Where the town had knowledge that the defendants planned to purchase and use their property as a salvage yard and zoned the entire town as residential with the sole purpose of preventing such use, such exercise of the zoning power was unreasonable, arbitrary, and beyond the purpose of the zoning law, especially in view of 66.052. Hobart v. Collier, 3 W (2d) 182, 87 NW (2d) 868.

Where claimed use of certain premises for a trailer camp prior to enactment of a town zoning ordinance placing premises in a residential zone was unlawful and in violation of an existing and valid town trailer-camp ordinance, the owner of the premises acquired no vested rights in and to the use thereof as a trailer camp on the theory that it was a valid nonconforming use. David A. Ulrich, Inc. v. Saukville, 7 W (2d) 173, 96 NW (2d) 612.

A town zoning ordinance passed in noncompliance with the empowering statute is invalid. State ex rel. Ryan v. Pietrzykowski, 42 W (2d) 457, 167 NW (2d) 242.

The notice required for a public hearing specified in 60.74 (2), Stats. 1949, is the same for the original ordinance as for an amendment. If, as a consequence of a hearing, substantial changes in the proposed ordinance or amendment are proposed, another public hearing on those proposed changes is necessary. 39 Atty. Gen. 292.

Procedures for enacting town zoning ordinances and amendments are discussed in 47 Atty. Gen. 220.

Procedures in obtaining exceptions, variances and amendments. Hagman, 33 WBB, No. 2.

60.75 History: 1947 c. 224; Stats. 1947 s. 60.75.

60.756 History: 1949 c. 495; Stats. 1949 s. 60.756; 1957 c. 610.

60.80 History: 1899 c. 124 s. 1; Supl. 1906 s. 959-81; 1907 c. 458; 1911 c. 136; 1917 c. 216; 1919 c. 523; Stats. 1919 s. 959-81, 959-114; 1921 c. 396 s. 6, 10; Stats. 1921 s. 66.04 (1), (5); 1923 c. 102; 1937 c. 291; Stats. 1937 s. 66.04 (1), (5), 66.42; 1939 c. 107; Stats. 1939 s. 66.04 (1), (3a), (5); 1953 c. 245 s. 8; Stats. 1953 s. 60.80.

60.81 History: 1955 c. 500; Stats. 1955 s. 60.81; 1957 c. 525; 1961 c. 33; 1965 c. 666 s. 22 (2); 1969 c. 276 s. 590 (1).

Editor's Note: The legislative proposal which led to the enactment of ch. 500, Laws 1955, creating 60.81, was discussed by the attorney general in an opinion published in 44 Atty. Gen. 151. A proposed amendment was considered by the attorney general in an opinion published in 56 Atty. Gen. 154.

In an action to enjoin an allegedly defective referendum on the incorporation of a town as a city, the adjoining city of Milwaukee, petitioning to intervene and be interpleaded, was not a necessary party. Even if the city of Milwaukee would be a proper party to the instant action, its interpleader would lie in the sound discretion of the trial court. Schatzman v. Greenfield, 273 W 277, 77 NW (2d) 511.

CHAPTER 61.

Villages.

61.187 History: R. S. 1849 c. 52 s. 73 to 76; R. S. 1858 c. 70 s. 73 to 76; 1872 c. 188 s. 78, 79; R. S. 1878 s. 924, 925; 1880 c. 55; Ann. Stats. 1889 s. 925; 1895 c. 100; 1897 c. 287 s. 90, 91; Stats. 1898 s. 924, 925; 1915 c. 385 s. 28; 1917 c. 671 s. 20; 1919 c. 691 s. 65, 66; Stats. 1919 s. 61.56, 61.57; 1921 c. 393; 1947 c. 388; Stats. 1947 s. 61.187; 1957 c. 525; 1965 c. 666 s. 22 (8); 1969 c. 276 s. 590 (1).

