The authority of the securities division to require a statement upon a subscription contract that the purchasers of trust certificates may be individually liable for all debts of the organization is dependent upon the terms of the trust agreement or the instrument creating the trust. 12 Atty. Gen. 560.

Filing may not be permitted where trustees bind themselves by resolution to designate their trust as a "common law trust" when operating within the state of Wisconsin though such words are not part of the title or name of the trust. 13 Atty. Gen. 109.

The secretary of state may determine the form of the declaration of trust required under 226.14, Stats. 1931. 22 Atty. Gen. 29.

A common-law trust which was created and which sold all of its beneficial certificates prior to the enactment of 226.14 (3) must pay the full filing fee including the fee of $1 for each $1,000 of beneficial certificates sold. 40 Atty. Gen. 18.

The real estate investment trust. Godfrey and Bernstein, 1962 WLR 637.

CHAPTER 227.

Administrative Procedure and Review.

227.01 History: 1943 c. 375; Stats. 1943 s. 227.01; 1945 c. 511; 1947 c. 411 s. 11; 1951 c. 717; 1953 c. 277; 1955 c. 221 s. 12, 13; 1957 c. 426; 1963 c. 457; 1965 c. 295; 1969 c. 259; 1969 c. 366 s. 117 (2) (b).

Committee Note, 1955: The definition of agency has been changed from the former definition in the following respects: (a) The enumeration of certain specific agencies has been eliminated. Such enumeration is unnecessary and might cast doubt on the inclusion of agencies which are included within the general terms of the definition but which are in a different class than those which are enumerated. (b) The exclusion of the industrial commission "in matters arising out of the workmen's compensation act or the unemployment compensation act" has been transferred to 227.22 which contains other similar exceptions and has been narrowed so that it no longer excepts rule making in the fields of workmen's and unemployment compensation. (c) The phrase "having state-wide jurisdiction and authorized by statute to exercise rule-making powers or to adjudicate contested cases" has been deleted. The purpose is to make all governmental agencies at the state level of government subject to the administrative procedure act except as such agencies have been excluded by express provision. The phrase "before an agency" was added in the first line of (2) for the sake of clarity. Otherwise the definition is the same as in the former law. The definition of "rule" in (3) is substantially the same as the former definition. (4) is an expression of a legislative desire that statements of general policy and interpretations which have been specifically adopted by an agency to govern its enforcement or administration of legislation should be filed as rules. (5) contains a number of specific exceptions to the general definition of rule in (3). The purpose is to make it certain that, regardless of whether these might or might not be within the definition, they are not included. (Bill 5-S)

The provisions for judicial review of rulings and decisions of administrative agencies should be liberally construed. The annuity and investment board is an "agency" within the meaning of 227.01, Stats. 1947, so that its rulings and determinations in administering the state employes retirement system are subject to judicial review. Kubista v. State Annuity and Inv. Board, 257 W 359, 43 NW (2d) 470.

The sole purpose of the legislature in adopting the uniform administrative procedure act, 227.01 et. seq., Stats. 1943, was to establish a uniform method of judicial review of official acts of administrative bodies, and there was no intent to abolish any existing right of review. Muench v. Public Service Comm. 261 W 492, 53 NW (2d) 514.

A regularly enacted statute, or an order of an administrative body made pursuant to statutory authority, will be presumed to be constitutional until it has been declared to be otherwise by a competent tribunal. A party attacking a statute has the burden of overcoming the presumption of constitutionality and showing that the statute is unconstitutional. State v. Stehlek, 262 W 642, 56 NW (2d) 514.

An announced general policy of an agency cited as a reason for rejecting an application for a license constitutes a rule; if the agency refuses the license for a reason limited to the facts presented, this is within the exception set forth in 227.01 (4), Stats. 1955. Frankenthal v. Wisconsin R. E. Brokers' Board, 3 W (2d) 249, 88 NW (2d) 352, 89 NW (2d) 825.

In construing the administrative procedure act, an article written by the chairman of the committee which drafted the act is entitled to great weight so far as relating to purpose of the act. Wisconsin Valley Imp. Co. v. Public Service Comm. 7 W (2d) 120, 95 NW (2d) 767.

In the definition of "contested case" referring to a "party" controverting the right, duty, or privilege of another party, the term "party" does not restrict the definition of "contested case" to proceedings wherein issues are contested between private parties. Hall v. Banking Review Board, 13 W (2d) 359, 108 NW (2d) 543.

The procedural requirements of ch. 227, relating to the hearing and determination of contested cases by administrative agencies, were not applicable to proceedings by the Milwaukee city school board on charges against a teacher, since, under 227.01, an "agency" is a board "in the state government", and a city school board is not part of the state government. (Statement in State ex rel. Nyberg v. School Director, 190 W 570, 575, overruled.) State ex rel. Wasilewski v. Board of School Directors, 14 W (2d) 243, 111 NW (2d) 198.

A letter issued to all plumbers in Wisconsin by the state board of health directed, "To Whom It May Concern", prohibiting the use of single vent double chair carrier water closet fittings, which pronouncement contained no indication that the policy was limited to a particular manufacturer and distributor to the exclusion of others, constituted a rule, since it was a statement of agency policy of general

application reviewable by the declaratory-relief procedure set forth in 227.05. Josam Mfg. Co. v. State Board of Health, 26 W (2d) 587, 133 NW (2d) 301.

A contested case before an administrative agency within the meaning of ch. 227, Stats. 1963, requiring the making of findings of fact is one in which a hearing is required by law or by constitutional provisions of due process. A contest in fact or a dispute in a laymen's sense does not satisfy the definition of a contested case in 227.01 (2), unless the hearing in which such contest arose was required to be held. Norway v. State Board of Health, 32 W (2d) 362, 145 NW (2d) 790.

A manual of the department of health and social services, which listed a series of procedural steps, giving sequence and suggested time limits to each such step in processing requests by an applicant or recipient of categorical aids, constituted a rule or statement of policy within the contemplation of 227.01 (3), although promulgation was not preceded by notice and public hearing, for the rule, being procedural, was expressly excepted from those requirements by 227.02 (1). Will v. Dept. of H. & S.S. 44 W (2d) 507, 171 NW (2d) 378.

227.013 History: 1955 c. 221 s. 13; Stats. 1955 s. 227.013.

Committee Note, 1955: Forms often impose substantive requirements which add to the requirements of the statute which is being administered. Even if they do not impose such requirements, they can be considered to be a type of procedural rule. Nevertheless, for practical reasons, it is necessary to exempt them from many of the procedural requirements imposed upon rule making in general. Perhaps there are forms which might be considered of sufficient importance to be treated as rules for all purposes, but this section treats all forms alike because of the difficulty of drawing a satisfactory line to separate them. (Bill 5-S)

227.014 History: 1955 c. 221 s. 13; Stats. 1955 s. 227.014.

On legislative power generally and on delegation of power see notes to sec. 1, art. IV; and on judicial power generally see notes to sec. 2, art. VII.

