred only

as a compliment and carries no official duties or authority. Such an honorary deputy is not within the exception to the prohibition against carrying concealed weapons under 340.69. 37 Atty. Gen. 381.

A sheriff has power to appoint his own deputies. A county board has no power to discharge deputy sheriffs. 38 Atty. Gen. 245.

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.

A deputy sheriff may act in or outside of the county within limitations of the statutes. 45 Atty. Gen. 267.

A county board may, under 59.21 (8), Stats. 1959, enact an ordinance placing deputy sheriffs under civil service and providing for various classes of deputy sheriffs. 48 Atty. Gen. 98.

See note to 59.15, on appointive officials, etc., citing 49 Atty. Gen. 26.

County boards may provide for the establishment of civil service procedure applicable to deputy sheriffs and may establish qualifications of reasonable relationship to the position in addition to the statutory qualifications provided they do not discriminate. 54 Atty. Gen. 106.

59.22 History: R. S. 1849 c. 10 s. 80, 82, 83, 88, 89; R. S. 1858 c. 13 s. 99, 101, 102, 107, 108; R. S. 1878 s. 721, 724; Stats. 1898 s. 721, 724; 1919 c. 220; 1919 c. 695 s. 72; 1919 c. 702 s. 35, 36; Stats. 1919 s. 59.22; 1921 c. 446; 1947 c. 210; 1961 c. 276; 1963 c. 6, 436; 1965 c. 124, 249, 510.

The sheriff is liable for all acts of his deputy by virtue of his office, as where the latter levies on the goods of A. under an execution against B. Sprague v. Brown, 40 W 612.

The deputy is personally liable for a contempt in not returning a summons, and may be proceeded against under 295.01, Stats. 1953. Heymann v. Cunningham, 51 W 506, 8 NW 401.

The liability of the sheriff for the wrongful act of his deputy in levying on the property of a person not a party to the action continues after his death, and an action may be brought on his bond without joining his personal representative. Dishneau v. Newton, 91 W 199, 64 NW 879.

59.225 History: 1929 c. 379; Stats. 1929 s. 59.225.

59.23 History: R. S. 1849 c. 10 s. 84, 86, 93; 1856 c. 120 s. 322; R. S. 1858 c. 13 s. 102, 103, 105, 112; R. S. 1858 c. 140 s. 45; R. S. 1858 c. 190 s. 10, 11; 1868 c. 94 s. 1; R. S. 1878 s. 725, 2826; 1891 c. 152; Stats. 1898 s. 725, 2826; 1919 c. 695 s. 73; Stats. 1919 s. 59.23, 2826; 1925 c. 3; Stats. 1925 s. 59.23, 269.40; 1931 c. 200; 1935 c. 541 s. 144; Stats. 1935 s. 59.23; 1937 c. 373; 1947 c. 304; 1953 c. 506; 1955 c. 330; 1961 c. 673; 1969 c. 276 s. 584 (1)(b).

On election, terms, and removal of county officers see notes to sec. 4, art. VI; on state, county and municipal prisons see notes to various sections of ch. 53; and on executions see notes to various sections of ch. 272.

The levy on the property of one person under a writ against that of another is a trespass. Cotton v. Marsh, 3 W 221.

The sheriff acquires no title to goods of a stranger taken upon a writ, and cannot maintain trespass against him though he may against all other persons. Whitney v. Brunette, 3 W 621.

The officer is liable for taking exempt property, though the writ does not except it, and though the debtor has agreed, previous to judgment, to waive exemptions. Gilman v. Williams, 7 W 329; Maxwell v. Reed, 7 W 582.

The sheriff acquires special property in personalty levied on and may maintain actions which depend on the right of possession. Martin v. Watson, 8 W 315.

The sheriff may execute a writ and pay the proceeds to a creditor, though a prior writ against same goods was in deputy's hands, of which he had no notice. The principle of his responsibility for his deputy, and that both are regarded as one officer, cannot be extended so as to charge him with notice of what comes to his deputy's knowledge, or possession of what comes to his possession. Russell v. Lawton, 14 W 202.

Every failure to perform his duties is a breach of his bond. Acting under the direction of the plaintiff's attorneys is a defense to an action by the plaintiff for so acting. Bartlett v. Hunt, 17 W 214.

The fact that the plaintiff was not entitled to issue process is a complete defense to an action for not executing it. Loomis v. Wheeler, 21 W 271.

It is an abuse of process to execute a writ of restitution by turning the family of a defendant into the street in the night of an inclement season and breaking and damaging their furniture and clothing. Andrea v. Thatcher, 24 W 471.

An officer executing process is not protected if he has notice of some jurisdictional defect which renders the process void. Information by defendant's attorney to the officer that a judgment upon which execution is issued is void is a sufficient notice. Grace v. Mitchell, 31 W 533.

The sheriff has no further right of action in regard to property levied on than is necessary to perform his official duty; hence if the defendant or his agent gets possession of exempt property levied on the officer has no action therefor. Connaughton v. Sands, 32 W 387.

Defects in a sheriff's official title, as that he did not properly qualify, is no defense or excuse. Nor can he be excused for the acts of one acting as a deputy with his knowledge. Sprague v. Brown, 40 W 612.

The delivery of property to the holder of paramount liens thereon for less than its value is a breach of his bond. A sheriff may levy successive attachments on the same property and hold it on all according to priority. Halpin v. Hall, 42 W 176.

The duty of serving process and attending upon the circuit court while in session may

be performed by the deputy of the sheriff, and the latter's delay of 4 days in levying an execution is prima facie unreasonable, notwithstanding such court was in session. A delay of 4 days in levying execution is prima facie negligence, and press of business is no excuse, as it is the officer's duty to provide as many deputies as are necessary to the discharge of his duties. Elmore v. Hill, 46 W 618, 1 NW 235.

The clerk of the circuit court may act as agent of the plaintiff in filling blanks in an execution, and may deliver the same to the sheriff, and the date of such delivery will be deemed the date of issue of the writ. Chase v. Ostrum, 50 W 640, 7 NW 667.

In defense to an action for false imprisonment a defendant must show that the warrant was valid on its face. Gelzenleuchter v. Niemeyer, 64 W 316, 25 NW 442.

The sheriff may refuse to execute a writ which is invalid, but its invalidity must be shown in order to excuse him. Such writ carries with it presumption of its regularity and validity. The sheriff is liable in damages for disobedience of a writ delivered to him unless he proves its invalidity. Harris v. Snyder, 113 W 451, 89 NW 660.

Counties have no corporate duty to perform in respect to the arrest and prosecution of offenders against the criminal laws of the state. The services of the sheriff in the execution of the criminal laws are performed for the state and his compensation fixed by the state to be paid by the county. Northern T. Co. v. Snyder, 113 W 516, 89 NW 460.

A sheriff and deputy are liable for false imprisonment for arrest under a warrant showing on its face that it is not in conformity to the statutes, since a sheriff is protected in performing official duties only when the writ is regular on its face, and he is not chargeable with knowledge to the contrary. Rubin v. Schrank, 207 W 375, 241 NW 370.

See note to 295.01, citing Cordts v. Reuter, 223 W 518, 271 NW 39.

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.

Letters received from the post office, addressed to prisoners may not be opened by the sheriff without the prisoner's consent. Sheriffs have no right to deny a prisoner the right to have his attorney consult with him. Nor should such sheriff hear the conversation between the prisoner and his attorney without the former's consent. 1908 Atty. Gen. 771.

The sheriff cannot demand an indemnity bond to serve papers in criminal cases. He is not protected in executing a warrant which shows upon its face that it is void and issued without authority. 1910 Atty. Gen. 617.

A sheriff is not entitled to the fee "for assisting the clerk of the circuit court in drawing a jury," because he is present when the clerk draws the names for the petit jury list. A sheriff is not entitled to any fee for making a copy of the register of prisoners, etc., to lay before the court. 2 Atty. Gen. 761.

When a valid criminal warrant is delivered to a sheriff, service is not discretionary; he must execute it notwithstanding the contrary advice of the district attorney. 6 Atty. Gen. 342.

It is the duty of the superintendent to apprehend and return an escaped inmate of the state hospitals for the insane. The superintendent may request and authorize the sheriff to assist. The sheriff is authorized where the superintendent has asked the district attorney to have the sheriff take and hold such person. 6 Atty. Gen. 556.

The sheriff is liable for the laundry of prisoners. 12 Atty. Gen. 273.

A sheriff who is under salary fixed by the county board is not entitled to per diem for his deputy fixed by 59.23 (3). 18 Atty. Gen. 170.

A board of control is authorized to issue an order requiring the sheriff to apprehend a probation violator and it is the duty of the sheriff to obey such order. 22 Atty. Gen. 66.

A county board cannot require a sheriff who is compensated on a fee basis to keep a book or record of the amount he receives as fees. 26 Atty. Gen. 425.

Under 59.23 (4), it is the duty of the sheriff to convey delinquent children to the appropriate centers established by the department of public welfare, under 54.23 (3) and (4), upon delivery to him of the commitment. 36 Atty. Gen. 609.

A sheriff has the duty to confine persons arrested by city police where he has reason to believe that the arrest has been proper. 39 Atty. Gen. 50.

Sheriffs have the duty to accept prisoners from state conservation wardens when arrest is made without a 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 59.23 (8), Stats. 1951, means a book in which are listed civil writs, processes, and other papers delivered to the sheriff for service. 41 Atty. Gen. 237.

Under certain circumstances the sheriff is required to cooperate and provide transportation to the county jail for persons arrested for violation of state law and expense to be borne by the municipality whose ordinance was violated. Transportation is not to be provided in arrests without a warrant. 50 Atty. Gen. 47.

Under 59.07 (1) (d), Stats. 1963, a county board may employ unused office space in the county jail for personnel other than sheriff's subordinates, provided jail operation or security are not impaired. If such occurs, the sheriff's rights are superior. 52 Atty. Gen. 377.

59.24 History: R. S. 1849 c. 10 s. 85; R. S. 1858 c. 13 s. 104; R. S. 1878 s. 727; Stats. 1898 s. 727; 1919 c. 695 s. 74; Stats. 1919 s. 59.24; 1967 c. 105.

Sec. 13, ch. 104, R. S. 1858, does not give the sheriff power to employ counsel at a hearing on habeas corpus before the supreme court on behalf of a prisoner held in custody by him. McDonald v. Milwaukee County, 41 W 642.

An officer may order a driver to pull his truck across a highway as a roadblock. The driver is not liable for negligence in so doing or in failing to put out warning lights. Kagel v. Brugger, 19 W (2d) 1, 119 NW (2d) 394.

A sheriff has no right, by virtue of his office, to free admission for himself or his deputies, to an exhibition or entertainment for the sole purpose of witnessing the same. 3 Atty. Gen. 809.

A member of a posse comitatus is not entitled to compensation from a county or municipality nor from the officer summoning him. 12 Atty. Gen. 339.

Highway motor police appointed by a county highway committee are supplementary to the sheriff and the sheriff is not thereby relieved of his duty to preserve the peace. 19 Atty. Gen. 256.

A county is responsible for damage to a citizen's car which was impressed by the sheriff in apprehension of a criminal. 24 Atty. Gen. 565.

The duties of the clerk of the municipal court of the city of Oshkosh and Winnebago county as defined by sec. 20, ch. 43, Laws 1935, are incompatible with those of deputy sheriff set forth in 59.24. 36 Atty. Gen. 483.

59.245 History: 1969 c. 369; Stats. 1969 s. 59.245.

59.25 History: R. S. 1849 c. 10 s. 91, 92; R. S. 1858 c. 13 s. 110, 111; R. S. 1878 s. 728; 1887 c. 67; Ann. Stats. 1889 s. 725a, 728; Stats. 1898 s. 725a, 728; 1919 c. 45; 1919 c. 695 s. 75, 75a; Stats. 1919 s. 59.25.

Notice of acceptance of the offer need not be given. An offer may be made orally. An offer cannot be withdrawn after performance under it. Reif v. Paige, 55 W 496, 13 NW 473.

There is nothing in this section or elsewhere to prevent the reward from being apportioned among 2 or more claimants who may have participated in complying with the terms of the offer. Kinn v. First Nat. Bank, 118 W 537, 95 NW 969.

59.26 History: R. S. 1849 c. 10 s. 95; R. S. 1858 c. 13 s. 114; 1869 c. 61 s. 1; R. S. 1878 s. 729; Stats. 1898 s. 729; 1919 c. 695 s. 76; Stats. 1919 s. 59.26.

Neither of the officers specified in sec. 729, R. S. 1878, can be permitted to divest himself of his official character for the time being and do any of the acts enumerated therein. Cutts v. Rock County, 82 W 17, 51 NW 881.

59.27 History: R. S. 1849 c. 10 s. 90; R. S. 1858 c. 13 s. 109; R. S. 1878 s. 730; Stats. 1898 s. 730; 1919 c. 695 s. 77; Stats. 1919 s. 59.27.

59.28 History: R. S. 1849 c. 131 s. 10; 1851 c. 353 s. 1; 1852 c. 392 s. 4; R. S. 1858 c. 133 s. 1, 3, 4; 1863 c. 301 s. 1; 1866 c. 49 s. 2; 1867 c. 17 s. 1; 1867 c. 18; 1871 c. 7; 1873 c. 94; 1873 c. 116 s. 3; 1876 c. 147; 1877 c. 202 s. 1; 1877 c. 211; R. S. 1878 s. 731; 1880 c. 174 s. 2; 1880 c. 175; 1882 c. 176; 1887 c. 470; Ann. Stats. 1889 s. 731, 1547d; Stats. 1898 s. 731; 1899 c. 351 s. 15; 1905 c. 139 s. 1; Supl. 1906 s. 731; 1919 c. 689; 1919 c. 695 s. 78; 1919 c. 702 s. 44b; Stats. 1919 s. 59.28; 1925 c. 93, 150, 248; 1947 c. 485; 1949 c. 148; 1955 c. 265, 457, 506, 654; 1957 c. 618; 1959 c. 310; 1961 c. 273, 480; 1963 c. 6, 37.

Comment of Interim Committee, 1947: 59.28 (37) is from old 51.06 (2) and is placed in the general sheriff fee section. Mentally deficient and epileptic patients are specifically included. Railroad fare is mentioned in old 51.06 (2) but is covered by "necessary expenses." [Bill 19-S]

The fees for acts of a deputy belong to the sheriff, and he may lawfully agree with a deputy to share them with him. But a contract between them that the deputy should pay a gross sum for his appointment would be corrupt and void. Addington v. Sexton, 17 W 327.

Where the delivery of a copy of a paper or writ is a necessary part of the service thereof the sheriff is entitled to the statutory fee for making it though voluntarily furnished by the party. Bound v. Beach, 44 W 600.

Where the return shows service of a subpoena on several witnesses both within and without the county, nothing appearing to the contrary, the presumption is that the mileage charged is for travel within the county only. Reid v. Martin, 77 W 142, 45 NW 820.

Until the court has made an allowance for the expenses incurred in taking possession of property and preserving it the sheriff has no right to retain any portion of the moneys collected by him on account of such expenses. First Nat. Bank v. Kickbush, 78 W 218, 47 NW 267.