61.189 History: 1897 c. 287 s. 98; Stats. 1898 s. 925g; 1915 c. 385 s. 29; 1919 c. 249; 1919 c. 691 s. 67; Stats. 1919 s. 61.58; 1921 c. 242 s. 13a; 1937 c. 300; 1943 c. 66; 1947 c. 113, 388; Stats. 1947 s. 61.189; 1957 c. 525; 1959 c. 261; 1961 c. 33; 1969 c. 276 s. 590 (1).

On the creation of a city out of a preexisting village, the territory of the village formerly joined with part of an adjoining town as a joint school district becomes severed from the district, and passes under the jurisdiction of the city school board. State ex rel. Joint School Dist. v. Sweeney, 103 W 404, 79 NW 420.

The two methods by which a village may become a city are (a) to organize as a city under the city-manager plan pursuant to 64.01-64.15, Stats. 1965, or (b) to proceed under 61.189. The statutory requirements set forth in 61.189 (2), as to notice and conduct of village elections of mayor and aldermen and the requirement for certifying the results thereof to the secretary of state and the filing of a description of the legal boundaries of the proposed city, must be fulfilled before the latter has any power to issue a certificate of incorporation, and compliance therewith is essential before a municipality may be governed by ch. 62. Bleck v. Monona Village, 34 W (2d) 191, 148 NW (2d) 708. See also: 13 Atty. Gen. 600 and 26 Atty. Gen. 533.

61.19 History: R. S. 1849 c. 52 s. 18, 19; R. S. 1858 c. 70 s. 18, 19; 1872 c. 188 s. 23, 28, 29, 36, 76; 1874 c. 319; R. S. 1878 s. 875; 1885 c. 374 s. 1; 1889 c. 16; Ann. Stats. 1889 s. 875; 1897 c. 287 s. 28; Stats. 1898 s. 875; 1907 c. 398; 1911 c. 11; Stats. 1911 s. 875, 875m; 1915 c. 210; 1917 c. 78; 1919 c. 362 s. 25; 1919 c. 691 s. 18; Stats. 1919 s. 61.19; 1931 c. 296 s. 2; 1933 c. 187 s. 4; 1939 c. 513 s. 16; 1943 c. 173, 575; 1945 c. 86; 1963 c. 6; 1965 c. 20, 617; 1969 c. 433.

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 deputy clerk acts as clerk in case of a vacancy. 4 Atty. Gen. 957.

61.191 History: 1961 c. 677; Stats. 1961 s. 61.191.

61.195 History: R. S. 1878 s. 920; 1897 c. 287 s. 87; Stats. 1898 s. 920; 1915 c. 385 s. 27; 1919 c. 691 s. 60; Stats. 1919 s. 61.52; 1937 c. 416; 1939 c. 152; Stats. 1939 s. 61.195; 1965 c. 20, 617.

61.197 History: 1939 c. 152; 1939 c. 515 s. 6; Stats. 1939 s. 61.197; 1965 c. 273; 1967 c. 276 s. 39; 1969 c. 317.

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.

See note to 61.34, citing Thompson v. Whitefish Bay, 257 W 151, 42 NW (2d) 462.

61.20 History: 1919 c. 691 s. 20; Stats. 1919 s. 61.20; 1921 c. 159; 1943 c. 204; 1957 c. 97.

A failure to divide the 6 trustees into classes, as provided by sec. 875m, Stats. 1911, was a mere irregularity, and all trustees were elected and entitled to hold for at least one year. State ex rel. McManman v. Thomas, 150 W 190, 136 NW 623.

A member of the school board is eligible for membership on a village board. 12 Atty. Gen. 442.

The offices of district attorney and member of a village board are compatible. 26 Atty. Gen. 11.

61.20, Stats. 1937, was construed in 27 Atty. Gen. 311.

61.21 History: R. S. 1849 c. 52 s. 20; R. S. 1858 c. 70 s. 20; 1872 c. 188 s. 33, 35; R. S. 1878 s. 876; 1897 c. 287 s. 29; Stats. 1898 s. 876; 1919 c. 362 s. 15; 1919 c. 691 s. 21; Stats. 1919 s. 61.21; 1945 c. 23; 1965 c. 617.

