

**Legislative Council Note, 1967:** Sub. (1) based on s. 40.08 (1). Reference to s. 117.06 [present s. 40.07] deleted because that section applies generally and need not be mentioned here. Sub. (2) restates s. 40.08 (3) (a). Sub. (3) revises s. 40.08 (3) (b).

Present s. 40.08 (2) is deleted because it is unnecessary. [Bill 353-S]

Failure to keep a school for 2 successive years because there are no children in a district is not neglect to provide schooling for children. 20 Atty. Gen. 187.

The requirement in 40.08 (1), Stats. 1953, that a nonoperating school district be attached to an operating district does not apply to districts which do not operate a school on account of a contract under 37.10 or 41.42. 44 Atty. Gen. 59.

**117.10 History:** 1967 c. 92; Stats. 1967 s. 117.10.

**Legislative Council Note, 1967:** Sub. (1) based on s. 40.10 (1). Sub. (2) based on s. 40.10 (2) and (3). Sub. (3) based on s. 40.10 (4) and (6).

Present s. 40.10 (5) is deleted because its provisions have become meaningless.

Present s. 40.10 (7) and (8) deleted, because they were made obsolete by the enactment of the requirement that all territory in the state be in a high school district.

Present s. 40.11 deleted because it is obsolete. [Bill 353-S]

A district in which a high school has been established and is maintained remains an ordinary school district. State ex rel. Herman-son v. Callahan, 179 W 549, 191 NW 974.

Statutory requirements concerning establishment of a high school by a common school district cannot be avoided by the adoption of a 12-grade course of study. 23 Atty. Gen. 393.

## CHAPTER 118.

### General School Operations.

**118.01 History:** 1967 c. 92; Stats. 1967 s. 118.01; 1969 c. 276 s. 589 (1) (a).

**Legislative Council Note, 1967:** Restates s. 40.46, except that a time limitation on foreign language instruction in present s. 40.46 (1) is deleted and a portion of present s. 40.46 (3) (b) is transferred to the county teachers college law and the remainder is deleted because it is obsolete. [Bill 353-S]

A pupil presenting the written objection of parents is excused from the course of study in accordance with 40.22 (2), Stats. 1929; such pupil may not be required to pass the examination in such excused study. 19 Atty. Gen. 171.

A school board may provide for supervised play and recreation of school children in conformity with the course in physical education prescribed by the state superintendent under 40.22 (3), Stats. 1941, and subject to requirements of that section as to the number of hours of instruction per week. 32 Atty. Gen. 126.

**118.02 History:** 1967 c. 92; Stats. 1967 s. 118.02.

**Legislative Council Note, 1967:** Rearranges s. 40.45 (2). [Bill 353-S]

**118.03 History:** 1967 c. 92; Stats. 1967 s. 118.03.

**Legislative Council Note, 1967:** Sub. (1) like s. 40.48. Sub. (2) like s. 40.50 (1). Present s. 40.50 (2) to (4) deleted, because the provisions are unworkable since the state superintendent does not publish annually a "list of textbooks." [Bill 353-S]

**118.04 History:** 1967 c. 92; Stats. 1967 s. 118.04.

**Legislative Council Note, 1967:** Restates s. 40.99 (1). [Bill 353-S]

**118.05 History:** 1967 c. 92; Stats. 1967 s. 118.05.

**Legislative Council Note, 1967:** Restates s. 40.98. [Bill 353-S]

**118.06 History:** 1967 c. 92; Stats. 1967 s. 118.06.

**Legislative Council Note, 1967:** Like s. 40.47 (1). [Bill 353-S]

For failure to display a flag on the schoolhouse, as required by sec. 436a, Stats. 1915, the school district officers may be removed from office, or prosecuted for neglect of official duty. 5 Atty. Gen. 742.

A requirement that the pledge of allegiance be recited by all pupils once a week in all public and private schools would be in violation of the First and Fourteenth Amendments to the U.S. Constitution. 50 Atty. Gen. 172.

The requirement that a noncompulsory pledge of allegiance be offered is constitutional. 52 Atty. Gen. 173.