A sheriff can recover nothing for services required by law for which no compensation is made as he takes his office cum onere. McCumber v. Waukesha County, 91 W 442, 65 NW 51.

The sheriff can be paid no fee for his services in regard to the board of prisoners, nor can he gain any profit thereby. Doty v. Sauk County, 93 W 102, 67 NW 10.

As it is the duty of the sheriff to make copies of a summons and complaint to serve upon various defendants, a plaintiff cannot tax for extra copies for such defendants. Koch v. Peters, 97 W 492, 73 NW 25.

A sheriff is not entitled to mileage for travel in an unsuccessful attempt to execute a criminal warrant; where the warrant cannot be served, his compensation for the attempt should be under sec. 731, Stats. 1898. Schneider v. Waukesha County, 103 W 266, 79 NW 228.

Where sec. 731, Stats. 1898, is disregarded by the sheriff in making out his return for the service of subpoenas a retaxation of expenses arising out of a change of venue under 271.22 and 271.26 will be ordered. Green Lake County v. Waupaca County, 113 W 425, 89 NW 549.

A sheriff is entitled only to mileage where the travel is successful and on the particular trip which results in the service of the warrant. Northern T. Co. v. Snyder, 113 W 516, 89 NW 460.

The allowance of bills for services in the unsuccessful pursuit of fugitives from justice outside the county without having the certificates required by the subdivision is an abuse of the power of the county board. Douglas County v. Sommer, 120 W 424, 98 NW 249.

The claim of a deputy sheriff for mileage under 59.28 (27) was payable to the sheriff and was subject to the claims of creditors of the sheriff. Prielipp v. Sauk County, 215 W 16, 254 NW 369.

A sheriff is not entitled to a $2 fee for executing a deed under 59.28 (12), in addition to the fee under 59.28 (33). 3 Atty. Gen. 686.

A sheriff who travels to serve an execution but fails to find property is not entitled to mileage. 3 Atty. Gen. 745.

The sheriff is not entitled to compensation from the industrial school for apprehending escaped inmates. 4 Atty. Gen. 389.

Neither the sheriff nor the doctor employed by him has a valid claim against the county for services performed and expenses incurred in examining a corpse to determine the cause of death. The district attorney should be notified of the finding of the body and he has authority to order an inquest. 10 Atty. Gen. 22.

Members of a posse comitatus cannot recover compensation for services either from the sheriff or the county. The sheriff may be allowed compensation on the necessary and proper service and expense incurred in pursuing a criminal only as prescribed in 59.28 (34). 11 Atty. Gen. 829.

Where the debtor pays into court the amount of the judgment and costs after property has been levied upon, the sheriff is not entitled to fees for collecting the judgment. 12 Atty. Gen. 292.

A sheriff is not entitled to a witness fee when called upon to testify while present in court on official business. 14 Atty. Gen. 78.

A sheriff is not entitled to compensation for investigations of questions and matters for which no fees are provided by statute. For executing a search warrant he is entitled to the same fees as for serving any other warrant. He is not entitled to be paid per diem fee for time expended in searching premises. A sheriff is not entitled to compensation for raiding a soft drink parlor, but can only charge the fee provided for by statute for making arrest. 15 Atty. Gen. 465.

A sheriff on salary should not get fees for taking a patient to an asylum. 16 Atty. Gen. 3.

Statutes make no provision for a sheriff to obtain a fee of $2.50 for serving a search warrant and for making a search of premises. 59.28 (24) cannot be construed as authorizing such fee. 16 Atty. Gen. 237.

A sheriff cannot insist upon payment of statutory fees before undertaking service of process. 24 Atty. Gen. 508.

Neither the sheriff nor his deputies are entitled to per diem provided by 59.28 (22) where the sheriff is compensated upon a salary basis even though the salary resolution reads that it "shall not be construed to include fees or per diem earned by the sheriff in civil actions or for private individuals." 28 Atty. Gen. 363.

See note to 59.15, on reimbursement, citing 36 Atty. Gen. 328.

A sheriff is required to charge the fees authorized, whether he retains them or turns them into the treasury. The county board can require the sheriff to pay a portion of the fees to the treasury. 48 Atty. Gen. 257.

Under 59.28 (2) (a) a sheriff can charge for mileage while serving civil process only when he is successful in making service. Fact situation would govern individual cases. 53 Atty. Gen. 44.

A sheriff may extend credit for his fees or demand prepayment. 53 Atty. Gen. 218.

59.29 History: 1901 c. 126 s. 1, 2; Supl. 1906 s. 731a, 731b; 1911 c. 663 s. 69; 1915 c. 259; 1919 c. 695 s. 79, 80; Stats. 1919 s. 59.29; 1949 c. 129.

A sheriff who returns a prisoner from another city is not entitled to pay expenses of an assistant nor mileage for use of such assistant's automobile. 19 Atty. Gen. 377.

See note to 59.15 on elective officials, citing 43 Atty. Gen. 237.

59.30 History: 1851 c. 353 s. 2; R. S. 1858 c. 133 s. 2; R. S. 1878 s. 732; Stats. 1898 s. 732; 1919 c. 695 s. 81; Stats. 1919 s. 59.30.

59.31 History: R. S. 1849 c. 10 s. 94; 1851 c. 247 s. 1; R. S. 1858 c. 13 s. 113; R. S. 1858 c. 133 s. 5; R. S. 1878 s. 733; Stats. 1898 s. 733; 1919 c. 695 s. 82; Stats. 1919 s. 59.31.

If a probation violator was not convicted in the county whose sheriff is requested to apprehend him, the expense of temporarily lodging him in jail is chargeable to the state. 22 Atty. Gen. 66.

59.32 History: R. S. 1858 c. 13 s. 116; R. S. 1878 s. 734; Stats. 1898 s. 734; 1919 c. 695 s. 83; Stats. 1919 s. 59.32.

59.33 History: R. S. 1849 c. 10 s. 87; R. S. 1858 c. 13 s. 106; R. S. 1878 s. 726; Stats. 1898 s. 726; 1913 c. 163; 1919 c. 695 s. 84; Stats. 1919 s. 59.33.

Under sec. 106, ch. 13, R. S. 1858, a sale of property in a foreclosure suit was properly made by the sheriff to whom the decretal order was originally delivered, although his term of office expired before the sale. Cord v. Hirsch, 17 W 403.

59.34 History: R. S. 1849 c. 10 s. 100; R. S. 1849 c. 131 s. 101, 102; R. S. 1858 c. 13 s. 119, 120, 121; R. S. 1878 s. 736, 737; Stats. 1898 s. 736, 737; 1919 c. 695 s. 85; Stats. 1919 s. 59.34; 1943 c. 247; 1957 c. 31; 1965 c. 217.

On election, terms, and removal of county officers see notes to sec. 4, art. VI; and on inquests see notes to various sections of ch. 979.

The coroner is required to serve process on the sheriff when the sheriff is a party in a court of record. A constable may serve the sheriff in an action before a justice of the peace. Cron v. Krones, 17 W 401.

In spite of the provision of, under sec. 737, Stats. 1898, for service of process by the coroner when the sheriff is a party, in case of replevin before justices of the peace under sec. 3737, any constable shall serve the process. Griswold v. Nichols, 111 W 344, 87 NW 300.

The coroner is prohibited from using a siren on his delivery vehicle. 18 Atty. Gen. 346.

The coroner may not hold a formal investigation preliminary to an inquest nor summon

witnesses to attend. The coroner may exclude the public from inquests, including attorneys for witnesses, but power should be exercised with caution. Coroner's records are public records. 20 Atty. Gen. 323.

The offices of coroner in counties having a population of less than 500,000 and city police officer are incompatible. 33 Atty. Gen. 227.

59.35 History: 1889 c. 78; Ann. Stats. 1889 s. 735a; Stats. 1898 s. 735a; 1909 c. 305; 1919 c. 695 s. 86; Stats. 1919 s. 59.35; 1927 c. 202; 1943 c. 247; 1965 c. 217.

59.36 History: 1875 c. 124; R. S. 1878 s. 739; Stats. 1898 s. 739; 1919 c. 695 s. 87; Stats. 1919 s. 59.36.

59.365 History: 1929 c. 60; Stats. 1929 s. 59.365; 1943 c. 247.

The fact that a person's appointment as deputy coroner of Milwaukee county was first filed with the county clerk, instead of with the clerk of the circuit court where it was subsequently filed, as required by 59.365 (1), did not cause the office of deputy coroner to become vacant, the statute being directory, and hence, the appointment being otherwise valid and effective, the appointee, as deputy coroner and before his appointment was properly filed, could validly file charges with the county civil service commission against the coroner's assistants. State ex rel. Ikeler v. Koszewski, 243 W 483, 11 NW (2d) 176.

59.37 History: R. S. 1849 c. 131 s. 11; R. S. 1858 c. 133 s. 16; R. S. 1878 s. 738; Stats. 1898 s. 738; 1919 c. 695 s. 88, 91; 1919 c. 702 s. 85; Stats. 1919 s. 59.37.

59.375 History: 1955 c. 225; Stats. 1955 s. 59.375.

59.38 History: R. S. 1849 c. 10 s. 58, 59; R. S. 1858 c. 13 s. 68, 69; R. S. 1878 s. 741; 1893 c. 18; Stats. 1898 s. 741; 1917 c. 206; 1919 c. 695 s. 89; Stats. 1919 s. 59.38; 1927 c. 473 s. 13; 1937 c. 293; 1953 c. 155; 1961 c. 495.

If a certificate in the name of the clerk of circuit court is signed by his deputy it will be presumed, in the absence of all proof, that the circumstances existed which authorized the latter to act, notwithstanding the certificate is silent. Delaney v. Schuette, 49 W 366, 5 NW 796.

59.39 History: R. S. 1849 c. 10 s. 57, 60; 1853 c. 19 s. 1; 1855 c. 56 s. 1, 2, 6; R. S. 1858 c. 13 s. 67, 70, 71, 73, 74, 78; 1863 c. 13 s. 1; 1866 c. 60 s. 1; 1867 c. 150 s. 3, 6; 1869 c. 112 s. 1; R. S. 1878 s. 742, 743; Stats. 1898 s. 742, 743; 1919 c. 695 s. 90, 91, 92; 1919 c. 702 s. 85; Stats. 1919 s. 59.39; 1923 c. 35; 1947 c. 472; 1953 c. 327; 1955 c. 204, 553; 1965 c. 129; 1967 c. 201; 1969 c. 16, 236.

On jurisdiction of circuit courts see notes to sec. 8, art. VII, and notes to 252.03.

The minutes of the clerk, on all subjects which are properly matters of record, import verity; and the return thereof by the clerk of the original minutes properly certified is sufficient. Peterson v. State, 45 W 535.

The entry of a verdict in the minute book is the only entry or record necessary prior to the discharge of the jury. Smith v. State, 51 W 615, 8 NW 410.

When an order is signed by the judge and filed with the clerk, and the latter enters a brief statement of it in his minute book, the order is entered within the meaning of sec. 3042, R. S. 1878, although it is not recorded until some days later. Uren v. Walsh, 57 W 98, 14 NW 902.

An original order made by the circuit court and sent to the supreme court remains of record in the former. Kelly v. Chicago & Northwestern R. Co. 70 W 335, 35 NW 338.

A judgment is entered when duly signed and filed by the clerk. Netherton v. Frank Holton & Co. 189 W 461, 207 NW 953.

Unless it results in actual loss or damage to someone there is no liability on a clerk failing to keep proper records. Wisconsin M. & S. Co. v. Kriesel, 191 W 602, 211 NW 795.

59.39, 59.395, 253.30, and 270.33, Stats. 1967, when read together, lead to the conclusion that the clerk of court is, under the statutory scheme, the custodian of the records of the county court, whose duties in regard to the right of public inspection are defined by 59.14. State ex rel. Journal Co. v. County Court, 43 W (2d) 297, 168 NW (2d) 836.

On the duties of the clerk of court under this section and 956.01 (13), Stats. 1957, see 47 Atty. Gen. 157.

On the retention of original documents in small claims matters, state traffic violation cases, etc., see 56 Atty. Gen. 195, 199.

Preservation of court records. Merritt, 33 WBB, No. 5.

59.395 History: 1955 c. 553; Stats. 1955 s. 59.395; 1963 c. 407, 427; 1965 c. 617; 1967 c. 276 s. 39; 1969 c. 253; 1969 c. 276 s. 582 (17); 1969 c. 449.

On divorce statistics see note to 69.52; on collection of delinquent taxes see notes to 71.13; on entry by clerk as to trial and judgment see notes to 270.31; on costs and fees in courts of record see notes to various sections of ch. 271; and on executions and writs of assistance see notes to various sections of ch. 272.

It is the duty of the clerk of court to pay over funds in court to his official successor, and a failure to do so is a breach of his bond. Schnur v. Hickox 45 W 200.

Clerks of circuit courts are not required or authorized by statute or by the circuit court rules adopted by the supreme court to set or bring cases on for trial. Wis. Lumber & S. Co. v. Dahl, 214 W 137, 252 NW 714.

Where the appellants' attorneys and the respondent's attorneys agreed that a check was to be used as a supersedeas on the money judgment appealed from and the agreement contained no direction to the clerk of the circuit court, with whom the check was deposited, to cash the check, the clerk in receiving and holding the check violated no duty which he was required by law to perform and hence the clerk and his surety could not be held liable for the loss resulting from delay in presenting the check for payment. Wilhelm v. Hack, 234 W 213, 290 NW 642.

A state tax of $1 on civil suits in county court should not be paid into the state treasury, and if so paid through error should be refunded to the county. 10 Atty. Gen. 853.

In a civil suit against a clerk of circuit court

for damages arising out of alleged failure to perform the duties of his office by not cashing or having certified a check deposited with him as a supersedeas bond, as the result of which a judgment creditor was unable to realize upon a judgment because of failure of an insurance company, it is not the duty of the district attorney to defend the action; the county board may not authorize retention of counsel to be paid at county expense; the county is under no duty to reimburse the clerk for expense of defending the action but may do so under 331.35, Stats. 1937, if the clerk prevails and then petitions for reimbursement or under other circumstances specified where the clerk does not prevail but is not at fault. 28 Atty. Gen. 96.

59.40 History: 1853 c. 61 s. 1; R. S. 1858 c. 13 s. 79; R. S. 1878 s. 745; Stats. 1898 s. 745; 1919 c. 695 s. 94; Stats. 1919 s. 59.40; 1967 c. 276 s. 39.

59.41 History: 1856 c. 81 s. 1; R. S. 1858 c. 13 s. 72; R. S. 1878 s. 746; Stats. 1898 s. 746; 1919 c. 695 s. 95; Stats. 1919 s. 59.41.