61.22 History: R. S. 1849 c. 52 s. 17; 1872 c. 188 s. 32 to 34; R. S. 1878 s. 877; 1897 c. 287 s. 20; Stats. 1898 s. 877; 1919 c. 691 s. 21; Stats. 1919 s. 61.22; 1959 c. 603.

61.23 History: R. S. 1849 c. 52 s. 18, 19, 22; R. S. 1858 c. 70 s. 18, 19, 22; 1872 c. 188 s. 30, 31; R. S. 1878 s. 878; 1891 c. 269; 1897 c. 287 s. 31; Stats. 1898 s. 878; 1909 c. 260; 1911 c. 11; 1919 c. 362 s. 8; 1919 c. 691 s. 21; Stats. 1919 s. 61.23; 1943 c. 66, 173, 575; 1947 c. 534; 1965 c. 20.

61.24 History: 1872 c. 188 s. 37; R. S. 1878 s. 879; 1897 c. 287 s. 32; Stats. 1898 s. 879; 1919 c. 691 s. 22; Stats. 1919 s. 61.24; 1951 c. 560; 1955 c. 330.

The office of village president and justice of the peace are incompatible. 4 Atty. Gen. 322.

The offices of county highway commissioner and village president are compatible. 14 Atty. Gen. 135.

The duties of village president and chief of a village fire department are incompatible. 28 Atty. Gen. 21.

61.25 History: R. S. 1849 c. 52 s. 64 to 66; R. S. 1858 c. 70 s. 64 to 66; 1872 c. 188 s. 38, 48 to 50; 1875 c. 268; R. S. 1878 s. 880; 1889 c. 518; Ann. Stats. 1889 s. 880, 2319b; 1897 c. 287 s. 33; Stats. 1898 s. 880; 1919 c. 691 s. 23; Stats. 1919 s. 61.25; 1925 c. 163; 1929 c. 525 s. 2; 1931 c. 289 s. 1; 1959 c. 565; 1961 c. 33; 1965 c. 273; 1967 c. 276 s. 39.

The offices of village clerk and justice of the peace are compatible. 22 Atty. Gen. 289.

A village treasurer may pay out moneys only on the written order of the village president, countersigned by the clerk, and under 61.25 (6), Stats. 1933, the clerk draws and countersigns all orders on the treasury ordered by the village board and none other. 24 Atty. Gen. 422.

The duties of village clerk and assistant fire chief are compatible. 28 Atty. Gen. 21.

The offices of village clerk and school district clerk are compatible. (5 Atty. Gen. 852 and 23 Atty. Gen. 605 followed, and 22 Atty. Gen. 43 overruled.) 27 Atty. Gen. 549; 29 Atty. Gen. 384.

61.26 History: R. S. 1849 c. 52 s. 58 to 62; R. S. 1858 c. 70 s. 58 to 60, 62; 1872 c. 188 s. 39, 58; R. S. 1878 s. 881; 1887 c. 391 s. 3; Ann. Stats. 1889 s. 870c, 881; 1897 c. 287 s. 34; Stats. 1898 s. 881; 1919 c. 691 s. 24; Stats. 1919 s. 61.26; 1929 c. 164; 1933 c. 435 s. 2; 1959 c. 92.

On the town treasurer's bond see notes to 60.48.

The failure of a village treasurer to turn over moneys to his successor in office constitutes a breach of his bond. Prentice v. Nelson, 134 W 456, 114 NW 830.

61.261 History: 1937 c. 22; Stats. 1937 s. 61.261.

61.27 History: 1897 c. 287 s. 35; Stats. 1898 c. 882 [881a]; 1913 c. 247; 1915 c. 400; 1919 c. 362 s. 36; 1919 c. 691 s. 25; Stats. 1919 s. 61.27; 1921 c. 83; 1931 c. 219; 1937 c. 432; 1943 c. 66; 1969 c. 433.

61.28 History: R. S. 1849 c. 52 s. 67; R. S. 1858 c. 70 s. 67; 1872 c. 188 s. 40; R. S. 1878 s. 883; 1897 c. 287 s. 37; Stats. 1898 s. 884 [883]; 1919 c. 691 s. 26; Stats. 1919 s. 61.28; 1967 c. 276 s. 39; 1969 c. 87, 255.