See note to 227.05, citing Frankenthal v. Wisconsin R. E. Brokers' Board, 3 W (2d) 249, 88 NW (2d) 352, 89 NW (2d) 825.

See note to sec. 3, art. VII, general, citing State ex rel. Reynolds v. Dinger, 14 W (2d) 193, 206, 109 NW (2d) 685, 692.

See note to sec. 3, art. VII, general, citing State ex rel. State Bar v. Keller, 16 W (2d) 377, 386, 114 NW (2d) 796, 801.

Legislative delegation of power to administrative agencies. Luce, 34 MLR 1.

Administrative agencies as the fourth department of government. Cahill, 34 MLR 90.

The Wisconsin administrative procedure act. Hoyt, 1944 WLR 214.

A study of administrative rule making in Wisconsin. Helstad and Sachse, 1954 WLR 368.

New law on administrative rule making. Helstad, 1956 WLR 407.

227.015 History: 1955 c. 221 s. 13; Stats. 1955 s. 227.015; 1957 c. 523.

Committee Note, 1955: This section replaces the former 227.04 which authorizes petitions for adoption, amendment or repeal of rules and requires each agency to prescribe the procedure for submission and disposition of such petitions. Since most agencies have not prescribed such rules, the procedure has been written into the new section. The new section also requires the agency to take action on the petitions. However, as a precaution against the agency's time being dissipated in making written denials of unfounded and pestiferous petitions, the section limits the right of petition to a municipality or to 5 or more interested persons. This section does not affect the constitutional right of fewer than 5 persons to petition for rule changes but the agency under such circumstances would not be required to take action on the petition. [Bill 5-S]

227.018 History: 1955 c. 221 s. 13; Stats. 1955 s. 227.018.

227.02 History: 1955 c. 221 s. 13; Stats. 1955 s. 227.02.

Public hearings and the rule-making process in Wisconsin: the conservation commission. Boles, 40 MLR 167.

227.021 History: 1955 c. 221 s. 13; Stats. 1955 s. 227.021.

There is no time limit on adoption of rules and regulations after a hearing and investigations, but a court might consider the lapse of time in determining whether the agency was arbitrary or capricious. 54 Atty. Gen. 225.

227.022 History: 1955 c. 221 s. 13; Stats. 1955 s. 227.022.

227.023 History: 1955 c. 221 s. 13; Stats. 1955 s. 227.023.

See notes to 16.05, citing McCann v. Personnel Board, 255 W 321, 38 NW (2d) 480, and 37 Atty. Gen. 513.

See note to 78.79, citing Mondovi Co-op. Equity Asso. v. State, 258 W 505, 46 NW (2d) 825.

On the requirements of 227.03, Stats. 1943, see 32 Atty. Gen. 359 and 37 Atty. Gen. 391.

On rule-making procedures by state agencies and correction of possible errors see 52 Atty. Gen. 315.

227.024 History: 1955 c. 221 s. 13; Stats. 1955 s. 227.024.

227.025 History: 1955 c. 221 s. 13; Stats. 1955 s. 227.025.

Committee Note, 1955: The publication requirements prescribed by this section supersede the publication requirements prescribed by former 227.03 (1) and by the various statutes amended or repealed by ss. 19 to 58 of this bill. The details of publication are prescribed in 35.93. [Bill 5-S]

See note to sec. 21, art. VII, on publication of statute law, citing Whitman v. Dept. of Taxation, 240 W 564, 4 NW (2d) 180.

227.026 History: 1955 c. 221 s. 13; Stats. 1955 s. 227.026; 1965 c. 249.

Committee Note, 1955: This section replaces the former 227.03 (2). It differs in that it bases the effective date on publication in the

administrative register rather than on publication in the official state paper. The idea of a delayed effective date is to make rules available to the public before such rules become effective. At the same time, the minimum period between the adoption and effective date of a rule should be as short as possible so as not to impede effective administration of the law. This section serves both ends. Rules will be distributed through the monthly administrative register prior to their becoming effective. Emergencies may demand more prompt action. Therefore, special provision has been made in new 227.027 for emergency rules. The agency also is given discretion to fix a later effective date than the general one prescribed by this section. To meet constitutional publication requirements, special provision for a delayed effective date is made in (3) in the event that unforseen circumstances delay publication of the register beyond the end of the month in which it was scheduled for publication. [Bill 5-S]

227.027 History: 1955 c. 221 s. 13; Stats. 1955 s. 227.027.

Committee Note, 1955: (2) prescribes certain supplementary publicity procedures, but the validity of the rule is not dependent on compliance with these procedures. [Bill 5-S]

227.03 History: 1955 c. 221 s. 13; 1955 c. 448; Stats. 1955 s. 227.03.

Committee Note, 1955: This section is new. It prescribes, with respect to construction of rules of administrative agencies, 2 principles which 990.03 and 990.04 make applicable to construction of statutes. Both are common principles of statutory construction and should be equally applicable to the construction of administrative rules. [Bill 5-S]

227.031 History: 1955 c. 221 s. 13; Stats. 1955 s. 227.031.

Committee Note, 1955: While many of the provisions prescribing rule-making procedure with respect to specific agencies are repealed by ss. 19 to 58 of this bill, some will be retained and others may be added in the future. This provision makes clear that the general procedure prescribed by this bill does not supersede such specific procedures. [Bill 5-S]

227.033 History: 1955 c. 221 s. 13; Stats. 1955 s. 227.033.

227.05 History: 1943 c. 375; Stats. 1943 s. 227.05; 1955 c. 221 s. 13; 1965 c. 191; 1969 c. 276.

Committee Note, 1955: This section replaces the former 227.05 which provides for petitions for declaratory judgments on rules. It was not clear that the former 227.05 was the exclusive method of judicial review of administrative rules. This new section clarifies the law by providing that a rule may be reviewed only as provided therein. It spells out in detail the various forms of proceedings in which a rule may be judicially reviewed and the procedures which must be followed. The primary method of review is an action for declaratory judgment set forth in (1). Former 227.05 provides for such review by petition. Procedural difficulties and uncertainties were encountered thereunder, and the elimination thereof impelled change so as to provide that the procedure is by an action like in other declaratory judgment matters. Five other types of proceedings in which a rule may be reviewed if its validity is material to the proceeding are set forth in (3). (4) prescribes the procedure to be followed when the validity of a rule is material to and arises in any proceeding other than those described in (3). In such a case, the party asserting the invalidity of the rule must do so in his pleading and then apply to the court for a stay of that proceeding until the validity of the rule can be determined in an independent declaratory judgment action pursuant to (1). (5) prescribes the scope of judicial review in any case in which a rule is subject to such review and is substantially the same as was provided in former 227.05 (2). [Bill 5-S]

A complaint by licensed osteopaths, questioning the validity of a rule of the state board of health that funds obtained from the children's bureau of the U.S. department of labor under federal legislation, should not be used to pay any person furnishing obstetrical care to wives of servicemen unless such person be licensed to practice medicine and be a graduate of certain approved medical schools, did not state a case for declaratory relief under 227.05, Stats. 1943, in that the allegations of the complaint and the relief demanded were concerned solely with the proper distribution of federal funds by a federal administrative board, through the state board as its agent, presenting a controversy out of reach of the state courts. Hecker v. Gunderson, 245 W 655, 15 NW (2d) 788.