59.42 History: 1851 c. 354 s. 1; 1857 c. 91 s. 1; R. S. 1858 c. 13 s. 67; R. S. 1858 c. 133 s. 6, 7; 1867 c. 93 s. 1; 1867 c. 150; 1869 c. 92; 1871 c. 109; R. S. 1878 s. 747; 1887 c. 166 s. 1; Ann. Stats. 1889 s. 747, 747a; Stats. 1898 s. 747; 1919 c. 695 s. 96, 97, 98; Stats. 1919 s. 59.42; 1931 c. 470 s. 3; Spl. S. 1937 c. 1 s. 3; 1941 c. 44; 1943 c. 169; 1953 c. 511, 662; 1957 c. 429; 1961 c. 505, 519; 1963 c. 407; 1965 c. 73, 379, 625; 1967 c. 276 s. 40; 1967 c. 325; 1969 c. 43, 88, 253; 1969 c. 276 s. 584 (1) (b); 1969 c. 284; 1969 c. 449 ss. 3, 8.

The clerk of circuit court should charge fees for filing and docketing income tax warrants, in accordance with 59.42, Stats. 1935. 25 Atty. Gen. 110.

The clerk of circuit court of Milwaukee county is entitled to charge the same fees in respect to income tax warrants as any other clerk of circuit court, as provided by 59.42. 26 Atty. Gen. 615.

A clerk of circuit court paid on a salary basis must collect fees for filing a delinquent income tax warrant at the time such warrant is satisfied or released. 28 Atty. Gen. 168.

Petitions for occupational drivers' licenses do not constitute actions or special proceedings in the courts and no clerk fee or suit tax may properly be charged. 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, Stats. 1953, 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 the 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 paternity proceedings are to be taxed under 353.25, Stats. 1955, as in criminal cases, the clerk's fee for filing a paternity settlement agreement made under 52.28 is that provided by 59.42 (2) (a), relating to civil actions. 45 Atty. Gen. 128.

A state suit tax of $5 and a clerk's fee of $8 is proper for filing of papers in connection with settlement or compromise of a cause of action in favor of or against a minor or mentally incompetent person where no action has been commenced by service or summons or complaint. 56 Atty. Gen. 195.

59.43 History: 1957 c. 206; Stats. 1957 s. 59.43.

Editor's Note: Sec. 748, Stats. 1898, which was redesignated as 59.43, Stats. 1919, and which was repealed in 1955, had to do with filing fees. It was cited in Lang v. Menasha P. Co. 119 W 1, 96 NW 393, and Williams v. Wallock, 123 W 293, 101 NW 927. See also 28 Atty. Gen. 168.

The clerk may extend credit for fees but when he does so it is at his own risk. The county cannot set up a revolving fund for him. 53 Atty. Gen. 218.

59.44 History: R. S. 1849 c. 10 s. 68; R. S. 1858 c. 13 s. 87; R. S. 1878 s. 750; 1887 c. 354; Ann. Stats. 1889 s. 750, 752a; Stats. 1898 s. 750; 1903 c. 283 s. 1; Supl. 1906 s. 750; 1907 c. 615; 1913 c. 244; 1919 c. 695 s. 100; Stats. 1919 s. 59.44; 1943 c. 423; 1947 c. 483; 1965 c. 519.

Assistance to the district attorney in a prosecution for burglary by the attorney whose house is alleged to have been broken open is not a ground for reversing a judgment. Lawrence v. State, 50 W 507, 7 NW 343.

Where objection is made to a district attorney's having assistance, and such objection is overruled, the district attorney being present and not objecting to such assistance, it is equivalent to a request that assistance be rendered, and no ground for reversal. Rounds v. State, 57 W 45, 14 NW 865.

The provision authorizing appointment of counsel to assist the district attorney in criminal cases applies to the municipal court of Milwaukee and its judge. Biemel v. State, 71 W 444, 37 NW 244.

An attorney is not disqualified to receive an appointment by a court as assistant prosecutor in a murder case, because of previous employment by a relative of deceased, if that employment is renounced before an appointment is made. Bird v. State, 77 W 276, 45 NW 1126.

A former district attorney who conducted the preliminary examination against one accused of larceny and who also appeared for the defendant in replevin brought by the accused against the officer who seized the property alleged to have been stolen is not disqualified for appointment to assist his successor upon the trial of the accused for the larceny. Jackson v. State, 81 W 127, 51 NW 89.

The law partner of the district attorney may assist the latter in a criminal prosecution notwithstanding the court has appointed counsel under this section. Richards v. State, 82 W 172, 51 NW 652.

A district attorney who, by artifice and fraud, falsely pretending to be the counsel of a person accused of crime, obtains a knowledge of the facts of the case, prejudicial to the defendant's rights, is disqualified to prosecute

the case, and if he does prosecute it and a conviction is had it will be set aside. The counsel appointed to assist the district attorney must be an attorney at law of this state. The appointment of a nonresident attorney and his active participation in the trial of a person accused of murder is a prejudicial error. State v. Russell, 83 W 330, 53 NW 441.

Objections to counsel appointed to assist the district attorney are waived by not making them in open court when called upon to do so. Baker v. State, 88 W 140, 59 NW 570.

In administering that clause which authorizes the appointment of counsel to assist in the prosecution of criminal cases, courts "should permit or select only such assistants as are unprejudiced and impartial as the prosecutor provided by law." French v. State, 93 W 325, 67 NW 706.

A county board in the absence of a statute has no power to hire an additional attorney to assist the district attorney in litigation in circuit court. Frederick v. Douglas County, 96 W 411, 71 NW 798.

Under sec. 750, Stats. 1898, a county judge may be appointed to assist the district attorney in a prosecution. Bliss v. State, 117 W 596, 94 NW 325.

In the prosecution for arson where defendant had lost a trunk in the depot of a railway company by the same fire which she was accused of setting, it was not error to appoint the local attorney for such company to assist the district attorney where such local attorney testified that he had no knowledge of a claim for loss of the trunk and was not retained by the company in the matter. Colbert v. State, 125 W 423, 104 NW 61.

Public policy does not permit the employment by private persons of counsel to assist the district attorney in the prosecution of persons accused of crime, and a contract therefor is void. Rock v. Ekern, 162 W 291, 156 NW 197.

Where a district attorney in charge of a prosecution offered himself as a witness and testified to a conversation with the defendant on trial, such procedure was improper; the proper practice would have been for him to withdraw from the case and to ask the court to appoint another prosecutor under this section. Zeidler v. State, 189 W 44, 206 NW 872.

An attorney appointed to prosecute instead of the district attorney has the same power to file an information that the district attorney has. The best practice is to permit the attorney who is to try a case to file an information. 13 Atty. Gen. 640.

A district attorney pro tempore may receive the compensation provided for in 59.44 (2), Stats. 1925. This compensation must be determined by the court by order and must be certified as reasonable compensation. 16 Atty. Gen. 17.

Fees of witnesses, reporters and those of district attorney pro tempore in John Doe proceedings are properly payable out of county funds. 17 Atty. Gen. 534.

The power of a court to appoint a special prosecutor or district attorney where the district attorney is disqualified under 59.44 (1), Stats. 1939, is not limited to appointing for the trial of the case. Trial is not limited to preparation for and trial of the case in the trial court but extends to appeal or review in the supreme court. Limitations with respect to fees for preparation and trial under 59.44 (2) are not applicable on the appeal. 28 Atty. Gen. 546.

The district attorney inducted into the armed forces does not cease to be an inhabitant of the county from which inducted and the circuit judge may appoint a district attorney pro tempore to attend to the district attorney's duties pending his return. 30 Atty. Gen. 54.

It is doubtful that 59.44 (3), Stats. 1945, is broad enough to justify the hiring of special counsel to assist the county park commission in acquiring flowage easements to restore a lake in a county park where no condemnation proceedings or other litigation may be required. 34 Atty. Gen. 188.

59.45 History: 1901 c. 394; Supl. 1906 s. 750a; 1919 c. 695 s. 103; Stats. 1919 s. 59.45; 1949 c. 631 s. 239; 1963 c. 506.

Comment of Advisory Committee, 1949: Permits assistant district attorneys to sign informations. See note to 355.13 [955.13]. [Bill 474-S]

The offices of assistant district attorney and justice of the peace are incompatible. 31 Atty. Gen. 230.

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

59.455 History: 1957 c. 92; Stats. 1957 s. 59.455.

59.456 History: 1957 c. 92; Stats. 1957 s. 59.456; 1965 c. 249, 271; 1969 c. 255 ss. 20, 65; 1969 c. 276 s. 608.

59.46 History: 1907 c. 351 s. 2; 1909 c. 292; Stats. 1911 s. 751d; 1919 c. 695 s. 107; 1919 c. 702 s. 37; Stats. 1919 s. 59.46; 1925 c. 346; 1927 c. 22 s. 1; 1929 c. 237, 253; 1949 c. 631 s. 240; 1957 c. 92; 1959 c. 172, 648; 1963 c. 506; 1965 c. 249.

Comment of Advisory Committee, 1949: Amends 59.46 (1) to permit assistant district attorneys to sign informations, in Milwaukee county. See notes to 355.13 [955.13]. [Bill 474-S]

59.47 History: R. S. 1849 c. 10 s. 63 to 65, 71, 72; R. S. 1858 c. 13 s. 82 to 84, 90, 91; R. S. 1878 s. 752; 1881 c. 138; Ann. Stats. 1889 s. 752; 1897 c. 29; Stats. 1898 s. 752; 1909 c. 229; 1909 c. 395; 1911 c. 663 s. 335; Stats. 1911 s. 752, 752m, 1797n-4; 1919 c. 695 s. 108, 109; Stats. 1919 s. 59.47, 1797n-4; 1923 c. 108 s. 145; 1923 c. 193; 1923 c. 291 s. 3; Stats. 1923 s. 59.47, 133.12; 1935 c. 550 s. 360; Stats. 1935 s. 59.47; 1937 c. 373; 1955 c. 575 s. 20a; 1955 c. 696 s. 15; 1959 c. 127; 1961 c. 40; Sup. Ct. Order, 17 W (2d) xx; 1969 c. 255; 1969 c. 276 s. 584 (1) (b).

Legislative Council Note, 1955: This [59.47 (11)] is a new statutory provision although it appears to be the law at the present time. See, for example, 7 Ops. Atty. Gen. 625 (1918); 25 Ops. Atty. Gen. 549 (1936); 34 Ops. Atty. Gen. 337 (1945). Exactly the same

provision appears in proposed s. 48.04, but since this section deals specifically with the duties of the district attorney it is desirable to repeat it here. [Bill 444-S]

Editor's Notes: (1) For a discussion of the duties of district attorneys, with a collection of scattered statutory provisions and review of court decisions and attorney general's opinions on that subject, see 25 Atty. Gen. 549 to 573.

(2) The following offices have been held incompatible with that of district attorney: County highway committee member (11 Atty. Gen. 875); income tax assessor (8 Atty. Gen. 69); village attorney (6 Atty. Gen. 489); court commissioner (7 Atty. Gen. 636); member of county income tax board of review (21 Atty. Gen. 431); director of a joint school district within the county (22 Atty. Gen. 677); member of village board (26 Atty. Gen. 11).

(3) In connection with the amendment effected by ch. 255, Laws 1969, see the opinions published in 5 Atty. Gen. 695 and 6 Atty. Gen. 290.

On election, terms, and removal of county officers see notes to sec. 4, art. VI; on paternity proceedings see notes to 52.21—52.45; on assistants in criminal and civil cases see notes to 59.44; on appropriation for criminal trials and investigations see notes to 59.88; on unlawful employment see notes to 196.675; and on inquests see notes to 979.01.

An appeal from a judgment against the state in an action brought in a circuit court to recover a forfeiture can be taken only by the district attorney with the possible exception of the attorney general. State v. Duff, 83 W 291, 53 NW 446.

The district attorney must be a lawyer. State v. Russell, 83 W 330, 53 NW 441.

See note to 70.36, citing State v. Wolfrum, 88 W 481, 60 NW 799.

The district attorney cannot obtain assistance in a civil matter such as habeas corpus at public expense, but he is not prohibited from obtaining or receiving assistance at his own expense or the expense of others in a civil proceeding. State ex rel. Durner v. Huegin, 110 W 189, 85 NW 1046.

On employment of counsel to assist the district attorney in the prosecution of a criminal case see Richards v. State, 82 W 172, 51 NW 652, and Kraimer v. State, 117 W 350, 93 NW 1097.

It is inadvisable, if not improper, for a district attorney to act as attorney to recover civil damages arising from a supposed criminal act. Coon v. Metzler, 161 W 328, 154 NW 377.

Sec. 752, Stats. 1915, confers authority upon the district attorney of a county to prosecute an action to recover the penalty of a liquor license bond given under the provisions of sec. 1549, the state being interested. State v. Helmann, 163 W 639, 158 NW 286.

The district attorney is the proper official to procure and prosecute writs of error and of certiorari in criminal actions. State ex rel. Zabel v. Municipal Court, 179 W 195, 190 NW 121.

A public prosecutor is a quasi-judicial officer, retained by the public for the prosecution of persons accused of crime, in the exercise of a sound discretion to distinguish between the guilty and the innocent, between the certainly and the doubtfully guilty. Application of Bentine, 181 W 579, 196 NW 213.

It is not improper in a criminal prosecution to permit the district attorney to be sworn as a witness for the prosecution, especially where he took no personal part in the case except that he appeared as a witness. Lukas v. State, 194 W 387, 216 NW 483.

District attorneys are officers of the court, and they should have scrupulous regard for the constitutional rights and privileges of defendants. Watson v. State, 195 W 166, 217 NW 653.

Permitting a district attorney to testify, in corroboration of other witnesses, as to statement made to him by defendant's witness, in conflict with witness' testimony, was not error. The determination of the question whether a prosecuting attorney should be permitted to testify lies largely, if not wholly, within discretion of the trial court. Baumgartner v. State, 198 W 180, 223 NW 419.

It was not error to permit an assistant district attorney to appear for the applicants and participate in proceedings on an application for a judicial inquiry as to the mental condition of an allegedly feeble-minded person, since both the state and county are interested in such proceedings. In re Terrill, 240 W 53, 2 NW (2d) 847.

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

A district attorney acting for the state is not a mere legal attorney, but a sworn minister of justice; and acting for the state he possesses its power with respect to consent to the waiver of a 12-man jury when defendant demands a 6-man jury in a misdemeanor case. State ex rel. Sauk County D. A. v. Gollmar, 32 W (2d) 406, 145 NW (2d) 670.

While it is the duty of the district attorney to prosecute criminals, there is no obligation or duty upon him to prosecute all complaints that may be filed with him, for a great portion of the power of the state has been placed in his hands for him to use in the furtherance of justice, which does not per se require prosecution in all cases where there appears to be a violation of the law no matter how trivial. State ex rel. Kurkierewicz v. Cannon, 42 W (2d) 368, 166 NW (2d) 255.

It is the duty of the district attorney to prosecute or defend all actions to which the county is a party. 1906 Atty. Gen. 659.

The district attorney is prohibited from accepting a retainer from a public utility corporation. 1908 Atty. Gen. 766.

The district attorney is not required to appear at an examination of an insane person. 1910 Atty. Gen. 664.

The district attorney should defend the game warden in a replevin action when property of the state is involved, such as game. 1912 Atty. Gen. 412.

It is the duty of the district attorney to prosecute for the violations of the weights and measures law. 1 Atty. Gen. 614.