A village marshal has authority to call upon persons for assistance in the arrest of one disturbing the peace, although such person is already technically under arrest by a deputy sheriff. West Salem v. Industrial Comm. 162 W 57, 155 NW 929.

See note to 102.03, citing Schofield v. Industrial Comm. 204 W 84, 235 NW 396.

The village marshal may serve a criminal warrant and is entitled therefor to the fees of a constable. 7 Atty. Gen. 37.

61.29 History: 1874 c. 319 s. 2; R. S. 1878 s. 884; 1897 c. 287 s. 38; Stats. 1898 s. 885 [884]; 1919 c. 691 s. 27; Stats. 1919 s. 61.29.

61.31 History: 1872 c. 188 s. 42; R. S. 1878 s. 887; 1897 c. 287 s. 41; Stats. 1898 s. 888 [887]; 1899 c. 351 s. 17; Supl. 1906 s. 888 [887]; 1919 c. 691 s. 30; Stats. 1919 s. 61.31; 1941 c. 95.

61.32 History: 1872 c. 188 s. 27, 45 to 47, 82; R. S. 1878 s. 889; 1897 c. 287 s. 43; Stats. 1898 s. 890 [889]; 1905 c. 44 s. 1; Supl. 1906 s. 890 [889]; 1913 c. 519; 1915 c. 385 s. 26; 1919 c. 691 s. 31; Stats. 1919 s. 61.32; 1929 c. 43; 1935 c. 432; 1937 c. 432; 1943 c. 415; 1955 c. 398; 1957 c. 221; 1959 c. 435, 565; 1959 c. 641 s. 13; 1965 c. 252.

Where a meeting of the village board was not a regular meeting and was not called in pursuance of this section, action taken at such meeting and at the subsequent adjourned meetings was void. Kleimenhagen v. Dixon, 122 W 526, 100 NW 826.

Where a regular meeting of a village board was adjourned "subject to call," and the adjourned meeting was not called in the manner provided for special meetings, the adjourned meeting was void and any action

taken thereat was of no effect. Coon Valley v. Spellum, 190 W 140, 208 NW 916.

61.325 History: 1943 c. 193; Stats. 1943 s. 61.325.

61.34 History: 1933 c. 187 s. 3; Stats. 1933 s. 61.34; 1935 c. 441; 1943 c. 205; 1947 c. 172; 1957 c. 98; 1959 c. 92; 1965 c. 105; 1969 c. 276 s. 589 (2) (a).

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 general laws on enumerated subjects see notes to sec. 32, art. IV; on the rule of taxation see notes to sec. 1, art. VIII; on property taken by municipality see notes to sec. 2, art. XI; on municipal home rule, 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 municipality law see notes to various sections of ch. 66; on actions for violations of city or village regulations see notes to 66.12; on municipal borrowing and municipal bonds see notes to various sections under ch. 67; on general property taxes see notes to various sections of ch. 70; on peddlers, truckers, transient merchants, secondhand dealers and showmen see notes to 440.81 to 440.96; on local health officials see notes to various sections of ch. 141; on intoxicating liquor licenses see notes to 176.05; and on powers of state and local authorities over traffic regulation see notes to various sections of ch. 349.

1. General grant.
2. Acquisition and disposal of property.

1. General Grant.

Equity will not enforce by injunction a village ordinance forbidding an act which is not a nuisance per se. The erection of wooden buildings within certain limits is not a nuisance. Waupun v. Moore, 34 W 450.

Municipal authorities empowered by charter to regulate saloons may make a valid ordinance requiring the closing of saloons at 10 p. m. Platteville v. Bell, 43 W 488.

A village board may grant a franchise to collect wharfage for the use of a pier on navigable waters. Farnham v. Johnson, 62 W 620, 22 NW 751.