**118.07 History:** 1967 c. 92; Stats. 1967 s. 118.07.

**Legislative Council Note, 1967:** Restates s. 40.47 (2) and (3). [Bill 353-S]

**118.08 History:** 1967 c. 92; Stats. 1967 s. 118.08.

**Legislative Council Note, 1967:** Restates s. 40.60, and deletes present s. 40.60 (4). According to the highway commission, that subsection is now obsolete. [Bill 353-S]

**118.09 History:** 1967 c. 92, 313; Stats. 1967 s. 118.09.

**Legislative Council Note, 1967:** Like s. 40.61. [Bill 353-S]

**118.10 History:** 1967 c. 92; Stats. 1967 s. 118.10.

**Legislative Council Note, 1967:** Restates s. 40.63. [Bill 353-S]

**118.11 History:** 1967 c. 92; Stats. 1967 s. 118.11.

**Legislative Council Note, 1967:** Like s. 40.62. [Bill 353-S]

**118.12 History:** 1967 c. 92; Stats. 1967 s. 118.12; 1969 c. 315.

**Legislative Council Note, 1967:** Sub. (1) restates s. 40.93. Sub. (2) like s. 40.95. Sub. (3) restates s. 40.94. [Bill 353-S]

**Editor's Note:** In connection with the amendatory legislation of 1969 see opinions of the attorneys general published in 12 Atty. Gen. 72 and 18 Atty. Gen. 372.

The principal of a county training school for teachers would be aiding a book concern by running paid advertising in a magazine published by him. 7 Atty. Gen. 435.

Acceptance of a commission by a music teacher or band director in the employ of a public school on musical instruments sold to students under his direction violates 40.14, Stats. 1947. 27 Atty. Gen. 267.

**118.13 History:** 1967 c. 92; Stats. 1967 s. 118.13.

**Legislative Council Note, 1967:** Restates s. 40.51. [Bill 353-S]

**118.14 History:** 1967 c. 92; Stats. 1967 s. 118.14.

**Legislative Council Note, 1967:** Like s. 40.44 (1). [Bill 353-S]

A rule of a local school board, requiring a child to have attained the age of 6 years on or before some date prior to December 1 of the year of enrollment, is not in conflict with the legislative regulation under 40.02 (1), Stats. 1949. 38 Atty. Gen. 424.

**118.145 History:** 1967 c. 92; Stats. 1967 s. 118.145; 1969 c. 276 s. 589 (1) (a).

**Legislative Council Note, 1967:** Based on s. 40.90 and clearly makes this section applicable to all school districts operating high school grades. [Bill 353-S]

**118.15 History:** 1967 c. 92, 313; Stats. 1967 s. 118.15; 1969 c. 276 s. 589 (1) (a); 1969 c. 344, 501.

**Legislative Council Note, 1967:** Restates and rearranges s. 40.77. Present s. 40.77 (1) (b) (last sentence) is deleted because the attorney general has issued an opinion that changes made by the 1965 legislature voided that sentence. [Bill 353-S]

The parent shall first be proceeded against if a child within his care and custody does not comply with the compulsory school attendance law. In re Alley, 174 W 85, 182 NW 360.

That defendant's children were to board the school district automobile at an inclosed district shelter, at the site of the discontinued school which they formerly attended, one-half mile from their home, did not show that the district failed to furnish "transportation" for the children so as to excuse the defendant's failure to send the children to school. State v. Walters, 212 W 132, 248 NW 777.

A mother may instruct her child; and if such instruction is the equivalent to the manual prepared by the state superintendent, it obviates the necessity of the child's attendance at school. 1908 Atty. Gen. 343.

The fact that the mother refuses to permit a child to attend school is no defense in a prosecution against the father for refusing to send the child to school. 5 Atty. Gen. 478.

Attendance at school is not compulsory when the highway is impassable. 6 Atty. Gen. 421.

A civil employe of the U.S. government is subject to the compulsory education law to the extent that compliance therewith will not interfere with performance of his duties. 10 Atty. Gen. 990.

A girl under 18, who refuses to attend school as required by 40.73 (3), Stats. 1921, is delinquent within the meaning of 48.01 (1). 10 Atty. Gen. 1069.

A boy between the ages of 17 and 18 years who is subject to the vocational school law but refuses to attend and whose parents are unable to compel him to attend is delinquent and may be proceeded against as a delinquent child. 16 Atty. Gen. 573.