The revocation of the license of a district attorney to practice law causes a vacancy in that office. 2 Atty. Gen. 667.

The district attorney is not entitled to compensation, in addition to his regular salary, for

professional services rendered to a committee of the county board. 3 Atty. Gen. 684.

The district attorney has no general authority by virtue of his office to institute a civil action in behalf of his county without authorization by the county board. Want of such authority is a matter in abatement only and may be cured by ratification while the action is pending. 3 Atty. Gen. 688.

A district attorney cannot bring an action for a plaintiff when the county is a necessary party to such action, having an interest adverse to the plaintiff. 3 Atty. Gen. 702.

The district attorney should not represent the plaintiff in actions contesting the legality of the income tax. 4 Atty. Gen. 94.

It is the duty of the district attorney to prosecute all actions to recover forfeitures under secs. 2339e and 2339f, Stats. 1913. 4 Atty. Gen. 128.

It is not the duty of the district attorney to appear in proceedings for binding over to keep the peace. 4 Atty. Gen. 158.

The manner of satisfying judgments in favor of the state is discussed in 4 Atty. Gen. 880.

It is the duty of district attorney to prosecute to recover the forfeiture incurred on a bond given under sec. 4587c, Stats. 1915. 5 Atty. Gen. 872.

The district attorney should file a claim against the estate of an inmate of the home for the feeble-minded for unpaid maintenance in case of a proceeding under sec. 3995b, Stats. 1917. 7 Atty. Gen. 75.

It is improper for a district attorney to defend in justice court a person charged with assault and battery. 7 Atty. Gen. 644.

It is the duty of the district attorney to file a claim in the name of his county against the estate of a deceased patient of the county asylum for the insane, when the decedent is indebted to the county for keep. The claim in county court need not be verified but may be by affidavit of a person having knowledge of the facts. 10 Atty. Gen. 595.

The district attorney should study questions before advising or consulting with the attorney general, and should give him the benefit of such study. The district attorney should not act as relay for questions raised by persons not entitled to the services of the attorney general. He should advise county officials and as a rule refrain from submitting questions to which he knows the answers to a reasonable certainty. 10 Atty. Gen. 741 and 1014; 11 Atty. Gen. 242 and 263.

A county board has no power to instruct the district attorney to perform the duties of divorce counsel. 14 Atty. Gen. 31.

A district attorney cannot properly represent a bank in an action brought against a sheriff to restrain him from collecting an alleged illegal assessment of a tax. 14 Atty. Gen. 90.

It is not the duty of a district attorney to defend a taxpayers' action brought against former members of the county highway committee, which charges misapplication of county funds, nor should he appear in such action for defendants unofficially, because it may become his duty to prosecute them for violation of criminal law. 14 Atty. Gen. 602.

A district attorney is not required to prosecute in another state a proceeding to recover income taxes; he may receive no extra compensation therefor; he may be reimbursed his actual expenses. 20 Atty. Gen. 225.

See note to 77.09, citing 22 Atty. Gen. 515.

A district attorney is not required to prosecute for violations of municipal ordinances. 2 Atty. Gen. 728; 24 Atty. Gen. 39.

Upon notice of the county court to a district attorney that a hearing is to be held to determine the sanity of a person under 51.11, Stats. 1935, in which inquiry the county is interested, it is the duty of the district attorney to appear. 25 Atty. Gen. 614.

See note to 70.20, citing 27 Atty. Gen. 175.

A district attorney should not act as guardian ad litem in any hearing or proceeding involving a question of insanity, as duty to the incompetent may well conflict with duty to the county. 28 Atty. Gen. 30.

It is the duty of the district attorney to enforce a criminal statute even though he believes such statute to be unconstitutional. However, he is under no duty to refrain from submitting a constitutional question to the court and may properly recommend in case of conviction that a constitutional question be certified to the supreme court. 28 Atty. Gen. 86.

Neither 59.47 (3), Stats. 1937, nor other general or special statutes relating to the duties of the district attorney makes it his duty to obtain options, examine titles, draft contracts and conveyances, prepare bond issues, and perform other like services for the building committee of a county board in connection with the construction of new county buildings. Private counsel may be employed by a county for such purpose. 28 Atty. Gen. 162.

A district attorney is under no duty to initiate adoption proceedings arising under 48.36, Stats. 1939, nor to prepare necessary papers in such proceedings. 28 Atty. Gen. 272.

A district attorney has a duty under 59.47 (1), Stats. 1945, to appear in juvenile court proceedings under ch. 48, if he has notice of such proceedings. 34 Atty. Gen. 337. See also 18 Atty. Gen. 573.

A district attorney has a duty under 59.47 (1), Stats. 1945, to commence and prosecute a forfeiture action under 93.21 (3) at the request of an agent of the state department of agriculture, if he has sufficient evidence to establish a violation. 93.22 (1) and (2) are permissive only and do not require that all such actions be prosecuted by the department's attorney or a special prosecutor. 35 Atty. Gen. 282.

It is not mandatory under 59.47 (3) that a district attorney submit a question to the attorney general for an opinion when requested to do so by the county board. The district attorney should submit a question to the attorney general for an opinion only when he feels he is unable to arrive at a correct conclusion to any question before him and feels it is necessary that he receive the advice of the attorney general, or other circumstances exist which in the judgment of the district attorney warrant his seeking the advice of the attorney general. 36 Atty. Gen. 10.

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 46.22, citing 42 Atty. Gen. 231.

Except as provided in 59.46 (3) and 59.88, a district attorney has no authority to employ an investigator to investigate an unsolved crime. 44 Atty. Gen. 159.

See note to 288.12, citing 57 Atty. Gen. 198.

59.471 History: 1967 c. 325; Stats. 1967 s. 59.471; 1969 c. 55 s. 113; 1969 c. 154, 331.

59.475 History: 1959 c. 259; Stats. 1959 s. 59.475; 1967 c. 325.

59.48 History: 1917 c. 435; Stats. 1917 s. 750b; 1919 c. 298; 1919 c. 695 s. 110; 1919 c. 702 s. 38; Stats. 1919 s. 59.48; 1929 c. 78; 1953 c. 441.

A district attorney is not authorized to act as assistant to a city attorney in a prosecution for violation of a city ordinance. 12 Atty. Gen. 605.

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 History: 1957 c. 170; Stats. 1957 s. 59.485.

59.49 History: R. S. 1858 c. 13 s. 86; R. S. 1878 s. 754; Stats. 1898 s. 754; 1911 c. 304; 1919 c. 695 s. 111; Stats. 1919 s. 59.49; 1963 c. 389.

59.50 History: R. S. 1849 c. 10 s. 119, 120; R. S. 1858 c. 13 s. 138, 139; R. S. 1878 s. 756; 1889 c. 18; Ann. Stats. 1889 s. 756; Stats. 1898 s. 756; 1919 c. 695 s. 112; Stats. 1919 s. 59.50.

A minor may be appointed deputy register of deeds and may perform functions under 59.51. 15 Atty. Gen. 413.

See note to 59.07 (20), citing 41 Atty. Gen. 105.

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

59.51 History: R. S. 1849 c. 10 s. 121, 122; R. S. 1858 c. 13 s. 140, 141; 1863 c. 161 s. 2; 1876 c. 403; R. S. 1878 s. 758, 763; Stats. 1898 s. 758, 763; 1907 c. 650; 1917 c. 178 s. 2; 1919 c. 695 s. 114, 119; Stats. 1919 s. 59.51; 1925 c. 525 s. 3; 1931 c. 255; 1941 c. 312; 1943 c. 203, 245, 503; 1945 c. 152; 1947 c. 143; 1955 c. 10, 253; 1959 c. 80; 1961 c. 156, 159; 1963 c. 158, 237; 1965 c. 51, 139, 625.

On election, terms, and removal of county officers see notes to sec. 4, art. VI; and on vital statistics see notes to various sections of ch. 69.

The record may be partly written and partly printed. Maxwell v. Hartmann, 50 W 660, 7 NW 103.

A register of deeds is not authorized to make any charge for making the indorsement required by 59.51 (5). He has no authority to refuse the representative of an abstract company the privilege of making copies from the records in his office, under reasonable rules and regulations. An abstract company cannot demand desk room in the office of a register of deeds. 2 Atty. Gen. 787.

What constitutes recording in the register of deeds' office of transcripts of the records of other counties is explained in 8 Atty. Gen. 792.

The register of deeds is entitled to be supplied with office equipment at county expense, whether paid by fees or on a salary basis. 9 Atty. Gen. 599.

There is no statutory authority for recording with the register of deeds a document showing the liquidation of a bank located in his county. 11 Atty. Gen. 74.

A county board has no power to provide conveyancing blanks for gratuitous distribution by registers of deeds to private conveyancers. 12 Atty. Gen. 209.

A register of deeds cannot refuse to record deeds until a plat is approved, filed and recorded. 14 Atty. Gen. 32.

Photographic methods may be used by a register of deeds for recording instruments. 14 Atty. Gen. 345.

A register of deeds cannot be compelled to record a lease covering a period less than 3 years. 22 Atty. Gen. 631.

A register of deeds may accept and record an instrument in a foreign language but is not obligated to do so. 26 Atty. Gen. 146.

Records of births, except illegitimate births, marriages and deaths kept by register of deeds under 59.51 (7) and 69.56 are public records open to public inspection by virtue of 18.01 and 59.14 (1). 27 Atty. Gen. 619.

A register of deeds does not have authority to redraft plats for the purpose of correcting them. 27 Atty. Gen. 671.

Statutory provisions relating to recording of instruments in the office of register of deeds do not contemplate partial recording of any instrument; and trust indenture covering descriptions of lands in other counties should be recorded in its entirety. 30 Atty. Gen. 326.

Unless the names of the grantors, grantees, witnesses and notary public are plainly printed or typed on a deed or other instrument as required by 59.51 (1), the register of deeds is under no duty to and should refuse to record the same. In recording instruments which comply with 59.51 (1) the register of deeds should record the names of grantors, grantees, witnesses and notary twice where the name is typed or printed under the signature. Where a notary takes an acknowledgment and also signs an instrument as witness, 59.51 (1) requires that his name be typed or printed on the instrument twice, once as a notary and again as a witness. The fact that the name of a grantor appears in the body of an instrument does not meet with the requirements of 59.51 (1). It is necessary that the name of such grantor be plainly printed or typed on such instrument so as to accurately give the name of the grantor as actually signed by him. Instrument to be recorded may be signed by printed lettering instead of written lettering where signer has adopted such a form of signature and if such signature is plainly printed the instrument may be recorded without having the name typed underneath signature. Ch. 152, Laws 1945, is a valid law. 34 Atty. Gen. 181, 314.

See note to 59.515, citing 34 Atty. Gen. 314.

A register of deeds cannot lawfully file a blanket assignment of chattel mortgages or conditional sales contracts when said blanket assignment does not contain the date, filing date and document number of each chattel mortgage or conditional sales contract intended to be assigned as well as meet all other requirements imposed by 59.51 (11). 35 Atty. Gen. 127.

It is improper for the register of deeds to use the name of the assignee in place of the actual grantee in the index required by 59.51 (12). 37 Atty. Gen. 117.

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

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

Under 59.51 (4), the signature of the register of deeds on the certificate indorsing the time, volume and page of recording may be made by a rubber stamp. 44 Atty. Gen. 170.

59.51 (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 236.34, citing 45 Atty. Gen. 47.

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

The register of deeds should accept for recording under 59.51 (1) maps of subdivisions which do not comply with the requirements of ch. 236 provided the parcels of land in such subdivisions exceed 1½ acres in area, and the surveys comply with 59.62. Descriptions by metes and bounds and numbered parcels in the survey should also be accepted. 48 Atty. Gen. 54.

A cemetery plat must be divided into lots to qualify for recording by the register of deeds. 48 Atty. Gen. 82.

Mortgages and trust deeds referred to in 182.025 (1) need only be recorded by the register of deeds as he would a real estate mortgage. 48 Atty. Gen. 83.

59.512 History: 1969 c. 440; Stats. 1969 s. 59.512.

59.513 History: 1957 c. 70; Stats. 1957 s. 59.513; 1967 c. 186; 1969 c. 55.

The word "person" as it appears in 59.513, Stats. 1957, means the same thing as the word "draftsman" which appears in 59.57 (1) (c), Stats. 1957, and both refer to a natural person. 46 Atty. Gen. 165.

Conveyancing as practice of law under 59.513. 41 MLR 481.

59.514 History: 1965 c. 205; Stats. 1965 s. 59.514.

59.515 History: 1945 c. 586; Stats. 1945 s. 59.515; 1957 c. 70.

59.515, Stats. 1945, is a curative statute and does not change the duties of the register of deeds under 59.51 (1) and (11). 34 Atty. Gen. 314.

59.516 History: 1965 c. 202; Stats. 1965 s. 59.516.

59.52 History: R. S. 1849 c. 10 s. 123, 124; R. S. 1858 c. 13 s. 142, 143; 1876 c. 404 s. 1; R. S. 1878 s. 759; 1887 c. 323; Ann. Stats. 1889 s. 759, 759a; Stats. 1898 s. 759; 1919 c. 695 s. 115; Stats. 1919 s. 59.52; 1965 c. 139; 1969 c. 55.

A correct description of the land in the index cures a mistake in the description in the record at large of the deed. Shove v. Larsen, 22 W 142.

Where the index, although correct, bears upon its face evidence that it was made after the land affected by it has been conveyed, the last grantee is not chargeable with constructive notice when he took his conveyance of the deed thus indexed afterwards. Hay v. Hill, 24 W 235.

The theory of the statute is that recording immediately follows reception, though practically there must be some delay in recording and stating the volume and page in the general index. But the other entries in such index should be made immediately on reception. They give all the information necessary to the constructive notice of the instrument which can be given without spreading it on the records, and until the record is made at length the instrument itself supplies its place; the entries operate as constructive notice of the whole instrument until it is recorded, and after that they so operate as far as they go. It is presumed that official duty has been performed until the contrary appears, and that the instrument was recorded when it was received, there being a certificate to that effect at the foot of the record. And the force of this presumption is not overcome by evidence of the habit of a subsequent register. Oconto Co. v. Jerrard, 46 W 317, 50 NW 591.

An instrument is not recorded until proper entries thereof are made in the general index; until then an indorsement does not operate as constructive notice; nor, in the case of a tax deed, does the statute of limitations begin to run. Lombard v. Culbertson, 59 W 433, 18 NW 399.

If the index does not describe the land affected by the instrument indexed the error is cured if the instrument is correctly recorded in the proper record book and the index refers to such book. It is presumed, nothing appearing to the contrary, that an instrument was recorded in full on the day the register received it. St. Croix L. & L. Co. v. Ritchie, 73 W 409, 41 NW 345, 1064.

Though entries in the general index are not made in the order in which the instruments are received, the index is not necessarily impeached so as to render the registry invalid. If it is shown that the instrument was entered at a later date, it is presumed that it was transcribed upon the records and the registry completed at that date. Lane v. Duchac, 73 W 646, 41 NW 962.

If the name of the county which gives the deed is entered in the index this is all that is required; the omission of the name of the state is immaterial. Hall v. Baker, 74 W 118, 42 NW 104.