The issuance by the real estate brokers' board in 1956 of mimeographed instructions for the renewal of real estate brokers' licenses, which contained the requirement that all members of a partnership must be licensed as a condition to licensing the partnership, constituted the making of a "rule" within the meaning of 227.014, Stats. 1955, so as to be reviewable by the declaratory-relief procedure set forth in 227.05. Frankenthal v. Wisconsin R. E. Brokers' Board, 3 W (2d) 249, 88 NW (2d) 352, 89 NW (2d) 825.

In a declaratory relief proceeding to determine the scope of a motor carrier license issued after a hearing, the public service commission should consider the entire record in making its determination. B. D. C. Corp. v. Public Service Comm. 23 W (2d) 260, 127 NW (2d) 409.

The board of pharmacy's announcement that it intended to prosecute out-of-state manufacturers who sell prescription drugs in this state without a license pursuant to 151.04 (5) does not constitute a rule and is not subject to review under 227.05. Barry Laboratories, Inc. v. State Board of Pharm. 26 W (2d) 505, 132 NW (2d) 833.

An order of an administrative body, made pursuant to statutory authority will be presumed constitutional, and the burden to rebut the presumption requires proof beyond a reasonable doubt. Great weight should be given to an administrative agency's interpretation and application of its own rules, unless plainly erroneous or inconsistent with the regulations so interpreted. The party attacking a rule issued by a state board or agency has the

duty of establishing its unconstitutionality by proof beyond a reasonable doubt, i.e., it must be shown that there is no reasonable basis upon which the legislature (and hence the board or agency) could have based its legislation (and hence the rule which it has promulgated). Josam Mfg. Co. v. State Board of Health, 26 W (2d) 587, 133 NW (2d) 301.

The specified and prescribed method for review of an administrative agency's order, as set forth in 227.05, is exclusive, and if the validity of a rule of an administrative agency is not duly challenged in the proceeding before the agency in which the order or decision sought to be reviewed was made or entered, as prescribed in the statute, no other redress is to be had. R. T. Madden, Inc. v. Dept. of I., L. & H. R. 43 W (2d) 528, 169 NW (2d) 73.

Testing the validity of an income-tax rule through a declaratory judgment action. Maly, 41 MLR 446.

227.06 History: 1943 c. 375; Stats. 1943 s. 227.06; 1955 c. 221 s. 13; 1965 c. 191.

Committee Note, 1955: This section replaces the former 227.06. (1) is a restatement of former law. (2) to (5) are new. They prescribe the procedure to be followed by a person who petitions for a declaratory ruling and the procedure to be followed by the agency in acting on such petition. The present section directs the various agencies to prescribe its own procedures relative to such matters but it was found that very few of the agencies had done so. [Bill 5-S]

A petition to the circuit court for Dane county to review the action of the annuity and investment board, in denying the petition of the administrator of a deceased state employe to grant the request of such employe to change to another plan of payment under the state employes retirement system, was sufficient to give the court jurisdiction as a petition for a review of a "declaratory ruling" by the board under 227.06, Stats. 1947, although the petition filed with the board was not designated as a petition for a declaratory ruling, and neither petition made any reference to this section. Kubista v. State Annuity and Inv. Board, 257 W 359, 43 NW (2d) 470.

227.06 (1), Stats. 1965, does not provide a method of review of a determination already made but a method of requesting an agency to make a determination. Wisconsin Fertilizer Asso. v. Karns, 39 W (2d) 95, 158 NW (2d) 294.

227.07 History: 1943 c. 375; Stats. 1943 s. 227.07.

A determination made by an administrative agency is not the exercise of a judicial function, but is an administrative act merely and does not have the force of a judgment of a court. A ruling made by an administrative agency relates only to the facts and conditions presented on the pending proceeding, and the agency is not bound by its prior determinations. A determination of the employment relations board denying a petition of certain employers involving certain issues of fact did not preclude the board from later making a determination granting a subsequent petition involving the same issues. Dairy Employes Ind. Union v. Wisconsin E. R. Board, 262 W 280, 55 NW (2d) 3.

On the requirements of a fair hearing see State ex rel. Ball v. McPhee, 6 W (2d) 190, 94 NW (2d) 711.

See note to 101.15, citing Park Bldg. Corp. v. Industrial Comm. 9 W (2d) 78, 100 NW (2d) 571.

Due process and quasi-judicial tribunals. McMahon, 29 MLR 95.

227.08 History: 1943 c. 375; Stats. 1943 s. 227.08.

The function of prescribing rules for pleading and procedure before administrative bodies is not for the courts but for the legislature, which may prescribe such rules or may authorize the administrative board or agency to prescribe its own rules. Gray Well Drilling Co. v. State Board of Health, 263 W 417, 58 NW (2d) 64.

It is not the province of courts to prescribe rules of procedure for administrative bodies, as that function belongs to the legislature; hence the rule-making power of the supreme court does not extend to prescribing procedures to be followed by administrative agencies. State ex rel. Thompson v. Nash, 27 W (2d) 183, 133 NW (2d) 769.

227.09 History: 1943 c. 375; Stats. 1943 s. 227.09.

See note to 452.10, citing Nolan v. Wisconsin R. E. Brokers' Board, 3 W (2d) 510, 89 NW (2d) 317.

227.10 History: 1943 c. 375; Stats. 1943 s. 227.10; 1955 c. 221 s. 14.

On the issue whether "outside" employes constituted a single division or department of the employer, the employment relations board properly admitted and considered bargaining contracts of other dairies operating in the area since, although evidence of that character would not under most circumstances be received in a court of law, proceedings before the board, as an administrative body, are not required to be conducted with all the formality of a trial in a court and the board is not bound by common-law or statutory rules of evidence in contested cases. Dairy Employes Ind. Union v. Wisconsin E. R. Board, 262 W 280, 55 NW (2d) 3.