A plan under which boys indentured as apprentices attend high school half days, taking full load of a regular course, and work the other half days, meets the compulsory school attendance provision. 40 Atty. Gen. 248.

Under 40.77 (1), Stats. 1955, a pupil is required to attend school until the end of the term, quarter, or semester in which such pupil reaches 16 years of age. 46 Atty. Gen. 28.

Where parents and child reside in county A and the child attends school in county B, venue for prosecution for truancy lies in county A as does prosecution for delinquency, which may occur in county B. 47 Atty. Gen. 99.

**118.16 History:** 1967 c. 92; Stats. 1967 s. 118.16; 1969 c. 68.

**Legislative Council Note, 1967:** Based on s. 40.78 and provides that school district administrators are truant officers unless the school board designates another professional employe to be the truant officer. [Bill 353-S]

**118.17 History:** 1967 c. 92; Stats. 1967 s. 118.17.

**Legislative Council Note, 1967:** Restates s. 40.79. [Bill 353-S]

**118.18 History:** 1967 c. 92; Stats. 1967 s. 118.18.

**Legislative Council Note, 1967:** Revises s. 40.44 (2) and (3). [Bill 353-S]

**118.19 History:** 1967 c. 92; Stats. 1967 s. 118.19; 1969 c. 276 ss. 438, 589 (1) (a).

**Legislative Council Note, 1967:** Revises s. 40.43 (1), (3), (3a), (4), (5) and (6). [Bill 353-S]

The statutes place the issuance and annulment of teachers' certificates under the control of the state superintendent; and such issuance cannot be made the subject of judicial review, and such annulment cannot be adjudged, in an action. Clune v. School Dist. 166 W 452, 166 NW 11.

Breach of a contract by a teacher is not immoral conduct within the meaning of the statutes. The authority of the state superintendent is limited to revocation of state licenses and certificates. 9 Atty. Gen. 331.

The "grandfather" provision applies to any teacher who taught in the public schools during or prior to the 1937-38 school year and without any limitation that the teaching subsequent to that school year be continuous. 54 Atty. Gen. 218.

**118.195 History:** 1969 c. 66, 184; Stats. 1969 s. 118.195.

**118.20 History:** 1967 c. 92; Stats. 1967 s. 118.20; 1969 c. 264.

**Legislative Council Note, 1967:** Restates s. 40.435. [Bill 353-S]

**118.21 History:** 1967 c. 92; Stats. 1967 s. 118.21.

**Legislative Council Note, 1967:** Sub. (1) restates s. 40.40 (1). Sub. (2) is like s. 40.43 (2). Sub. (3) restates s. 40.40 (2). Sub. (4) revises s. 40.40 (3). [Bill 353-S]

In the absence of proof to the contrary it will be presumed that a contract with a teacher which is signed by all the district officers was authorized at a meeting of the board, although they were not together when they signed it. Such contract cannot be held void because of fraud for the reason that the teacher employed was the daughter of one member of the school board and the sister of another, she being of full age; nor because other competent persons might have been employed at less salary. *Dolan v. Joint School Dist.* 80 W 155, 49 NW 960.

A meeting of a school board attended only by 2 of the members, who had called the meeting by serving on the third member a notice which failed to state the place where it was to be held, was not a legal meeting. A contract with a teacher attempted to be authorized at such meeting is void; and if the treasurer pays the salary of such teacher, without the proper order of the clerk therefor, he and his surety are liable on his bond. *School Dist. v. Baier*, 98 W 22, 73 NW 448.

A teacher is not a school district officer. Mandamus will not lie to reinstate him or pay him his salary. *Board of Education v. State ex rel. Reed*, 100 W 455, 76 NW 351.

A school district board could contract with a teacher for a term to begin during the next school year subject to directions which might be given by the voters. *Hemingway v. Joint School Dist.* 118 W 294, 95 NW 116.

It is the school board, and not the school district, which must contract with a teacher in order that there may be a valid agreement. Statutes prescribing the respective duties and powers of a school district must be strictly construed, and persons dealing with such bodies are bound to know thereof at their peril. *Leahy v. Joint School Dist.* 194 W 530, 217 NW 293.