The purpose of the requirement that the names of the grantors shall be thus entered is to enable persons interested in the title to the land to ascertain by an inspection of the index whether the owner had parted with or been deprived of the title thereof. The mere entry in alphabetical order of the names of

the grantees in a tax deed can be of no service or notice to any one, since no one could be expected to conjecture who might happen to be the grantee in such or any other deed. Hence the records of tax deeds are not admissible in the evidence unless the names of the grantor therein were entered in the alphabetical order in a general index. Hiles v. Atlee, 80 W 219, 49 NW 816.

An omission to make proper entries in the general index at the time the deed is spread upon the record may be remedied after such recording by making such entries, and, when so made, the record will be good from that date, and it will not be necessary to again record the deed. Inserting the words "see record" in the index, under the column for the description of the premises, and a reference to the volume and page, makes the record complete and operative from the time of such insertion. Hotson v. Wetherby, 88 W 324, 60 NW 423.

A certificate, by the register of deeds, of the date an instrument was received for record and the place where it was recorded is prima facie proof that it was entered in the general index. Chippewa River L. Co. v. J. L. Gates L. Co. 118 W 345, 94 NW 37, 95 NW 954.

Tax deeds were properly recorded where the name of the county in the column headed "Grantors" was not written out but was indicated by ditto marks. Chase v. Maxcy, 134 W 435, 114 NW 832.

Questions affecting the validity of a tax deed of real estate in a state must be disposed of, in federal courts, in accordance with the interpretation of the statutes of the state by its highest judicial tribunal. Under sec. 759, R. S. 1878, it was not necessary to insert in the index the name of the state as grantor. Bardon v. Land & R. I. Co. 157 US 327.

A direction in the general index to see the record is sufficient to put all interested parties upon inquiry, although it appears that it was the practice of the register, in a majority of cases, to so index tax deeds. Coleman v. Peshtigo L. Co. 30 F 317.

The purpose of this section is to secure a brief and ready notice to all persons of the conveyance and the place where the full record thereof may be found. It is not competent nor allowable for a person who has information sufficient to direct him to the full record to shut his eyes and claim ignorance of facts which are easily within his reach because of informalities in the index. Land & R. I. Co. v. Bardon, 45 F 706.

59.53 History: R. S. 1849 c. 10 s. 125; R. S. 1858 c. 13 s. 144; 1876 c. 404 s. 2; R. S. 1878 s. 760; Stats. 1898 s. 760; 1919 c. 695 s. 116; Stats. 1919 s. 59.53; 1965 c. 139; 1969 c. 55.

The keeping of a volume index was merely a statutory duty under sec. 144, R. S. 1858, and its omission did not affect the registry of the instrument as constructive notice. Oconto Co. v. Jerrard, 46 W 317, 50 NW 591.

Sec. 760, R. S. 1878, does not require that entries in the grantee index shall be made in the order in which the instruments were received. Lane v. Duchac, 73 W 646, 41 NW 962.

59.54 History: R. S. 1849 c. 112 s. 10; R. S. 1858 c. 130 s. 19; 1860 c. 168 s. 1, 2; 1867 c. 80 s. 1, 2; 1869 c. 19 s. 1; 1878 c. 293; R. S. 1878 s. 761; Stats. 1898 s. 761; 1919 c. 695 s. 117; Stats. 1919 s. 59.54.

The failure of the register of deeds to index the certificate of the sale of land upon execution, as required by sec. 761, R. S. 1878, does not invalidate such sale. Phillips v. Hyland, 102 W 253, 78 NW 431.

59.55 History: 1864 c. 352 s. 1 to 3; 1867 c. 39 s. 1; R. S. 1878 s. 762; 1881 c. 149; Ann. Stats. 1889 s. 762; Stats. 1898 s. 762; 1905 c. 239 s. 1, 2; Supl. 1906 s. 762; 1907 c. 368; 1911 c. 81; 1919 c. 695 s. 118; Stats. 1919 s. 59.55; 1947 c. 143; 1963 c. 506 s. 9.

As to liability for failure to enter a conveyance in the tract index, see Johnson v. Brice, 102 W 575, 78 NW 1086.

A tract index in a county where no such index has existed, when ordered to be made by the county board, must be made by the register of deeds of such county at statutory compensation determined by the board, not exceeding 2 cents for each entry. The county board has no authority to employ any other than the register of deeds to make such index, nor to provide a different basis of compensation than the statutory one. 12 Atty. Gen. 503.

Volumes of indexes to records of lands formerly part of another county used by a private abstractor and purchased from him by the county board but never continued do not constitute "existing tract index" within the meaning of 59.55 (4), Stats. 1923. 12 Atty. Gen. 558.

A copy of a town board order creating a town sanitary district required to be filed with the register of deeds under 60.303 (7) need not be indexed in the tract index system under 59.55 (1) for each description of land included in the district. 35 Atty. Gen. 158.

Plans and specifications for protection of an airport filed pursuant to 114.135 (2) need not be entered in the tract index. The register of deeds entering any instrument in a tract index is entitled to the fee provided in 59.57 (1)(b). 36 Atty. Gen. 24.

A certificate of special assessment by a municipality filed with the register of deeds pursuant to 66.60 (15) (b), need not be entered in the tract index. 38 Atty. Gen. 115.

59.56 History: 1907 c. 229; Stats. 1911 s. 763a; 1919 c. 695 s. 120; Stats. 1919 s. 59.56.

59.57 History: R. S. 1849 c. 112 s. 11; R. S. 1858 c. 110 s. 11; R. S. 1858 c. 133 s. 31; 1864 c. 336 s. 1; 1864 c. 352 s. 1; 1867 c. 73 s. 1; 1867 c. 129 s. 1; 1868 c. 8 s. 1; 1873 c. 210 s. 3; 1875 c. 284 s. 1; R. S. 1878 s. 764; 1881 c. 278; Ann. Stats. 1889 s. 764; 1891 c. 374; 1893 c. 295; Stats. 1898 s. 764, 764a; 1899 c. 278; 1903 c. 105 s. 1; 1905 c. 416 s. 5, 6; Supl. 1906 s. 764, 764a; 1909 c. 157; 1915 c. 242 s. 1, 3; Stats. 1915 s. 764; 1919 c. 296 s. 1, 2; 1919 c. 695 s. 121; 1919 c. 702 s. 39; Stats. 1919 s. 59.57; 1929 c. 334; 1929 c. 525 s. 2; 1931 c. 288; 1937 c. 44, 405; 1939 c. 467; 1941 c. 143, 242, 312; 1943 c. 203, 295, 503; 1945 c. 36, 420; 1949 c. 154; 1951 c. 218, 312; 1953 c. 174; 1955 c. 10 s. 42, 43, 44; 1955 c. 238; 1957 c. 70, 215, 226; 1957 c. 672 s. 43; 1959 c. 601; 1961 c. 554, 621; 1963 c. 158; 1965 c. 249, 485, 625; 1967 c. 278; 1969 c. 55.

The register of deeds may charge only the rate provided in 59.57 (1), Stats. 1923, for recording mortgages to federal land banks. 12 Atty. Gen. 202.

A register of deeds is not entitled, in addition to the fee provided by 59.57 (11b), for registering birth, death and marriage certificates, to a fee for subsequent corrections to such certificates so registered. 31 Atty. Gen. 334.

Under 114.135 (2), a register of deeds is required to accept documents for filing without charge and 59.57 (6a) does not entitle him to charge a fee. 35 Atty. Gen. 262.

Register of deeds fees are payable in advance except as to the state. 53 Atty. Gen. 218.

59.575 History: 1943 c. 422; Stats. 1943 s. 59.575; 1945 c. 204; 1967 c. 66.

59.58 History: 1909 c. 326; 1911 c. 61; Stats. 1911 s. 762m; 1919 c. 695 s. 122; Stats. 1919 s. 59.58; 1935 c. 22.

The liability of the maker of an abstract of title for damages because of mistakes in the abstract is based on contract and not on negligence, and he is therefore not liable to persons misled to their damage, unless some privity of contract exists between them. Peterson v. Gales, 191 W 137, 210 NW 407.

A corporation may not act as a county abstractor. 7 Atty. Gen. 261.

Notes, memorandums and copies of abstracts made by the county abstractor or the staff of a county abstract department in performing functions under this section are county property and a retiring abstractor is not entitled to take them as his property. 35 Atty. Gen. 476.

59.59 History: R. S. 1849 c. 10 s. 128; R. S. 1858 c. 13 s. 147; R. S. 1878 s. 766; Stats. 1898 s. 766; 1919 c. 695 s. 123; Stats. 1919 s. 59.59; 1969 c. 499.

59.60 History: R. S. 1849 c. 10 s. 129, 130; R. S. 1858 c. 13 s. 148, 149, 151; 1862 c. 120; R. S. 1878 s. 768; Stats. 1898 s. 768; 1917 c. 168; 1917 c. 178 s. 2; 1919 c. 695 s. 124; Stats. 1919 s. 59.60; 1965 c. 217; 1969 c. 499.

On election, terms, and removal of county officers see notes to sec. 4, art. VI.

The county board is not bound to furnish fuel or stationery for the surveyor, though he may have an office in the courthouse. Towsley v. Ozaukee County, 60 W 251, 18 NW 840.

59.60 (2), Stats. 1921, applies to all official surveys made by the county surveyor or his deputy. Such surveys, and the records thereof, are competent evidence of the fact and are presumptively correct; there is no statute of limitations applicable thereto. 11 Atty. Gen. 91.

No registered engineer of the state may record a private survey in the county surveyor's record books unless he is also the county surveyor or deputy duly appointed. 27 Atty. Gen. 713.

59.61 History: R. S. 1849 c. 10 s. 133; R. S. 1858 c. 13 s. 152; 1862 c. 120 s. 3; R. S. 1878 s. 769; Stats. 1898 s. 769; 1919 c. 695 s. 125; Stats. 1919 s. 59.61; 1969 c. 499.

59.62 History: 1853 c. 77 s. 1; R. S. 1858 c. 13 s. 155; 1860 c. 323 s. 3, 4; 1862 c. 120; 1867 c. 169; R. S. 1878 s. 770; Stats. 1898 s. 770; 1919 c. 695 s. 126; Stats. 1919 s. 59.62; 1957 c. 567; 1969 c. 499.

Where only section and quarter-section posts were established by the original government survey of a quarter section bordering on the north line of a town the sixteenth corner posts must be determined upon a resurvey in the manner provided by sec. 770, R. S. 1878. Westphal v. Schultz, 48 W 75, 4 NW 136.

Sec. 770, R. S. 1878, has no reference to the establishment of lost or missing corners of sections or lesser subdivisions of government lands. Gerhardt v. Swaty, 57 W 24, 14 NW 851.

It is not inconsistent with sec. 770, R. S. 1878, that where a piece of land is subdivided into lots and a plat of the subdivision is recorded and the actual frontage of such lots is less than is called for by the plat that the deficiency must be divided among the several lots in proportion to their respective frontage as indicated by the plat. The same principle applies where the actual measurements are in excess of the dimensions specifically designated upon the plat; the excess should not be apportioned to a single lot whose frontage varies from that of the others. Pereles v. Magoon, 78 W 27, 46 NW 1047.

So-called meander corners are not fixed points as are established section corners and quarter corners, but are markers for courses. The east and west quarter line should be equidistant from the north and south lines. Thunder Lake L. Co. v. Carpenter, 184 W 580, 200 NW 302.

59.63 History: 1901 c. 449; Supl. 1906 c. 827a; 1911 c. 663 s. 73; 1913 c. 102; 1915 c. 604 s. 17; 1919 c. 695 s. 127; Stats. 1919 s. 59.63; 1931 c. 23; 1965 c. 252; 1969 c. 499.

The county surveyor is not entitled to have his fees and expenses, in making a survey of lands pursuant to this section, advanced to him by the town board, but must await the levy and collection of the special taxes provided by said section. 11 Atty. Gen. 542.

Where a county surveyor makes a survey of lands and a special tax for his fees and expenses is levied by a town clerk against such lands, but said lands are returned delinquent and the county purchases and takes a tax deed, the county while holding such tax deed is not liable to the county surveyor for such fees and expenses. 20 Atty. Gen. 744.

59.60, 59.63 and 59.635, Stats. 1935, require the county surveyor to make surveys in all cases requiring relocation and perpetuation of section corners and division lines and perpetuation of land marks. No other surveyor may be hired except as provided in 59.635 (3). 24 Atty. Gen. 500.

59.635 History: 1933 c. 104; Stats. 1933 s. 59.635; 1945 c. 556; 1949 c. 262; 1955 c. 267; 1969 c. 276 s. 588 (1); 1969 c. 499; 1969 c. 500 s. 30 (2)(e).

59.64 History: R. S. 1858 c. 13 s. 147; R. S. 1878 s. 771; Stats. 1898 s. 771; 1901 c. 213 s. 1; Supl. 1906 s. 771; 1919 c. 695 s. 128; Stats. 1919 s. 59.64; 1969 c. 499.

The official certificate of the county surveyor declaring the making of the survey

therein set forth is admissible. It is not the purpose of sec. 771, Stats. 1898, to render admissible only copies of the official records of the survey upon the certificate of the county surveyor. Peters v. Reichenbach, 114 W 209, 90 NW 184.

59.65 History: R. S. 1849 c. 10 s. 131; R. S. 1858 c. 13 s. 150, 151; 1862 c. 120 s. 2; 1876 c. 136; R. S. 1878 s. 772; 1887 c. 43; Ann. Stats. 1889 s. 772; Stats. 1898 s. 772; 1917 c. 168 s. 2; 1919 c. 695 s. 129; Stats. 1919 s. 59.65; 1945 c. 556; 1965 c. 217; 1969 c. 499.

Editor's Note: Sec. 772, Stats. 1915, was considered in opinions published in 4 Atty. Gen. 679 and 982.

59.66 History: 1917 c. 168 s.3; Stats. 1917 s. 772m; 1919 c. 695 s. 130; Stats. 1919 s. 59.66; 1969 c. 499.

59.665 History: 1969 c. 499; Stats. 1969 s. 59.665.

59.67 History: R. S. 1849 c. 9 s. 6; R. S. 1849 c. 10 s. 5; 1851 c. 334 s. 1; R. S. 1858 c. 13 s. 5, 7; R. S. 1878 s. 651, 653; Stats. 1898 s. 651, 653; 1919 c. 695 s. 131, 132; Stats. 1919 s. 59.67; 1941 c. 5; 1955 c. 651 s. 14.

The real estate of a county can be conveyed only as prescribed; a deed executed by the county clerk is not presumptive evidence that he was authorized to execute it. Bemis v. Weege, 67 W 435, 30 NW 938; Semple v. Whorton, 68 W 626, 32 NW 690.

A recital in a deed that the county clerk was authorized to execute it by a resolution of the board passed on a designated day is not per se evidence of that fact. The deed should contain the resolution. Ward v. Necedah L. Co. 70 W 445, 35 NW 929.

If the conditions upon which the county clerk is authorized to execute a conveyance have not been complied with it is invalid. Rice v. Ashland R. E. Co. 72 W 103, 8 NW 183.