Hearsay evidence, if admissible before an administrative agency, should not be received over objection where direct testimony as to the same facts is obtainable. Outagamie County v. Brooklyn, 18 W (2d) 303, 118 NW (2d) 201.

227.11 History: 1943 c. 375; Stats. 1943 s. 227.11.

A hearing held by the highway commission on the relocation of an arterial highway was only a part of the investigation by the commission and not a "contested case"; the court's review is not limited to the record made at the hearing but can include additional materials and reports used by the commission in making its decision. Ashwaubenon v. State Highway Comm. 17 W (2d) 120, 115 NW (2d) 498.

227.12 History: 1943 c. 375; Stats. 1943 s. 227.12; 1945 c. 511; 1965 c. 191.

"In administrative proceedings, due process does not require that evidence be taken be-

fore the officer who ultimately decides the matter. If the respondent's position were correct in this regard, the common practice of having testimony taken before trial examiners would be placed in jeopardy." Tecumseh Products Co. v. Wisconsin E. R. Board, 23 W (2d) 118, 126, 126 NW (2d) 520, 524.

227.13 History: 1943 c. 375; Stats. 1943 s. 227.13; 1965 c. 191.

Agencies subject to the provisions of ch. 227, Stats. 1943, should comply with the requirement that an agency's findings shall consist of a concise and separate statement of the ultimate conclusions of each contested issue of fact without recital of evidence. Clintonville Transfer Line v. Public Service Comm. 248 W 59, 21 NW (2d) 5.

In fixing rates for a telephone company, the public service commission must file findings of fact embracing the essentials on which it bases the reasonableness of its rate order, and it must determine and set forth the relevant facts and circumstances determinative of the rate base, otherwise its order is arbitrary and unlawful. Commonwealth T. Co. v. Public Service Comm. 252 W 481, 32 NW (2d) 247.

In reviewing, on appeal, the findings and decision of the public service commission in a case relating to a motor carrier, the supreme court is not called on to take up and refute statements made by the commission in its opinion by way of comment and argument. Motor Transport Co. v. Public Service Comm. 253 W 497, 34 NW (2d) 787.

Findings of the personnel board that the commissioner of the motor vehicle department "had reason to believe" that an employe in such department was guilty of certain conduct did not constitute proper findings of fact to support a conclusion that the employe's discharge was for just cause; it is not sufficient for the board to find that the commissioner believed the employe guilty of certain conduct which, if true, would constitute just cause for the discharge, but rather, whether the employe actually did these things which the board found that the commissioner believed the employe did. Bell v. Personnel Board, 259 W 602, 49 NW (2d) 889.

An administrative agency is required to make findings of fact consisting of ultimate conclusions on each contested issue, even though the specific statute under which it acts removes its decisions from judicial review under 227.15. Failure to do so requires a remand of the proceedings. State ex rel. Ball v. McPhee, 6 W (2d) 190, 94 NW (2d) 711.

See note to 101.15, citing Park Bldg. Corp. v. Industrial Comm. 9 W (2d) 78, 100 NW (2d) 571.

The state superintendent of schools was acting in a legislative capacity in ordering attachment of school districts under 40.035 and he was not required to hold a formal hearing or restrict his decision to the facts in the record. The fact that appellants sought review by certiorari does not convert the exercise of a legislative function into a contested case. State ex rel. La Crosse v. Rothwell, 25 W (2d) 228, 130 NW (2d) 806, 131 NW (2d) 699.

There is no requirement that an administrative agency charged with and performing a legislative function shall state the reasons or basis for a policy determination comporting with prescribed legislative standards; and findings meet the requirement when they are stated in terms of ultimate-factual determinations, albeit couched in the very words of the statute. Hixon v. Public Service Comm. 32 W (2d) 608, 146 NW (2d) 577.

227.14 History: 1943 c. 375; Stats. 1943 s. 227.14; 1945 c. 511.

See note to 32.05, citing Schroedel Corp. v. State Highway Comm. 38 W (2d) 424, 157 NW (2d) 562.

See note to 102.18, on review by department, citing Chevrolet Division, G. M. C. v. Industrial Comm. 31 W (2d) 481, 143 NW (2d) 532.

227.15 History: 1943 c. 375; Stats. 1943 s. 227.15; 1945 c. 511; 1947 c. 612; 1969 c. 276 ss. 590 (1), 592 (7), 600 (3).

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

See note to 111.06, on unfair labor practices by employers, citing United R. & W. D. S. E. of A. v. Wisconsin E. R. Board, 245 W 636, 15 NW (2d) 844.

A decision of the conservation commission denying an application for a muskrat-farm license under 29.575, is subject to judicial review under the administrative procedure act. Munninghoff v. Conservation Comm. 255 W 252, 38 NW (2d) 712.

See note to 196.405, citing Milwaukee v. Public Service Comm. 259 W 30, 47 NW (2d) 298.

See notes to 31.06, citing Muench v. Public Service Comm. 261 W 492, 53 NW (2d) 514.

The public service commission's determination of the value of the water utility of a town pursuant to 66.03 (4) is a "determination" within 196.41 and a "decision" within 227.15, so as to be subject to judicial review under ch. 227, Stats. 1953. St. Francis v. Public Service Comm. 270 W 91, 70 NW (2d) 221.

Whether review was sought by summons and complaint, instead of by petition, is deemed immaterial. Wisconsin Valley Imp. Co. v. Public Service Comm. 7 W (2d) 120, 95 NW (2d) 767.

See note to 343.40, citing Carlyle v. Karns, 9 W (2d) 394, 101 NW (2d) 92.

Where a certain existing bank, opposing the granting of a charter to a proposed new bank, was interested in serving the area which would also be served by the proposed new bank and in defending the adequacy of its service therein, the interest of such opposing bank would be sufficient to make it a "party aggrieved" by a decision of the banking review board adverse to it, so as to be entitled to a judicial review. Hall v. Banking Review Board, 13 W (2d) 359, 108 NW (2d) 543.

A landowner objecting to a decision of the highway commission that a certain highway is to be a non-access highway may have review under 227.15 as an exclusive remedy. Nick v. State Highway Comm. 13 W (2d) 511, 109 NW (2d) 71.

A prisoner's interest in parole is not a legal right or privilege within the meaning of 227.15 and the refusal of the department of public welfare to parole a prisoner is not a decision reviewable under 227.15 to 227.21. Tyler v. State Dept. of Public Welfare, 19 W (2d) 166, 119 NW (2d) 460.