A new consolidated school district decided not to operate the S. school and canceled the plaintiff's contract to teach at such school; the county superintendent failed to request of the state superintendent a renewal of the plaintiff's teaching permit to teach in the S. school solely because of the action of the new district; there was a breach of contract, entitling the plaintiff to recover damages, if any, from the new district, notwithstanding provisions in 40.19 (1), Stats. 1949, that no teaching contract with any person not legally authorized to teach a named school shall be valid, and that all teaching contracts shall terminate when the authority to teach terminates. *Nyre v. Joint School Dist.* 258 W 248, 45 NW (2d) 614.

A teacher cannot be required to attend a convention under threat of loss of pay, but can be required to work for the school if he does not attend with loss of pay if he refuses. *Muskego-Norway C.S.J.S.D. No. 9 v. W.E.R.B.* 35 W (2d) 540, 151 NW (2d) 617.

A board may not refuse to rehire a teacher because of labor organization activities and

cannot require a teacher to join any particular teachers' association. *Muskego-Norway C.S.J.S.D. No. 9 v. W.E.R.B.* 35 W (2d) 540, 151 NW (2d) 617.

A referendum election abolishing a particular teaching position does not invalidate a contract previously entered into between a school board and a teacher under 40.19, Stats. 1935. 25 Atty. Gen. 411.

Under 40.19, Stats. 1941, power of a school board to contract with a teacher is limited to the present and next ensuing school years, and the board may not make a contract for a term of years so as to deprive future boards of discretion in hiring teachers. The contract must be in writing and might be so drawn as to be automatically renewable from year to year until rescinded, although this is not advisable. 30 Atty. Gen. 279.

**118.22 History:** 1967 c. 92; Stats. 1967 s. 118.22; 1969 c. 55; 1969 c. 276 s. 604 (2).

**Legislative Council Note, 1967:** Restates s. 40.41. In sub. (2) the phrase "school board by which the teacher is employed or a school district employe at the direction of the school board" is used in place of "the managing body or other proper officer of the school or system." In sub. (3) reference to "administrators" is deleted because the definition of teachers in sub. (1) covers administrators. Also, specific reference is made in sub. (3) to "preliminary notice" to make it clear that the teacher receives a preliminary notice in the case of the school board's refusal to renew his contract. [Bill 353-S]

A contract with a qualified school teacher in due form signed by all the members of the school board but never authorized by any vote or at any meeting of the district board was void. *Manthey v. School Dist.* 106 W 340, 82 NW 132.

A contract of hire of a teacher to be valid must be authorized or approved by a meeting and a vote of the school board. *Harris v. Joint School Dist.* 202 W 519, 233 NW 97.

A teacher in Milwaukee county who did not receive a notice of renewal of his contract and did not accept the old contract by April 15 was entitled to reinstatement, since no written charges had been filed or hearing held. *State ex rel. Michael v. McGill*, 265 W 336, 61 NW (2d) 494.

**118.23 History:** 1967 c. 92, 313; Stats. 1967 s. 118.23; 1969 c. 276 s. 616.

**Legislative Council Note, 1967:** Based on s. 40.42. Sub. (1) restates s. 40.42 (1), except last sentence, (4), (6) and (7). Sub. (2) restates s. 40.42 (2) and last sentence of s. 40.42 (1). Sub. (3) restates s. 40.42 (3). Sub. (4) restates s. 40.42 (5). [Bill 353-S]

The fact that a teacher has tenure does not prevent a school board from imposing restrictions on granting a leave of absence. *Liddicoat v. Kenosha City Board of Education*, 17 W (2d) 400, 117 NW (2d) 369.

**118.235 History:** 1967 c. 293; Stats. 1967 s. 118.235.

**118.24 History:** 1967 c. 92; Stats. 1967 s. 118.24; 1969 c. 106.

**Legislative Council Note, 1967:** This section combines ss. 40.819 and 40.92 and makes the sections applicable to all school districts.

Sub. (1) (1st sentence) based on s. 40.92 which is substantially shortened and consolidated. The separate subsections of present s. 40.92 grant the authority to hire a school district superintendent to all but very small common school districts operating only elementary grades. Sub. (1) makes the grant of authority generally applicable.

Sub. (1) (2nd sentence) restates and combines s. 40.819 (1) and the last portion of s. 40.92 (1), and makes clear that the statement in present s. 40.92 (1) providing that the administrative authority of the school district superintendent is exercised under the direction of the school board is applicable in all instances.