A county board can give property only for a public purpose and only when authorized by statute. It cannot donate the fee of lands to an agricultural fair association. 8 Atty. Gen. 523.

A resolution of a county board purporting to authorize the county clerk to sell county-owned land at a price which equals or exceeds assessed valuation is invalid. 22 Atty. Gen. 387.

A county board resolution to sell to a former owner, lands acquired by the county on tax deeds for the amount of taxes, interest and penalties, does not constitute a valid communicated offer which ripens into a binding contract upon tender of payment by the former owner, and such resolution is contrary to public policy. 26 Atty. Gen. 158.

A county board may not lawfully authorize exchange of county-owned lands for other lands to which the county already holds title by tax deed. 26 Atty. Gen. 177.

A county may not accept a quitclaim deed from an owner of land upon which the county holds tax certificates in consideration for a quitclaim deed from the county to such owner covering part of such lands, with taxes on such latter lands marked paid. 27 Atty. Gen. 348.

A resolution of a county board that county tax deed land be sold at the minimum price except to owners, mortgagees and lienholders, who shall have the privilege to buy their land by payment of all taxes and charges against it, is valid. 31 Atty. Gen. 286.

There is no provision in the statutes for a county to charge back to a village tax certificates held by the county and canceled by it because the lands were not subject to taxation. 32 Atty. Gen. 14.

59.68 History: R. S. 1849 c. 10 s. 16; R. S. 1849 c. 87 s. 15, 16; R. S. 1858 c. 13 s. 16; R. S. 1858 c. 119 s. 16, 17; R. S. 1878 s. 656; 1887 c. 101; 1889 c. 218; Ann. Stats. 1889 s. 565a sub. 3; Ann. Stats. 1889 c. 656; Stats. 1898 s. 656; 1913 c. 746; 1919 c. 437; 1919 c. 695 s. 133; Stats. 1919 s. 59.68; 1943 c. 93; 1955 c. 651 s. 14; 1957 c. 284; 1961 c. 540; 1969 c. 366 s. 117 (2)(b).

In requiring the county to provide offices and the county officers to keep them open, it is implied that they should be warmed and lighted and kept in suitable condition to answer the wants of the public at the expense of the county. Jefferson County v. Besley, 5 W 134.

The fact that, when the exigency of the case requires it, the court may be temporarily held in a different building does not prevent the building constructed for the county court from continuing to be the courthouse. Pepin County v. Prindle, 61 W 301, 21 NW 254.

It is the duty of the county board to provide suitable quarters for the circuit court. In re Court Room, 148 W 109, 134 NW 490.

That part of sec. 656, Stats. 1898, as amended, providing that the plans shall be accompanied by a certificate of the circuit judge to the effect that he is advised by experts and believes that the court rooms will possess proper acoustical properties, is not unreasonable, discriminatory or invalid. McDougall v. Racine County, 156 W 663, 146 NW 794.

A city zoning ordinance cannot prevent a county from constructing a jail as required by 59.68. Green County v. Monroe, 3 W (2d) 196, 87 NW (2d) 827.

A county board has power to lease a building temporarily for a courthouse but not for a jail. 13 Atty. Gen. 454.

A county may proceed to construct, without a building permit under a city ordinance, an addition to its courthouse on county-owned lands within the limits of a city, after plans are approved by the industrial commission. 56 Atty. Gen. 225.

59.685 History: R. S. 1849 c. 153 s. 4; R. S. 1858 c. 190 s. 4; R. S. 1878 s. 4948; Stats. 1898 s. 4948; 1919 c. 78 s. 12; Stats. 1919 s. 55.10; 1947 c. 519; Stats. 1947 s. 59.685; 1955 c. 330.

59.69 History: 1872 c. 169; R. S. 1878 s. 669 sub. 9; 1895 c. 115; Stats. 1898 s. 669 sub. 9; 1907 c. 202; 1909 c. 138; 1911 c. 35; Stats. 1911 s. 669 subs. 9, 9m; 1913 c. 201, 619; Stats. 1913 s. 669 subs. 9, 9m, 9t; 1917 c. 70; 1919 c. 86, 641; 1919 c. 695 s. 134, 135, 168; 1919 c. 702 s. 42a, 42b; Stats. 1919 s. 59.69, 59.86; 1921 c. 210; 1923 c. 319 s. 2; Stats. 1923 s. 59.69, 59.86, 59.865; 1925 c. 280; 1927 c. 216; 1927 c. 225 s. 2, 3; 1929 c. 137; 1951 c. 727 s.

10; 1955 c. 651 s. 15, 16; Stats. 1955 s. 59.69; 1959 c. 72.

The county board may not convey its county-owned fairgrounds to a fair association, with the understanding that said association shall immediately raise $30,000 with which to improve the grounds and reconvey the same to the county, when the debt so incurred has been paid out of annual appropriations by the county board. 9 Atty. Gen. 119.

The existence of a county agricultural society does not prevent the purchase of real estate by the county board as a site for a county fair. 9 Atty. Gen. 542.

A member of a county board has no right to vote on a resolution designating a fair association in which he holds stock as the association to receive county aid. 20 Atty. Gen. 15.

Under this section, a county board may appropriate money to aid agricultural societies, including payment of debt already incurred for past exhibitions. 20 Atty. Gen. 34, 250; 22 Atty. Gen. 166.

See note to 67.04 (1), citing 39 Atty. Gen. 367.

See note to 59.06, citing 40 Atty. Gen. 228.

Where a part of the land and buildings constituting fairgrounds is owned by a county and part by a fair association, an agreement between the two 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.

A county board cannot accumulate yearly appropriations for county fair purposes in the county treasury; having transferred an accumulation to another fund, it cannot reappropriate in any year more than the amount allowed per year. 46 Atty. Gen. 230.

59.70 History: 1917 c. 588; Stats. 1917 s. 670 (24); 1919 c. 43, 460; 1919 c. 695 s. 136; 1919 c. 702 s. 41; Stats. 1919 s. 59.70.

59.71 History: R. S. 1849 c. 10 s. 37; R. S. 1858 c. 13 s. 44; 1860 c. 201 s. 1 to 6; 1867 c. 11 s. 2; 1875 c. 284 s. 2 to 4; R. S. 1878 s. 690, 691; Stats. 1898 s. 690, 691; 1903 c. 83 s. 1; Supl. 1906 s. 690; 1919 c. 695 s. 137, 138; Stats. 1919 s. 59.71.

59.715 History: 1947 c. 304; Stats. 1947 s. 59.715; 1949 c. 52; 1951 c. 464; 1955 c. 132; 1957 c. 230; 1965 c. 68, 295; 1967 c. 9; 1969 c. 276 s. 588 (1); 1969 c. 366 s. 117 (2)(b).

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 History: 1949 c. 52; Stats. 1949 s. 59.716; 1951 c. 464; 1957 c. 230; 1969 c. 276 s. 596.

59.717 History: 1949 c. 52; Stats. 1949 s. 59.717; 1951 c. 464; 1957 c. 230; 1969 c. 276 s. 596.

59.72 History: 1915 c. 619 s. 2; Stats. 1915 s. 709 (3a), (3b); 1917 c. 222; Stats. 1917 s. 709 (3a), (3b), (3c); 1919 c. 168; 1919 c. 695 s. 140 to 143; Stats. 1919 s. 59.72; 1923 c. 88; 1935 c. 127; 1967 c. 276 s. 39.

On election, terms, and removal of county officers see notes to sec. 4, art. VI.

A county auditor is entitled to have access to records of receipts kept by a county clerk under 59.47 (6), Stats. 1935. 24 Atty. Gen. 694.

59.73 History: R. S. 1849 c. 10 s. 66, 69; R. S. 1858 c. 13 s. 85, 88; 1862 c. 135; 1863 c. 220 s. 1, 3, 4; 1872 c. 15 s. 4; 1874 c. 399 s. 1, 2, 4; 1875 c. 252; R. S. 1878 s. 708, 714, 751, 753; Stats. 1898 s. 708, 714, 751, 753; 1903 c. 134 s. 1; Supl. 1906 s. 751; 1915 c. 242 s. 2; Stats. 1915 s. 694 (5), 708, 714, 751, 753; 1919 c. 695 s. 144; Stats. 1919 s. 59.73.

59.74 History: 1893 c. 259 s. 1 to 3, 6; 1895 c. 35, 75; Stats. 1898 s. 693; 1903 c. 358 s. 1; Supl. 1906 s. 693; 1907 c. 474; 1911 c. 240; 1919 c. 695 s. 145; 1919 c. 702 s. 42; Stats. 1919 s. 59.74; 1921 c. 422 s. 22; 1923 c. 183; 1927 c. 16, 276; 1929 c. 25; Spl. S. 1931 c. 1 s. 1, 3; Spl. S. 1931 c. 15 s. 1; 1933 c. 435 s. 1, 2.

A contract by which a bank agrees to pay 3 per cent interest on average monthly balances, subject to the check of the county treasurer, and 4 per cent on deposits which remained a year, but preserving the right of the county board to withdraw all deposits at will, was valid; and a bond containing such stipulations and conditioned for payment accordingly by the bank remained in force during the time deposits continued therein. Such a bond was not invalid because it omitted some things contained in the prescribed form for the bond of a county treasurer, such provisions being inapplicable thereto. The county board did not, by adopting the report of its committee to the effect that the bank had agreed to continue the arrangement in regard to the interest on monthly balances, as agreed upon, for the next succeeding year, extend or renew the contract so as to discharge the sureties. Manitowoc County v. Truman, 91 W 1, 64 NW 307.

A bank that is made a county depository cannot constitute another bank its agent to receive the county's deposits. 5 Atty. Gen. 878.

A county bankers' association not engaged in the banking business, but being merely a voluntary association of banks of a county, may not be designated as a county depository under provisions of 59.74, Stats. 1923. 12 Atty. Gen. 608.

59.75 History: 1872 c. 65 s. 2, 3; 1875 c. 261; R. S. 1878 s. 717, 718; 1893 c. 259 s. 4, 5; Stats. 1898 s. 717, 718; 1903 c. 358 s. 2; Supl. 1906 s. 717; 1913 c. 198; 1919 c. 695 s. 146, 147; Stats. 1919 s. 59.75; 1927 c. 305; Spl. S. 1931 c. 15 s. 2; 1935 c. 339; 1951 c. 96.

Where a bank purchases bonds from a county with the understanding that money is to remain in said bank until needed, the county is not bound to keep money in said bank; but if said bank is the sole county depository, the county treasurer is required to deposit money in said bank. 19 Atty. Gen. 344.

59.76 History: 1853 c. 12 s. 1; R. S. 1858 c. 13 s. 42, 43; 1868 c. 160 s. 3; R. S. 1878 s.

676, 682; 1881 c. 240; Ann. Stats. 1889 s. 676, 682, 929a; Stats. 1898 s. 676, 682; 1917 c. 553 s. 2, 3; Stats. 1917 s. 676, 682, 683; 1919 c. 695 s. 148, 149, 150; Stats. 1919 s. 59.76.

On liability of town and county for damage caused by highway defects see notes to 81.15.

A bond in the ordinary form of a recognizance, containing the statutory condition, approved by the clerk, is valid, no particular form being required. Conover v. Washington County, 5 W 438.

A county may be sued upon a county order after its treasurer has refused to pay it. Savage v. Crawford County, 10 W 49; Markwell v. Waushara County, 10 W 74.

The adoption by the county board of a committee's report recommending the rejection of a claim is a disallowance. Warner v. Outagamie County, 19 W 611.

An appeal confers no jurisdiction where the board has none. Stringham v. Winnebago County, 24 W 594.

On appeal from an action rejecting the whole of a claim for moneys paid upon a large number of illegal tax certificates, the appellant should be required to file a complaint classifying them and specifying the grounds on which each class is claimed to be illegal. Eaton v. Manitowoc County, 40 W 668.

Referral of a claim presented at the January session, to a committee with instructions to report thereon at the next November meeting, constituted a disallowance though the claim was for a large amount and its consideration involved intricate questions. Hyde v. Kenosha County, 43 W 129.

Under sec. 683, R. S. 1878 the right to appeal where a part of the claim has been allowed exists as well where a certain percentage of the whole claim is disallowed as where some items are allowed and others are disallowed. Bell v. Waupaca County, 62 W 214, 22 NW 398.

When the legislature creates a new county by dividing an old one and provides a special method of adjusting their rights and enforcing their claims, sections 676 and 677, R. S. 1878, are not applicable. Forest County v. Langlade County, 76 W 605, 45 NW 598; Lincoln County v. Oneida County, 80 W 267, 50 NW 344.

A claim for the refund of money paid for invalid tax certificates must be presented under sec. 676, R. S. 1878. Where tax certificates issued by a county were invalid, it was the duty of the county board to order the repayment of them to the holder and the claim of such holder was one which must first be presented to the county board. A claim to recover money paid for invalid tax certificates is within sections 682 and 683, and the only remedy of the claimant is by appeal from its disallowance. Pier v. Oneida County, 93 W 463, 67 NW 702.

The duties prescribed in sections 676-683, Stats. 1878, are quasi-judicial in their nature and members of the county board are not, within their jurisdiction, liable either for mistakes, errors of judgment or corrupt conduct. Such exemption does not apply where the subject matter acted upon is outside the jurisdiction of the board, such as a claim in which a member has a pecuniary interest, claims for work and materials furnished for objects not within the power of the board, claims allowed to officers in excess of the compensation fixed by law and in direct violation of the statute, claims for work and materials corruptly contracted for by the member and his associates, claims which the board is prohibited from auditing because not properly made out, verified and filed and claims for indebtedness contracted in excess of the constitutional limitation. Such exemption does apply to claims which the board is authorized to audit, though in excess of the tax levy, the issuing of orders thereon being what is prohibited by the statute. The board has no claim against a supervisor by reason of auditing claims in excess of the constitutional limit of debt and issuing orders in advance of the tax levy, where the tax levy has been made and the claims paid, so far as they are for legitimate county expenses. Land, L. & L. Co. v. McIntyre, 100 W 258, 75 NW 964.

Moneys belonging to a school district, but by mistake paid into the county treasury, can be collected only under the procedure provided for in the statutes requiring claims against counties to be presented to the county board, and brought into court only by appeal. State ex rel. Board of School Directors v. Nelson, 105 W 111, 80 NW 1105.

The statute prohibits the action from being originally brought in circuit court. It can get there only by appeal from the disallowance of the claim in whole or in part. Miller v. Crawford County. 106 W 210, 82 NW 175.

An instrument reciting that the obligor has appealed to the circuit court from the disallowance of his claim against the county by the county board, and stating that the obligors, as principal and surety, "do hereby undertake that the appellant will faithfully prosecute the appeal, and pay all costs that shall be adjudged against the appellant," is not technically a bond, and does not in form run to the county; but is a substantial compliance with the statute. Ellis v. Barron County, 111 W 576, 87 NW 552.

Sections 676 and 677, Stats. 1898, allow an appeal from the action of the county board in allowing an account for services of a physician under sec. 4870. Quigg v. Monroe County, 134 W 122, 113 NW 723.