Even though this was not a "contested case," the right to judicial review under the administrative procedure act was not foreclosed by such fact, since the amendment of 227.15 and 227.16 by ch. 511, Laws 1945, removed this circumstance as a condition to judicial review. (Prior decisions out of harmony herewith, modified.) Ashwaubenon v. Public Service Comm. 22 W (2d) 38, 125 NW (2d) 647, 126 NW (2d) 567.

The language in 49.50 (8), Stats. 1967, which accords finality to a decision of the department of public welfare determining the propriety of modification or cancellation of an award, is not intended to deprive a litigant of a right to review under ch. 227. Stacy v. Ashland County Dept. of Pub. Welfare, 39 W (2d) 595, 159 NW (2d) 630. Compare State ex rel. Ball v. McPhee, 6 W (2d) 190, 94 NW (2d) 711.

Unless some special statutory provisions apply to the judicial review of determinations of administrative agencies, courts have jurisdiction under 227.15 only on a petition to review a "decision". For a determination of an administrative agency to qualify as a "decision" under 227.15, it must be a final order entered at the end of a contested proceeding and based on findings of fact required by 227.13, absence of which factors preclude review under ch. 227. Universal Org. of M.F., S. & A. v. Wisconsin E. R. Comm. 42 W (2d) 315, 166 NW (2d) 239.

227.16 History: 1943 c. 375; Stats. 1943 s. 227.16; 1945 c. 511; 1947 c. 612; 1969 c. 276 ss. 582 (15), 590 (1), 592 (7), 600 (3), (5).

In the absence of a showing that it has been aggrieved by an order, which does not direct it to do or to refrain from doing anything, a labor union is not entitled to a review thereof. United R. & W. D. S. E. of A. v. Wisconsin E. R. Board, 245 W 636, 15 NW (2d) 844.

That an instrument, otherwise sufficient and timely, served on the public service commission for the purpose of having a review of a declaratory ruling of the commission, was designated "Notice of Appeal," rather than "Petition for Review" as provided for by 227.16 did not prevent the circuit court from acquiring jurisdiction to review such ruling; and the court could order an amendment of such instrument which did nothing but change its caption to "Notice of Appeal and Petition for Review" and make the minor changes in the body thereof which were required by such change of title, even though the time for serving a petition may have expired. Lake Superior D. P. Co. v. Public Service Comm. 250 W 39, 26 NW (2d) 278.

A citizen of the state, who appeared at a hearing of the public service commission, held under 31.06, in respect to an application to erect a dam in a navigable stream, is a person "aggrieved" and "directly affected" by a decision of the commission finding that public rights will not be violated by erection of the proposed dam, and is therefore entitled, under 227.16 (1), to petition the circuit court for review under 227.15. When public rights are at stake in proceedings for review of findings of the public service commission authorizing a permit to erect a dam in navigable waters, the state is an "interested person" so that, under 227.16 (1), the attorney general, in the name of the state, may be permitted by the court to intervene in the review proceedings. Muench v. Public Service Comm. 261 W 492, 53 NW (2d) 514.

The L telephone company was a person interested in and a proper party to proceedings before the public service commission on petition of certain rural patrons of L Company in the town of W. P., in which the C telephone company was also rendering local telephone service, for service from the C company, and a "person aggrieved" by an adverse decision of the public service commission, within the meaning of 227.16 (1), so as to be entitled to review of the commission's order in the circuit court. Lodi T. Co. v. Public Service Comm. 262 W 416, 55 NW (2d) 379.

See note to 111.07, on review of order, citing Dressler v. Wisconsin E. R. Board, 6 W (2d) 243, 94 NW (2d) 609, 95 NW (2d) 788.

The general purpose of the administrative procedure act was to secure uniformity in the method of review, but not necessarily of the place of review. Wisconsin Valley Imp. Co. v. Public Service Comm. 7 W (2d) 120, 95 NW (2d) 767.

The rules of ch. 227, Stats. 1959, as to judicial review, made applicable only to "contested cases" as defined in 227.01 (2), apply only to those situations in which the law already requires an opportunity for hearing to be offered, but the act does not itself specify or determine what types of cases require a hearing, that being a matter which is left for specification in the particular regulatory act which the agency administers. Milwaukee v. Public Service Comm. 11 W (2d) 111, 104 NW (2d) 167.

30.11, reposing in municipalities the right to establish bulkhead lines in navigable waters subject to the approval of the public service commission, is sufficient to make a town whose application has been denied a "person aggrieved" under 227.16, so as to be entitled to a judicial review under the administrative procedure act. Ashwaubenon v. Public Service Comm. 22 W (2d) 38, 125 NW (2d) 647, 126 NW (2d) 567.

A taxpayer seeking review of a decision rendered by the board of tax appeals must comply with the mandatory requirements of 227.16 (1) with respect to service of his petition seeking relief, and he cannot effectively invoke the jurisdiction of the circuit court by causing service of the petition for review to be made on that board, and omitting within the prescribed 30 days to serve the adverse tax agency. Monahan v. Dept. of Taxation, 22 W (2d) 164, 125 NW (2d) 331.

A private utility which had theretofore made expenditures for interconnecting facilities had no standing to contest the public service commission's order granting the city's application to construct and place in operation facilities to interconnect with those of a cooperative, for such financial interest by reason of its expenditures was in and of itself insufficient to entitle it to a review under 227.15 and 227.16. Wisconsin P. & L. Co. v. Public Service Comm. 45 W (2d) 253, 172 NW (2d) 639.

Nonresidents of Wisconsin, claiming that

payment of Wisconsin income taxes on wages and salaries received from Wisconsin employment was unconstitutional and seeking to enjoin enforcement of tax statutes against them, had under Wisconsin statutes a plain, speedy and efficient remedy in Wisconsin courts and could not maintain action in federal courts in view of the statute (28 USC 1341) prohibiting a district court from enjoining assessment or collection of the state tax where there is a plain, speedy and efficient remedy in the state courts. Gray v. Morgan, 371 F (2d) 172, cert. denied. Gray v. Morgan, 386 US 1033.

227.17 History: 1943 c. 375; Stats. 1943 s. 227.17; 1945 c. 511; 1969 c. 71 s. 3.

227.18 History: 1943 c. 375; Stats. 1943 s. 227.18; 1945 c. 511.

227.19 History: 1943 c. 375; Stats. 1943 s. 227.19; 1945 c. 511.

Where, in a proceeding for a review of a determination of the department of public welfare in the circuit court, the required notice of setting the date for "trial" had been served, the court had set a date, arguments had been made, briefs had been filed, and the matter had been entirely presented to the court, a petition thereafter made for leave to present additional evidence was properly denied as not timely. Lakeland v. State Dept. of Public Welfare, 265 W 321, 61 NW (2d) 477.