Sub. (2) like s. 40.819 (3) (1st and first part of last sentences).

Sub. (3) restates s. 40.819 (2).

Sub. (4) identical to s. 40.819 (3) (part of last sentence).

Sub. (5) restates s. 40.819 (5).

Present s. 40.819 (3) (last part of last sentence) deleted because the requirement is stated permissively and therefore is meaningless.

Present s. 40.819 (4) is deleted and the responsibility for filing the annual school district report is given to the school district clerk in a city school district under subch. II of ch. 120. As a practical matter, it is highly likely that the school district superintendent will actually prepare the report; however, the filing of the report is made a responsibility of the appropriate school board member. [Bill 353-S]

**118.25 History:** 1967 c. 92; Stats. 1967 s. 118.25; 1969 c. 276 s. 589 (1) (a); 1969 c. 366 s. 117 (2) (a), (g).

**Legislative Council Note, 1967:** Revises s. 40.30 (10m). The word "licensed" before physician is deleted, because s. 990.01 (28) defines "physician" as a person holding a license from the state board of medical examiners. Section 121.52 (3) of this act contains the health examination requirements for drivers of privately owned school buses. [Bill 353-S]

For discussion of 40.30 (10m), Stats. 1957, providing for examination of school employes and school children by an optometrist and physician, see 47 Atty. Gen. 62.

**118.26 History:** 1967 c. 92; Stats. 1967 s. 118.26.

**Legislative Council Note, 1967:** Revises s. 40.31. [Bill 353-S]

Mandamus will not lie to compel a school district clerk to direct payment of a judgment against a school district which is without money, nor to compel certification of the judgment to the town clerk, for levy to pay it. *Slama v. Young*, 199 W 82, 225 NW 830.

**118.27 History:** 1967 c. 92; Stats. 1967 s. 118.27.

**Legislative Council Note, 1967:** Revises s. 40.301. The last sentence of present s. 40.301 is deleted because it is unnecessarily repetitious. [Bill 353-S]

## CHAPTER 119.

### Milwaukee School System.

**Editor's Note:** This table is designed to assist in tracing the various provisions of present chapter 119 into the new provisions of chapter 119 as repealed and recreated by ch. 45, Laws 1969. The table does not show, except for deletions, what specifically happened to a particular section. To find that information turn to the new section and the NOTE thereto.

#### CONVERSION TABLE

1967 Stats.	1969 Stats.
119.01	119.01
119.015 (1) (1st sentence)	
(1st part)	119.16 (1)
(1st sentence)	
(last part)	119.08 (1)
(2)	119.12 (3)
119.02 (1st sentence)	119.06 (6),
(2nd sentence)	119.08 (2)
	119.08 (2); and
	part deleted,
	see note to
	119.08.
(3rd sentence)	119.08 (2)
(last sentence)	Deleted; see note
	to 119.08.
119.03 (1)	119.06 (2)
(2) (1st, 2nd, 3rd	
phrases)	119.06 (3)
(last phrase)	
(1st part)	119.06 (6)
(last phrase)	
(last part)	119.08 (3)
(3)	119.06 (4)
(4) (1st sentence)	119.08 (4)
(2nd sentence)	
(1st part)	119.08 (4)
(2nd sentence)	
(last part)	119.06 (1)
119.04 (1) (1st sentence)	
(1st part)	119.06 (5)
(1st sentence)	
(last part)	119.10 (2)
(2nd,	
last sentences)	119.10 (2)
(2)	119.10 (5) (1st
	sentence)
(3)	119.10 (5) (2nd
	sentence)
(4)	119.12 (5)
(5)	119.10 (6)
119.05 (1)	119.12 (1)
(2)	119.12 (4)
(3)	119.10 (4)
(4)	119.10 (3)
119.06 (1)	119.10 (1)
(2)	119.12 (2)
119.07 (1)	119.16 (2)
(2) (1st part)	119.16 (3) (a)
(last part)	119.52
(3)	119.52
(4)	119.16 (3) (b)
(5) (1st part)	Deleted; see note
	to 119.16 (2).
(last part)	119.18 (3)
(6) (1st sentence)	Deleted; see note
	to 119.18
	(10) (b).