The state may sue directly and is not required to proceed under sections 676 - 683, Stats. 1898. State v. Milwaukee, 145 W 131, 129 NW 1101.

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

A claim disallowed for the reason that the statement thereof was unverified did not bar a subsequent presentation of the claim duly verified. Blaser v. Vanden Heuvel, 164 W 98, 159 NW 735.

The requirement that all claims shall be filed with the county board before bringing action against the county is not removed as to claims against counties arising under highway contracts by the provisions of 82.04 to

82.06, Stats. 1931. Failure of the contractor to file a claim against the county before bringing action for the balance due under the contract may be taken advantage of by a plea in abatement. (Lincoln County v. Oneida County, 80 W 267, 50 NW 344, and State ex rel. Elliott v. Kelly, 154 W 482, 143 NW 153, distinguished.) The power to arbitrate claims against counties resides in the county board, and an arbitration award pursuant to a submission by the county highway committee imposed no liability on the county. Joyce v. Sauk County, 206 W 202, 239 NW 439.

An amendment correcting a mistake in the summons and complaint by substituting the word "corporation" for "company" in a plaintiff's corporate name did not cause the commencement of the action to date therefrom, within the limitation barring actions on claims against counties not brought within 6 months after disallowance. Necedah Mfg. Corp. v. Juneau County, 206 W 316, 237 NW 277, 240 NW 405.

A county cannot waive statutory requirements as to filing of claims against the county. Maynard v. DeVries, 224 W 224, 272 NW 27.

Prior to the procedural revision made by chs. 375 and 418, Laws 1943, the industrial commission (and later the state department of public welfare), as provided in 49.03 (8a), was given exclusive jurisdiction to hear and determine controversies between municipalities and counties as to liability for poor relief. The limitations relating thereto were those provided in 49.03. The provision in 59.76 (2), barring an action against a county on a disallowed claim if not brought within 6 months after disallowance by the county board, did not apply. Ashland County v. Bayfield County, 244 W 210, 12 NW (2d) 34.

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. 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, Stats. 1953, 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.

A document entitled "Notice of Injury," filed within 30 days of an incident on a highway, and employing the language of 81.15, was a notice of injury under 81.15 and not a notice of claim under 59.76 (1). Colburn v. Ozaukee County, 39 W (2d) 231, 159 NW (2d) 133.

Claims against a county by injured workmen need not be presented to the county board. The industrial commission may make an award, which may be reduced to judgment, filed with the county clerk and included in the next tax levy. The county boards should make provisions for payment of such claims. 4 Atty. Gen. 242.

Action on a claim is not barred until the statutory time after notice is given. 19 Atty. Gen. 240.

The holder of a county order, whether for pension or otherwise, may maintain an action against the county after it has been presented to the county treasurer and payment refused, even though such refusal was for want of funds. 28 Atty. Gen. 360.

59.77 History: R. S. 1849 c. 10 s. 32, 33; R. S. 1858 c. 13 s. 37, 38; 1862 c. 257 s. 1 to 3; 1868 c. 153 s. 1 to 4; 1868 c. 160 s. 2; 1869 c. 31 s. 2; R. S. 1878 s. 677, 679, 680, 681, 696; 1880 c. 117; 1883 c. 188; 1889 c. 342 s. 1; Ann. Stats. 1889 s. 677, 679, 680, 681, 696; Stats. 1898 s. 677, 679, 680, 681, 696; 1901 c. 153 s. 1; Supl. 1906 s. 696; 1907 c. 625 s. 4; 1915 c. 604 s. 15; 1915 c. 619; 1919 c. 695 s. 151 to 155; Stats. 1919 s. 59.77; 1933 c. 460 s. 2; 1949 c. 317; 1951 c. 240; 1955 c. 696 s. 15a, 15b; 1961 c. 614; 1963 c. 407; 1967 c. 276 ss. 39, 40; 1969 c. 255.

Where a claim is presented for the repayment of taxes upon a large number of certificates, without classification or the statement of grounds of illegality, the board may, before acting thereon, require such classification and statement; but its failure to do so will not affect its jurisdiction. Eaton v. Manitowoc County, 40 W 668.

A local act providing that no claim for repayment of taxes should be presented for more than the amount actually paid, with interest, does not deprive the board of jurisdiction of a claim for a larger amount. Marsh v. St. Croix County, 42 W 355.

A statement of a claim containing a description of land purchased by a committee of the board for a poor farm, which stated the number of acres and the price, is sufficient to give jurisdiction to the board, although it contained an item for interest and damages. This might have been made more definite if it was required. French v. Dunn County, 58 W 402, 17 NW 1.

This statute requires a very full statement of the facts upon which claims are based in order that the board shall be apprised of their nature and the particulars thereof. A justice's account for fees filed with the clerk for allowance, if good and sufficient in form and substance to be allowed in part, is good for the whole amount, which constitutes a legal charge against the county. Grimm v. Jefferson County, 62 W 572, 22 NW 857.

If accounts payable to the county by a town are not properly itemized, their allowance by the county board is not binding upon the town. Outagamie County v. Greenville, 77 W 165, 45 NW 1090.

An account for services as local fish and game warden containing numerous items consisting merely of dates and names of places without the description of the nature of the services charged for is not such a statement of the claim as is required. The provision that no such claim shall be acted upon or considered unless so made and filed is mandatory and must be substantially complied with. A statement not in substantial compliance with the statute is not sufficient as a complaint in the circuit court, although the record of the proceedings states that the claim was disallowed for the reason that it was not properly itemized, yet it being obvious that the board

did not pass upon the merits of the claim but merely suspended action until it should be properly itemized there was no disallowance. Miller v. Crawford County, 106 W 210, 87 NW 175.

A county board has no right to consider a claim unless it is filed in pursuance of sec. 677, Stats. 1898. Northern T. Co. v. Snyder, 113 W 516, 89 NW 460.

A county board cannot consider the claim of a constable for fees in a criminal action in justice court, where the district attorney did not report as to the county's liability upon such claim, and the certificate of the justice was not delivered to the county clerk until 7 days before the meeting of the board. Birdsall v. Kewaunee County, 124 W 576, 103 NW 1.

Where the claim is verified by some one other than the claimant, the affidavit must show that the affiant was the agent or attorney of the claimant. Failure to show this is a fatal defect. Meyer v. Outagamie County, 134 W 86, 114 NW 94.

The provision requiring an itemized statement of a claim applies only to accounts or claims in the nature of accounts. The claim for a fee of a physician for performance of a postmortem examination is not an account required to be itemized. Quigg v. Monroe County, 134 W 122, 113 NW 723.

After a demurrer to a complaint for an injury upon a county highway has been sustained in a municipal court, because it contained no allegation of the filing of notice as required by 59.77 (1), Stats. 1921, and after the court had lost jurisdiction of the action by failing to enter an adjournment to an hour, day and place certain, the plaintiff could file proper notice and bring a new action. Sippel v. Fond du Lac County, 184 W 607, 200 NW 459.

The fee of an officer in a criminal prosecution should not be paid directly to him by the court, but should be reported to the county board to be passed upon, and thereupon paid by the county treasurer. 12 Atty. Gen. 176.

The requirement that statements mentioned in 59.77 (3) be filed "on or before the first Monday in November in each year" is mandatory; neglect to comply therewith results in forfeiture of the right to compensation mentioned in such section. A public officer takes his office cum onere and is entitled to no salary or fees except what the statute provides. 17 Atty. Gen. 603.

A district attorney should not withhold his certificate required by 59.77 (5) (a) for witness and juror fees in cases of assault and battery before a justice of the peace, where such prosecution was conducted by private attorneys. 23 Atty. Gen. 245.

This section requires that the district attorney shall examine and approve accounts of the coroner. 26 Atty. Gen. 431.

59.78 History: 1915 c. 619 s. 2; Stats. 1915 s. 678m; 1919 c. 695 s. 156; Stats. 1919 s. 59.78; 1935 c. 127, 477.

59.79 History: R. S. 1849 c. 10 s. 27; R. S. 1858 c. 13 s. 27, 68; 1868 c. 160 s. 2 to 4; 1869 c. 148; R. S. 1878 s. 678; Stats. 1898 s. 678; 1917 c. 553 s. 2; 1919 c. 695 s. 157; Stats. 1919 s. 59.79.

Ch. 160, Laws 1868, is not to be construed as prohibiting the board from acting upon accounts which are not filed until after the first day of its meeting. Eaton v. Manitowoc County, 40 W 668.

Where an itemized bill was presented to the county board and the last 3 items were bracketed together and the amount set opposite them, together with a report that the bill be allowed at that sum, there was a disallowance of the other items. Jones v. Washburn, 106 W 391, 82 NW 286.

59.80 History: 1909 c. 19; Stats. 1911 s. 694 sub. 7; 1915 c. 242 s. 2; 1917 c. 469; Stats. 1917 s. 670 (26), 694 (7); 1919 c. 695 s. 158, 158a; Stats. 1919 s. 59.80; 1935 c. 65; 1945 c. 344; 1949 c. 111, 634; 1951 c. 89.

59.81 History: R. S. 1849 c. 10 s. 27, 39; R. S. 1858 c. 13 s. 2, 8, 27, 46; 1868 c. 160 s. 5; 1869 c. 148; 1873 c. 83; R. S. 1878 s. 686, 687, 688; 1895 c. 162; Stats. 1898 s. 686, 687, 688; 1915 c. 619 s. 2; Stats. 1915 s. 686, 687, 688, 715 (12); 1917 c. 178 s. 2; 1919 c. 695 s. 159 to 162; Stats. 1919 s. 59.81; 1923 c. 81; 1927 c. 473 s. 14; 1933 c. 65, 358; 1949 c. 317; 1965 c. 252.

A county order is a simple contract and action thereon is barred 6 years after presentation for payment. But it is available to the holder for the payment of county taxes to the amount of its face after the statute has run on it. Pelton v. Crawford County, 10 W 69.

An action may be maintained on a county order which the treasurer has refused to pay. Savage v. Crawford County, 10 W 49; Markwell v. Waushara County, 10 W 74.

The county clerk can issue county orders only by express direction of the county board. State ex rel. Mulholland v. County Clerk, 48 W 112, 4 NW 121.

Sec. 686, R. S. 1878, applies to a case where a certain percentage of a claim is allowed, as well as where a part or item is allowed. Bell v. Waupaca County, 62 W 214, 22 NW 398.

A verdict in an action on a county order should not include interest from the date of demand, at least where it is not shown that there were then funds on hand to pay the order. Alexander v. Oneida County, 76 W 56, 45 NW 21.

No interest can be recovered on county orders even after presentment. Mueller v. Cavour, 107 W 599, 83 NW 944.

The duty of the county clerk in signing and delivering orders is ministerial, and he may refuse to sign and deliver an order not legally authorized. He is required at his peril to interpret the statute or the order made in pursuance thereof imposing a duty upon him and calling for action on his part. His decision if erroneous does not exempt him from liability, but if correct is sufficient to defeat an action against him. Reichert v. Milwaukee County, 159 W 25, 150 NW 401.

The county clerk is required to sign all orders on the county treasurer for disbursement of drainage funds. 13 Atty. Gen. 10.

The certificate of the clerk of court and justice of the peace and other magistrates for payment of compensation of referees and fees of jurors, witnesses and interpreters, and similar court expenses, are required by 59.81 (2)

to be filed in the office of the county clerk, upon which filing the county clerk is required to draw and deliver to the county treasurer orders for payment; such certificates may not be paid by the county treasurer without such order. 13 Atty. Gen. 97.

59.83 History: R. S. 1849 c. 10 s. 40; R. S. 1858 c. 13 s. 47; R. S. 1878 s. 689; Stats. 1898 s. 689; 1919 c. 695 s. 164; Stats. 1919 s. 59.83; 1939 c. 207; 1965 c. 252.

59.84 History: 1915 c. 619 s. 2; Stats. 1915 s. 709 (23); 1917 c. 178 s. 2; 1917 c. 222; 1919 c. 695 s. 165; Stats. 1919 s. 59.84; 1923 c. 301; 1935 c. 127; 1939 c. 175; 1943 c. 103; 1953 c. 294; 1955 c. 205; 1959 c. 479; 1961 c. 453; 1965 c. 252.

The county auditor of Milwaukee county has standing, in a mandamus action to compel him to approve payment of county funds pursuant to a county ordinance, to challenge the validity of the ordinance on constitutional grounds. State ex rel. Sullivan v. Boos, 23 W (2d) 98, 126 NW (2d) 579.

A motion to transfer funds from the contingent fund for the purpose of paying salary increases failed of adoption because it was not supported by the affirmative vote of two-thirds of the members-elect of the county board, as required by 59.84 (5), Stats. 1951. 42 Atty. Gen. 50.

59.85 History: 1905 c. 458 s. 1, 2, 3; Supl. 1906 s. 697—52, 697—53, 697—54; 1911 c. 663 s. 65, 66; 1919 c. 695 s. 167; Stats. 1919 s. 59.85.

59.87 History: 1913 c. 611; Stats. 1913 s. 553q—1 to 553q—8; 1917 c. 224; 1917 c. 578 s. 5; 1917 c. 613; 1917 c. 677 s. 85; Stats. 1917 s. 697—61; Spl. S. 1918 c. 10; 1919 c. 116 s. 4; 1919 c. 305 s. 1; 1919 c. 695 s. 169; 1919 c. 702 s. 86; Stats. 1919 s. 59.87; 1921 c. 209; 1921 c. 422 s. 23; 1923 c. 359; 1933 c. 140 s. 3; 1937 c. 31; 1939 c. 513 s. 14; 1945 c. 33, 224, 559; 1949 c. 184; 1953 c. 307; 1955 c. 146 s. 16; 1955 c. 651 s. 17, 18; 1957 c. 97, 431; 1959 c. 524; 1963 c. 184; 1963 c. 565 ss. 37, 41; 1965 c. 19, 273, 517; 1967 c. 173, 240; 1969 c. 55.

A man employed as county agricultural representative may also be employed by private persons to do similar work in an adjoining county. The county board may not contract for such work, even though funds are privately subscribed to pay for the outside work. 2 Atty. Gen. 363.

A county board has no power to order a referendum vote on the question of employment of an agricultural representative. 13 Atty. Gen. 118.

An agricultural representative cannot, under contract with a committee of the county board not authorized to make such contract and the university of Wisconsin, receive compensation from the county unless the county board has made an appropriation therefor. 13 Atty. Gen. 324.

The county agricultural representative is within the unclassified service of the civil service. 17 Atty. Gen. 326.

While the county board may abolish the position of the county agricultural representative, it has no right to have such action take effect before the end of the period for which an appropriation was made by the preceding board and an agreement made with the university. Neither may the county board rescind an appropriation for extension work for a period covered by an agreement between the university and the United States department of agriculture. 22 Atty. Gen. 7.

A county board may at an adjourned annual meeting repeal an appropriation for maintenance of a county agricultural agent and abolish the office provided it is done before agreement has been made between the university and the U. S. department of agriculture covering the coming 2 years. 22 Atty. Gen. 287.