See note to 111.07, on jurisdiction, citing Wisconsin E. R. Board v. Lucas, 3 W (2d) 464, 89 NW (2d) 300.

The general provisions in 227.16 (1) apply to motions to dismiss under 227.19 (3). Where the motion to dismiss was not expressly grounded upon failure to state facts sufficient to show how petitioner was aggrieved so that petitioner was alerted to the claimed insufficiency, the court should not have dismissed the petition. Milwaukee County Dist. Council v. Wisconsin E. R. Board, 23 W (2d) 303, 127 NW (2d) 59.

227.20 History: 1943 c. 375; Stats. 1943 s. 227.20.

The power exercised by the public service commission under 194.23, Stats. 1941, in holding a hearing and acting on an application of a common motor carrier for a certificate of authority to operate, is legislative and not judicial in character, so that a hearing which satisfies the requirements for a legislative hearing is sufficient. Gateway City Transfer Co. v. Public Service Comm. 245 W 304, 14 NW (2d) 6.

Under 227.20 (1) (d), on review of proceedings brought before the department of public welfare under 49.03 (8a) (c), by Milwaukee county against Marathon county to recover for relief furnished, and in relation to an issue whether the relief recipient had been supported as a pauper during his first year of residence in Milwaukee county, the department's finding of fact, that, at all times material to these proceedings, the relief recipient's family was without funds, credits or assets to supply themselves with things they needed, may not be disturbed unless unsupported by substantial evidence in view of the entire record as submitted. Milwaukee v. Stratford, 245 W 505, 15 NW (2d) 812.

On a review of findings of the employment relations board, the court has no jurisdiction to determine the factual issues anew if there is some evidence before the board reasonably tending to support a finding, and the court may not weigh the evidence to ascertain whether it preponderates in favor of the finding, nor substitute its judgment for that of the board even though the court might have decided the question differently had it been before the court de novo, and there is applicable the provision in the administrative procedure act, that due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred on it. Ray-O-Vac Co. v. Wisconsin E. R. Board, 249 W 112, 23 NW (2d) 489.

Under 227.20 (1), Stats. 1947, the review by the court of a decision of the public service commission is definitely limited in matters relating to evidence to the question whether the finding is supported by substantial evidence or is arbitrary or capricious; and if the decision of the commission is supported by substantial evidence in view of the entire record, the decision is to be affirmed if not otherwise contrary to law. The court is not authorized to inquire where the burden of proof lies further than may be necessary to determine whether there is substantial evidence to support the decision or whether it is capricious or arbitrary, and the term "substantial evidence" does not include the idea of weight of evidence. On a review based on the record, and specifically in cases within 227.20 the court does not retry the case, but it is the duty of the court to examine the record sufficiently to determine whether the rights of the complaining party have been invaded by an error of the public service commission or other administrative agency. There was substantial evidence in this case to sustain a finding of the public service commission that the proposed operations of a common motor carrier, applying for authority to render additional services by its truck lines, would unduly interfere with the ability of existing public carriers to continue the proper rendition of adequate service to the public in the territory proposed to be served, so that it was within the discretion of the commission to deny the application under the provision in 194.23, requiring the commission, in making its determination, to take into consideration other transportation facilities in the territory proposed to be served, including common and contract motor carriers and steam and electric railways. Gateway City Transfer Co. v. Public Service Comm. 253 W 397, 34 NW (2d) 238.

The trial court must reverse the personnel board's decision sustaining the employe's discharge if there is no substantial evidence, considering the entire record as a whole, which would establish that the discharge was for just cause; the supreme court is unable to reach the conclusion of the trial court that there is no substantial evidence which might sustain the board's decision if the board had made proper findings of fact, and hence the record must be returned to the board so that it may make proper findings of fact and a new decision based on such new findings. Bell v. Personnel Board, 259 W 602, 49 NW (2d) 889.

In an order of the public service commission, requiring a railroad to stop a certain transcontinental train at a certain city, "or in the alternative, shall provide other eastbound passenger service between 6 a.m. and 12 noon daily," the alternative portion was inserted for the benefit of the railroad, and therefore it is in no position to claim that it was prejudiced thereby by asserting that the order was "arbitrary or capricious" in this respect within the meaning of 227.20 (1) (e). This section, (1) (d) in particular, is construed as meaning that the reviewing court must accept findings of fact of an administrative body if they are supported by substantial evidence, even in cases where a constitutional question is involved. Chicago, M., St. P. & P. R. Co. v. Public Service Comm. 260 W 212, 50 NW (2d) 416.

A finding of the public service commission, that construction and operation of extension of trackless trolley lines and service by a street railway company will not impair the earnings of the company so as to prevent an adequate or fair return, may be disturbed on appeal only if it is unsupported by substantial evidence in view of the entire record. The commission might reasonably assume that the company will take appropriate steps to save its property from confiscation, that is, apply for a rate increase, if the required extension will produce or increase an existing loss of revenue. In reviewing findings, the court must recognize that the commission has expert knowledge, that such knowledge may be applied by it, and that, even though the court might differ from the commission, the court is without power to substitute its views of what may be reasonable. Milwaukee E. R. & T. Co. v. Public Service Comm. 261 W 299, 52 NW (2d) 876.

See note to 111.05, citing Dairy Employes Ind. Union v. Wisconsin E. R. Board, 262 W 280, 55 NW (2d) 3.

The public service commission's finding that the L company's service to the petitioners was inadequate was sufficiently supported by evidence as to the cost of toll charges which the petitioners were required to pay in order to make calls to their trading, social, church, and school center, and the commission's order requiring the C company to extend its line in the town of W.P. so as to render local service to petitioners was within the commission's jurisdiction, and did not deprive the L company of any existing unqualified legal right under its authorization to operate in the same area. The court should not interfere with a finding of the commission merely because the commission may have reversed prior commission policy by so finding. Lodi T. Co. v. Public Service Comm. 262 W 416, 55 NW (2d) 379.

A city challenging a sewage-treatment order of the state committee on water pollution, on grounds of excess of statutory authority or on constitutional grounds or on some other ground, can obtain a judicial review of the order only by the methods specified under 144.56 (2) and 227.20, and the city cannot instead obtain a review of such order through the medium of an action for a declaratory judgment. (State ex rel. Martin v. Juneau, 238 W 564, explained.) Where a specified method of review is prescribed by statute, the method so prescribed is exclusive. Superior v. Committee on Water Pollution, 263 W 23, 56 NW (2d) 501.

Under 227.20 (1) (d) it is not proper for the court to affirm the findings of an agency by merely considering isolated testimony which, if standing alone, would be sufficient to sustain the findings, without considering other testimony in the record which impeaches the same. Motor Transport Co. v. Public Service Comm. 263 W 31, 56 NW (2d) 548.

Although the public service commission's findings are not to be disturbed if inferences from established facts are properly drawn, an isolated piece of testimony does not constitute "substantial evidence in view of the entire record" if such isolated statement is explained or entirely discredited by other testimony or evidence in the record. Albrent F. & S. Co. v. Public Service Comm. 263 W 119, 56 NW (2d) 846.

Orders of an administrative agency, like statutes, should not be held to be too indefinite to be operative because they contain terms not susceptible of exact meaning, or are imperfect in their details, or where they employ words commonly understood, and they should not be pronounced void for uncertainty if they are susceptible of any reasonable construction, but should be given effect if by any reasonable construction they are capable of administration and enforcement. Madison Bus Co. v. Public Service Comm. 264 W 12, 58 NW (2d) 463.

See note to 71.11 on tax evasion, general, citing Platon v. Dept. of Taxation, 264 W 254, 58 NW (2d) 712.

See notes to 111.07 on record; proof, citing St. Joseph's Hospital v. Wisconsin E. R. Board, 264 W 396, 59 NW (2d) 448.

As used in 227.20 (1) (d), the term "substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion but the substantiality of evidence must take into account whatever in the record fairly detracts from its weight. Chicago, M., St. P. & P. R. Co. v. Public Service Comm. 267 W 402, 66 NW (2d) 351.

An administrative agency's interpretation of its own rules should be accorded great weight by the courts unless it is plainly erroneous or inconsistent with the regulations so interpreted. State ex rel. Durando v. State Athletic Comm. 272 W 191, 75 NW (2d) 451.

In the absence of any claim or proof that the revocation of a broker's license in the instant case was a more-severe penalty than is being exacted by the real estate brokers' board for similar offenses committed by other brokers, there is no basis on which the supreme court might hold such penalty to be arbitrary or capricious. Sailer v. Wisconsin R. E. Brokers' Board, 5 W (2d) 344, 92 NW (2d) 841.

Penalties imposed by administrative agencies, which are so harsh as to shock the conscience of the court, constitute "arbitrary" action within the meaning of 227.20 (1) (e), thereby authorizing the reviewing court to modify or reverse the agency's order in such respect. (Certain language in Sailer v. Wisconsin R. E. Brokers' Board, 5 W (2d) 344, modified.) Lewis Realty v. Wisconsin R. E. Brokers' Board, 6 W (2d) 99, 94 NW (2d) 238.

See note to 196.405, citing Cobb v. Public

Service Comm. 12 W (2d) 441, 107 NW (2d) 595.

Where competent evidence is introduced by both the taxpayer and the department of taxation before the board of tax appeals on the issue in controversy in a case involving an additional assessment of income taxes, the reviewing court is concerned only with whether there is substantial evidence in view of the entire record to sustain the board's finding, and it is immaterial in relation thereto that the burden of proof is on the taxpayer to show the incorrectness of the additional assessment. Dept. of Taxation v. O. H. Kindt Mfg. Co. 13 W (2d) 258, 108 NW (2d) 535.

In proceedings instituted by a transport company for the review of certain orders of the public service commission prescribing passenger fares to be charged by the company for urban mass-transportation service provided by trackless trolleys and busses, the trial (reviewing) court was neither called on nor authorized to make an independent determination of the rate base, operating revenues, and return, nor an independent determination of facts. Milwaukee & S. T. Corp. v. Public Service Comm. 13 W (2d) 384, 108 NW (2d) 729.

Under 227.20 (1) (d), the words "substantial evidence" mean such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, the test of reasonableness being implicit in the statutory words "substantial evidence"; the use of the statutory words "in view of the entire record as submitted" strongly suggests that the test of reasonableness is to be applied to the evidence as a whole, not merely to that part which tends to support the agency's findings. Copland v. Dept. of Taxation, 16 W (2d) 543, 114 NW (2d) 858. See also State ex rel. Beierle v. Civil Service Comm. 41 W (2d) 213, 163 NW (2d) 606.

When the "substantial evidence" rule of 227.20 is applied to a legislative-type decision of the state highway commission, the test is whether reasonable minds could arrive at the same conclusion reached by the commission. Ashwaubenon v. State Highway Comm. 17 W (2d) 120, 115 NW (2d) 498.

Although 227.20 (1) (b) and (d) require Wisconsin courts to employ the so-called analytical approach when reviewing agency decisions, nevertheless, in fields in which an agency has particular competence or expertise, the courts should not substitute their judgment for the agency's application of a particular statute to the found facts if a rational basis exists in law for the agency's interpretation and it does not conflict with the statute's legislative history, prior decisions of the supreme court, or constitutional prohibitions. Pabst v. Dept. of Taxation, 19 W (2d) 313, 120 NW (2d) 77.

On judicial review of a decision of the board of tax appeals in an income-tax case—wherein all of the facts before the board were stipulated—if but one inference can reasonably be drawn from such undisputed facts, a question of law is presented and the finding of the board to the contrary is not binding on the reviewing court; but if more than one inference can reasonably be drawn, then the finding of the board is conclusive. Pabst v. Dept. of Taxation, 19 W (2d) 313, 120 NW (2d) 77.

227.20 (1) (d) does not apply to the review of workmen's compensation or unemployment compensation cases. Seymour v. Industrial Comm. 25 W (2d) 482, 131 NW (2d) 323.

See note to sec. 8, art. VII, on extraordinary writs to non-judicial agencies and officers, citing State ex rel. Thompson v. Nash, 27 W (2d) 183, 194, 133 NW (2d) 769, 775.

In any review of an agency decision the credibility of the witnesses and the weight to be attached to the reasonableness of the evidence as a whole remains with the agency. Hilboldt v. Wisconsin R. E. Brokers' Board, 28 W (2d) 474, 137 NW (2d) 482.

The applicant's challenge to the adverse determination of the public service commission that its findings of fact were unsupported by substantial evidence in view of the entire record, and that they were arbitrary and capricious, was adequate to raise the question of the sufficiency of the findings both on review in the circuit court and in the supreme court. Hixon v. Public Service Comm. 32 W (2d) 608, 146 NW (2d) 577.

The term "substantial evidence" as used in 227.20 (1) connotes such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Kenosha Teachers Union v. Wisconsin E. R. Comm. 39 W (2d) 196, 158 NW (2d) 914.

227.20 (1) (d), which provides that the decision of an agency may be reversed if unsupported by substantial evidence in view of the entire record as submitted, does not permit the supreme court to pass on credibility or to reverse an administrative decision because it is against the great weight and clear preponderance of the evidence, if there is substantial evidence to sustain it. Robertson Transport. Co. v. Public Service Comm. 39 W (2d) 653, 159 NW (2d) 636.