See note to 59.07 (43), citing 45 Atty. Gen. 253.

Where a county agricultural committee has entered into cooperative extension service contracts in agriculture and home economics under 59.87 (3) (b), it cannot decrease its share if the university increases its share. 48 Atty. Gen. 49.

59.871 History: 1921 c. 112 s. 1; Stats. 1921 s. 59.07 (17); 1935 c. 550 s. 8, 401; 1949 c. 542; 1953 c. 205; 1955 c. 651 s. 8; Stats. 1955 s. 59.871; 1969 c. 276 s. 583 (1).

59.872 History: 1939 c. 323 s. 3; Stats. 1939 s. 59.07 (25); 1955 c. 651 s. 8; Stats. 1955 s. 59.872; 1961 c. 336.

59.873 History: 1933 c. 339; Stats. 1933 s. 59.08 (18); 1945 c. 9; 1955 c. 651 s. 10; Stats. 1955 s. 59.873.

When a county committee has set up a lime project without authorization by the county board, the county board may ratify and approve acts of the committee provided that contracts and liabilities incurred are not subject to some other legal infirmity. 27 Atty. Gen. 247.

59.08 (18), Stats. 1945, gives the county board power to sell agricultural lime produced by it to a federal agency at cost under an agreement whereby the federal agency will in turn sell all said lime to farmers at cost. 36 Atty. Gen. 14.

59.874 History: 1945 c. 224; Stats. 1945 s. 59.08 (47); 1955 c. 651 s. 10; Stats. 1955 s. 59.874.

59.875 History: 1945 c. 224; Stats. 1945 s. 59.08 (54); 1955 c. 651 s. 10; Stats. 1955 s. 59.875.

59.876 History: 1927 c. 106; 1927 c. 541 s. 12; Stats. 1927 s. 59.08 (10); 1955 c. 651 s. 10; Stats. 1955 s. 59.876.

Where a county board creates a board of immigration and appropriates funds to aid in promoting settlement of vacant agricultural lands in the county, moneys may be used by such board in printing and distributing leaflets, booklets, etc., showing advantages of the county for agricultural purposes. 17 Atty. Gen. 40.

59.89 History: 1911 c. 209; Stats. 1911 s. 748m; 1915 c. 519 s. 1, 2; 1919 c. 695 s. 171; Stats. 1919 s. 59.89; 1931 c. 159; 1953 c. 61 s. 45, 46; 1961 c. 495; 1965 c. 252.

Disposition of unclaimed funds by a clerk of court is governed by 59.89, Stats. 1935, rather than 59.90. 25 Atty. Gen. 510.

59.90 History: 1923 c. 324; Stats. 1923 s. 59.90; 1933 c. 38; 1965 c. 252.

59.903 History: 1945 c. 284; Stats. 1945 s. 59.903; 1959 c. 117.

59.91 History: 1903 c. 444 s. 1 to 13; Supl. 1906 s. 697—32 to 697—44; 1911 c. 663 s. 62 to 64; 1919 c. 695 s. 174 to 186; Stats. 1919 s. 59.91; 1955 c. 10 s. 45.

On prohibition of special and private laws see notes to sec. 31, art. IV.

Bonds not strictly in the prescribed amounts are valid, since the statute is directory. Bingham v. Milwaukee County, 127 W 344, 106 NW 1071.

59.94 History: 1901 c. 343 s. 1 to 3; Supl. 1906 s. 776a to 776c; 1915 c. 25; Stats. 1915 s. 776g; Stats. 1919 s. 59.94; 1921 c. 71; 1967 c. 278.

59.96 History: 1921 c. 554; 1921 c. 590 s. 117; Stats. 1921 s. 59.96; 1929 c. 209, 222, 449; 1933 c. 357; 1933 c. 450 s. 1; 1935 c. 433; 1939 c. 6, 78; 1943 c. 177; 1945 c. 33; 1951 c. 358, 645; 1953 c. 196, 595, 597; 1957 c. 309; 1959 c. 210, 385; 1961 c. 37, 236, 486, 544, 622; 1963 c. 171, 459, 506; 1965 c. 252; 1965 c. 614 s. 57 (1), (4); 1969 c. 52, 241; 1969 c. 276 ss. 312, 588 (6); 1969 c. 366 s. 117 (2) (a).

Revisor's Note, 1933: The effect of the amendment is to transfer the clause "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" from paragraph (b) of (8) to (c) of (7) of 59.96 as located in ch. 357, Laws 1933. Its present location is an error and this amendment is to correct this error. [Bill 426-S, s. 1]

On exercises of police power see notes to secs. 1 and 13, art. I; on uniform town and county government see notes to sec. 23, art. IV; and on the rule of taxation (property taxes) see notes to sec. 1, art. VIII.

The maps and surveys referred to in 59.96 (5), Stats. 1921, include those made after the enactment of this section as well as those made before. Farming areas within the metropolitan district which do not immediately require sewers, but which are suburban territory and presumably will of necessity have them in the future, may be justly taxed for prospective benefits. Lake shore areas may be included, although not within the same drainage basin, if necessary to prevent drainage into the lake. Thielan v. Metropolitan S. Comm. 178 W 34, 189 NW 484.

The county board was without discretion to refuse to issue bonds on the sewerage commission's demand. Milwaukee Sewerage Comm. v. Supervisors, 211 W 412, 248 NW 454.

When the sewerage commission has adopted a resolution stating the amount which it requires for the construction and maintenance of sewers, and has filed a certified copy thereof with the county board, the board is without authority to require the commission to determine the necessity for the amount designated or its reasons for adopting its resolution, or to refuse to provide the amount designated. State ex rel. Milwaukee S. Comm. v. Supervisors, 220 W 670, 265 NW 848.

The effect of legislative action, even prior to 1953, was to give title to property acquired by the city commission to the metropolitan sewerage commission. The city commission could lease a strip of land above a tunnel enclosing a river without authorization of the metropolitan sewerage commission. S. D. Realty Co. v. Sewerage Comm. 15 W (2d) 15, 112 NW (2d) 177.

A town board in a county having a metropolitan sewerage commission may finance, construct and maintain a sewerage system under 59.96 (9) (b), Stats. 1949, without reference to the requirements provided in 60.29 (19). 39 Atty. Gen. 46.

59.965 History: 1953 c. 673; Stats. 1953 s. 59.965; 1955 c. 10 s. 45a; 1955 c. 574 s. 2 to 8; 1955 c. 652 s. 20; 1957 c. 28, 329; 1959 c. 57, 358, 640; 1961 c. 33, 209, 237, 682; 1965 c. 252, 290; 1965 c. 432 s. 6; 1967 c. 291 s. 14; 1967 c. 339; 1969 c. 154 s. 377; 1969 c. 475; 1969 c. 500 s. 30 (2) (c), (e).

The highway commission should cooperate to obtain federal funds to compensate the expressway commission for expenditures for relocation of utilities. 46 Atty. Gen. 58.

59.965 (5) (h), which authorizes partial reimbursement for utility lines because of expressway construction, does not authorize payment for the value of unused life of utility lines abandoned, but not required to be moved because of expressway construction. 49 Atty. Gen. 119.

59.965 (5) (g) and (h), which allow certain reimbursements for relocation of utility facilities in public ways because of county expressway constructions, are valid. 52 Atty. Gen. 819.

For discussion of rate of reimbursement to a gas utility for cut-off service to individual buildings being demolished for an expressway project see 55 Atty. Gen. 149.

59.967 History: 1969 c. 457; Stats. 1969 s. 59.967.

59.968 History: 1969 c. 457; Stats. 1969 s. 59.968.

59.97 History: 1923 c. 388; Stats. 1923 s. 59.97; 1927 c. 375; 1929 c. 279, 356; 1931 c. 236; 1935 c. 303, 403; 1941 c. 195; 1943 c. 281; 1945 c. 235; 1947 c. 224, 516; 1949 c. 221, 233, 509; 1949 c. 639 s. 12; 1951 c. 490; 1953 c. 61 s. 47; 1953 c. 366, 563; 1955 c. 10, 203; 1959 c. 101; 1965 c. 203, 252, 343; 1967 c. 77; 1969 c. 55, 481.

On exercises of police power see notes to secs. 1 and 13, art. I; on jurisdiction of circuit courts see notes to sec. 8, art. VII, and notes to 252.03; on zoning authority of towns see notes to 60.74; on village planning and zoning authority see notes to 61.35; and on city planning and zoning authority see notes to 62.23.

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, Stats. 1947, 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 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.

59.97, Stats. 1947, 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, Stats. 1947, 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, Stats. 1947, 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 nonconforming 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.

Under 59.97 (7) (a), Stats. 1957, providing that a county zoning ordinance shall not prohibit the continuance of the lawful use of any building or premises for any trade or industry for which they are used at the time the ordinance takes effect, the protection of the statute extends only to the particular lawful use for which the building or premises is actually used at the time the ordinance takes effect, and does not extend to protecting nonconforming uses substituted by virtue of a privilege or right given by the ordinance. State ex rel. Brill v. Mortenson, 6 W (2d) 325, 94 NW (2d) 691, 96 NW (2d) 603.

Even if some doctrine of estoppel or equity could prevent enforcement of zoning ordinance against one who had invested money in construction in reliance on an unauthorized permit, such doctrine would not apply where there was sufficient evidence that defendant was adequately informed that the permit issued to him was temporary before he invested his money. Wauwatosa v. Strudell, 6 W (2d) 450, 95 NW (2d) 257.

See note to 236.45, citing State ex rel. Albert Realty Co. v. Village Board, 7 W (2d) 93, 95 NW (2d) 808.

Under 59.97 (8), Stats. 1959, there is no requirement that an owner of real estate in the district, as a condition to exercising this right, must appeal an administrative decision; and even without this express authority, a private person may enjoin a violation of an ordinance when there is no practical remedy. Sohns v. Jensen, 11 W (2d) 449, 105 NW (2d) 818.

Since zoning is a legislative function, judicial review is limited and judicial interference restricted to cases of abuse of discretion, excess of power, or error of law. Consequently, although a court may differ with the wisdom, or lack thereof, or the desirability of the zoning, the court, because of the fundamental na-

ture of its power, cannot substitute its judgment for that of the zoning authority in the absence of statutory authorization. This rule applies not only to the necessity and extent of zoning but also to rezoning, classification, establishment of districts, boundaries, uses, and to the determination of whether or not there has been such a change of conditions as to warrant rezoning. Buhler v. Racine County, 33 W (2d) 137, 146 NW (2d) 403.

59.97 sets forth a limitation which exhausts the significance of the fact of the neighbors' protests and renders such fact an improper ground upon which to determine action or nonaction in reference to zoning. Buhler v. Racine County, 33 W (2d) 137, 146 NW (2d) 403.

Provisions of a county zoning ordinance applicable to automobile wrecking yards were construed in Racine County v. Plourde, 38 W (2d) 403, 157 NW (2d) 591.

Various aspects of the zoning law are discussed in 20 Atty. Gen. 751.

Where a county zoning ordinance permits signs of only a certain type in a district, the published record of nonconforming uses should contain a description of the land upon which nonconforming signs are located, unless the county under 59.95 (7) (d) enforces issuance of building permits or other devices. 28 Atty. Gen. 626.

A county board may not designate town clerks as its officers or agencies through which building permits required under a zoning ordinance should be secured. The county board cannot designate town chairmen as such agencies except through their appointment upon a county board committee created pursuant to 59.06. 35 Atty. Gen. 137.

A county has no power to regulate by zoning ordinances premises within the territorial limits of any city or village. 37 Atty. Gen. 621.

A county zoning ordinance adopted pursuant to 59.97 (2) may be amended only by the county board. No recommendation or report by the county park commission or rural planning board is required. There must be 10 days' published notice of any proposed change and a hearing for persons interested upon notice published 3 times during the 10 days preceding the hearing. The hearing may be held by the county zoning committee when authorized by the county board. 38 Atty. Gen. 186.

A 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 the 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 of 59.97 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 59.97 (3), and any ordinance establishing a different method is void. 43 Atty. Gen. 73.

See note to 59.07 (49), citing 46 Atty. Gen. 148.

Revision of an existing county zoning ordinance can be accomplished only by amendment pursuant to 59.97 (3). Towns may adopt the amendatory ordinance only in the manner provided in 59.97 (3) (g). 48 Atty. Gen. 65.

On approval of county zoning ordinances by town boards, prior to the amendatory legislation of 1965, 1967 and 1969, see 53 Atty. Gen. 214.

Control of land use to protect and promote growth of recreational value of northern areas. Waite, 42 MLR 271.

Procedures in obtaining exceptions, variances and amendments. Hagman, 33 WBB, No. 2.

Effect of restrictive covenants on zoning. Church, 1963 WLR 321.

59.971 History: 1965 c. 614; Stats. 1965 s. 59.971; 1969 c. 276 s. 588 (12).

59.99 History: 1927 c. 408; Stats. 1927 s. 59.99; 1943 c. 292; 1947 c. 120; 1949 c. 74; 1953 c. 61, 240; 1955 c. 651; 1957 c. 24; 1963 c. 212; 1965 c. 153, 252, 433.

59.997 History: 1935 c. 332; Stats. 1935 s. 59.997; 1951 c. 261 s. 10; 1965 c. 19, 252; 1965 c. 666 s. 22 (1).

CHAPTER 60.

Towns.

60.01 History: R. S. 1849 c. 12 s. 1, 5; R. S. 1858 c. 15 s. 1, 5; R. S. 1878 s. 773; Stats. 1898 s. 773; 1919 c. 551 s. 2; Stats. 1919 s. 60.01.

On exercises of police power see notes to secs. 1 and 13, art. I; on taking private property for public use see notes to sec. 13, art. I; on legislative power generally see notes to sec. 1, art. IV; on uniform town and county government see notes to sec. 23, art. IV; on the rule of taxation see notes to sec. 1, art. VIII; on property taken by municipality see note to sec. 2, art. XI; on limitation of indebtedness and direct annual tax to pay debt see notes to sec. 3, art. XI; on acquisition of lands by the state and subdivisions see notes to sec. 3a, art. XI; on election or appointment of statutory officers see notes to sec. 9, art. XIII; on eminent domain see notes to various sections of ch. 32; on general property taxes see notes to various sections of ch. 70; on taxation of forest crop land see notes to 77.01-77.16; on laying highways see notes to various sections of ch. 80; on town highways see notes to various sections of ch. 81; on miscellaneous highway provisions see notes to various sections of ch. 86; on intoxicating liquor licenses see notes to 176.05; on recovery of municipal forfeitures see notes to 288.10; and on powers of state and local authorities over traffic regulation see notes to various sections of ch. 349.

A town may lease buildings for town purposes, as for holding elections and town meetings. Beaver Dam v. Frings, 17 W 398.

An action on a town treasurer's bond may be brought by the supervisors in the name of their office. Cairns v. O'Bleness, 40 W 469.

An action by one town against another is properly brought as town of A. v. town of B. Pine Valley v. Unity, 40 W 682.

When the term "municipal corporation" is used in a statute it must be taken in the strict constitutional sense unless it is clear that it was intended to be used otherwise. A town may not purchase and hold tax certifi-