The scope of review of the supreme court with respect to decisions of administrative agencies is identical to that given to the circuit court by 227.20, Stats. 1967. (Scharping v. Johnson, 32 W (2d) 383, applied.) Milwaukee v. Wisconsin E. R. Commission, 43 W (2d) 596, 168 NW (2d) 809.

227.21 History: 1943 c. 375; Stats. 1943 s. 227.21.

On appellate jurisdiction of the supreme court see notes to sec. 3, art. VII, and notes to 251.08.

When a matter involving a decision of an administrative agency is brought before the supreme court on appeal from an order of the circuit court made in a proceeding to review under ch. 227, the supreme court deals with the order of the circuit court, and the question presented is whether the circuit court erred in its determination, and the supreme court does not reverse or modify the order or decision of the commission. Clintonville Transfer Line v. Public Service Comm. 248 W 59, 21 NW (2d) 5.

The supreme court is required to assume, unless there is affirmative proof to the contrary, that in a workmen's compensation case the industrial commission acted regularly as to all matters and pursuant to the rules of law and proper procedures in its determination.

Brouwer Realty Co. v. Industrial Comm. 266 W 73, 62 NW (2d) 577.

There can be no appeal to the supreme court from any determination of the circuit court in a proceeding for review under ch. 227 except from a final judgment or final order. Ashwaubenon v. Public Service Comm. 15 W (2d) 445, 113 NW (2d) 412.

227.22 History: 1943 c. 375; Stats. 1943 s. 227.22; 1949 c. 77; 1953 c. 277; 1955 c. 221 s. 15; 1967 c. 109.

Committee Note, 1955: (1) is substantially a restatement of the former 227.22. (2) replaces the complete exclusion, presently contained in the definition of "agency". (Bill 5-S)

227.24 History: 1943 c. 375; Stats. 1943 s. 227.24; 1955 c. 221 s. 17.

227.25 History: 1941 c. 194; Stats. 1941 s. 261.13; 1943 c. 375; Stats. 1943 s. 227.25; 1945 c. 511; 1969 c. 276 s. 584 (1) (b).

227.26 History: 1931 c. 280; Stats. 1931 s. 285.06; 1943 c. 375; Stats. 1943 s. 227.26.

285.06, Stats. 1935, authorizes the attorney general or any department, board, commission or officer sought to be restrained in federal district court, to bring, in the circuit court for Dane county, a suit to enforce any state statute assailed, at any time before the hearing on the application for an interlocutory injunction in the suit in the federal court. Dept. of Agriculture and Markets v. Laux, 223 W 287, 270 NW 548.

285.06, Stats. 1939, does not in any real sense confer jurisdiction of the subject matter of the action that has not already been conferred by the constitution, but prescribes the venue of the action and, in the situations specified, authorizes suit by the proper department, board, commission or officer. Where a foreign insurance company commenced an action in the federal court seeking to restrain the commissioner from enforcing, in accordance with his understanding of them, state statutes regulating the insurance business in Wisconsin, the situation was sufficiently within this section to authorize the commissioner to bring an action thereunder to enforce the state statutes, as against the contention that, since there was no formal order of denial of license by the commissioner at the time the action in the federal court was commenced, there was no attempt by the company to restrain enforcement of any "order" and the contingency on which the commissioner's authority to bring an action never happened. Duel v. State Farm Mut. Auto. Ins. Co. 240 W 161, 1 NW (2d) 887, 2 NW (2d) 871.

CHAPTER 228.

Recording and Copying of Public Records in Populous Counties.

228.01 History: 1959 c. 399; Stats. 1959 s. 228.01.

228.02 History: 1959 c. 399; Stats. 1959 s. 228.02.

228.03 History: 1959 c. 399; Stats. 1959 s. 228.03.

228.04 History: 1959 c. 399; Stats. 1959 s. 228.04.

228.05 History: 1959 c. 399; Stats. 1959 s. 228.05.

228.06 History: 1959 c. 399; Stats. 1959 s. 228.06.

CHAPTER 230.

Nature and Qualities of Estates in Real Property, and Restrictions on Alienation.

230.01 History: R. S. 1849 c. 56 s. 1; R. S. 1858 c. 83 s. 1; R. S. 1878 s. 2025; Stats. 1898 s. 2025; 1925 c. 4; Stats. 1925 s. 230.01; 1969 c. 334.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 230 through 1969, including the effects of chapters 334 and 339, Laws 1969. Two sections of ch. 230 (230.47 and 230.48) will become part of the probate code, effective April 1, 1971; and various other provisions of ch. 230 are restated in the revised property law, effective July 1, 1971. For more detailed information concerning the efforts of chapters 334 and 339, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 700.

230.02 History: R. S. 1849 c. 56 s. 2; R. S. 1858 c. 83 s. 2; R. S. 1878 s. 2026; Stats. 1898 s. 2026; 1925 c. 4; Stats. 1925 s. 230.02; 1969 c. 334.

The words "heirs and assigns" are not necessary to the creation of an equitable servitude which will pass with the land, but the use of those words is a strong indication of the purpose of the grantor although not controlling. Clark v. Guy Drews Post, 247 W 48, 18 NW (2d) 322.

If the deed of cemetery lots conveys an estate in land it conveys an estate of inheritance, which is one in fee simple under 230.02, Stats. 1943, and is assignable; and if such deed does not create an estate in land, the right of burial transferred by it to the grantees is a contractual right, which is a property right and assignable. Feest v. Hillcrest Cemetery, Inc. 247 W 160, 19 NW (2d) 246.

230.03 History: R. S. 1849 c. 56 s. 3; R. S. 1858 c. 83 s. 3; R. S. 1878 s. 2027; Stats. 1898 s. 2027; 1925 c. 4; Stats. 1925 s. 230.03; 1969 c. 334.

Where land was devised to trustees to receive rents and profits during the life of the son of the testator and to pay to such son the income during his life and at his death to convey "to his issue then living in fee or in case that he shall die without issue then and in that case the same to descend to my heirs at law then living in fee," there was not created an estate tail in the son. Webber v. Webber, 108 W 626, 84 NW 896.

230.04 History: R. S. 1849 c. 56 s. 3; R. S. 1858 c. 83 s. 3; R. S. 1878 s. 2028; Stats. 1898 s. 2028; 1925 c. 4; Stats. 1925 s. 230.04; 1969 c. 334.

230.05 History: R. S. 1849 c. 56 s. 5; R. S. 1858 c. 83 s. 5; R. S. 1878 s. 2029; Stats. 1898 s. 2029; 1925 c. 4; Stats. 1925 s. 230.05; 1969 c. 334.