The right to reconsider the passage of an ordinance which has not become binding by the action of other parties under it is inherent in all deliberative bodies. Under authority to establish rules to govern its proceedings a village board may prescribe the procedure on the reconsideration of votes. An averment in a pleading that the vote by which an ordinance was passed was duly reconsidered will be construed to mean that it was reconsidered in accordance with the rule. Waukesha H. Co. v. Waukesha, 83 W 475, 53 NW 675.

A village ordinance regulating the closing of saloons but allowing them to remain open by special permission of the president was void as a delegation of legislative power. Little Chute v. Van Camp, 136 W 526, 117 NW 1012.

A village board has the authority to order removal of an obstruction in the street and in case of disobedience to proceed to remove it. Blanke v. Genoa Junction, 140 W 211, 121 NW 132.

The village board has no authority to employ detectives to conduct an investigation to ascertain whether the criminal laws had been violated within the village. Flannagan v. Buxton, 145 W 81, 129 NW 642.

Villages have the powers necessarily implied from the powers expressly conferred. A village may regulate the parking of automobiles on business streets. Wonewoc v. Taubert, 203 W 73, 233 NW 755.

Villages have power to regulate the construction and location of gasoline filling stations. An ordinance prohibiting gasoline filling stations within 500 feet of any residence or any other filling station is not an unreasonable exercise of the power conferred. Where a municipal body enacts regulations pursuant to authority expressly granted, all presumptions are in favor of its validity, and one attacking it must make the fact of its invalidity clearly appear. State ex rel. Newman v. Pagels, 212 W 475, 250 NW 430.

Under 61.34 (1), Stats. 1949, a village may enact ordinances for the promotion of health and sanitation, but each ordinance must be consistent and not in conflict with the law of the state; and the power to compel property owners to connect with sanitary sewers, which is delegated to villages by 144.06, may be exercised only under certain prescribed conditions. Voss v. Lenerz, 256 W 183, 40 NW (2d) 519.

Under ch. 187, Laws 1933, a revision bill which among other things, repealed 61.34 (7), expressly authorizing a village board to appoint a village attorney, but created an omnibus new 61.34 (1) empowering the village board to "have the management and control of the village property, finances, * * * and the public service," and the provision in ch. 187 that it should not deprive a village of any privilege, right, or power possessed on the effective date of the act, the power of the village board to have an attorney was intended to be retained, and the power of the board to appoint an attorney was incorporated in 61.19 relating to the appointment of "officers" by the board; and thereunder, and under 61.197, a village attorney could be considered a public officer to whose appointment or selection the home-rule statute, 66.01, was applicable. Thompson v. Whitefish Bay, 257 W 151, 42 NW (2d) 462.

Generally, with certain exceptions, including zoning ordinances, an ordinance which prohibits the future use of property, but which permits the continuation of existing uses of the same kind, and hence discriminates in favor of those enjoying the existing use and against those who would make similar uses of their property, is void for such discrimination. Katt v. Sturtevant, 269 W 638, 70 NW (2d) 188.

Although a setback ordinance could not be sustained as a valid zoning ordinance, its validity could not be impugned when viewed as a building code restriction enacted by a village pursuant to its police power inherent in the general statutory authority conferred on

villages by 61.34, Stats. 1963. Wind Point v. Halverson, 38 W (2d) 1, 155 NW (2d) 654.

Since the village could not look to enforcement provisions of the zoning statute to enjoin violation of the setback restriction, its right to enforcement of the ordinance was limited to such circumstances as would warrant relief in implementing its police power, thus subjecting it to the rule that unless the act was established as a nuisance per se or a threat to destroy rights, injunction would not lie. Wind Point v. Halverson, 38 W (2d) 1, 155 NW (2d) 654.

A village ordinance prohibiting the sale of obscene matter constituted impermissible censorship under well-settled principles of constitutional law and unlawful delegation of power to the chief of police in that it did not provide for affirmative judicial review or definition of what was prohibited. State ex rel. Gall v. Wittig, 42 W (2d) 595, 167 NW (2d) 577.

Villages may by ordinance prohibit slot machines and pin ball games as potential gambling devices. 26 Atty. Gen. 585.

The legislature has not delegated to towns, cities and villages the power to charge a fee for the use of navigable waters within their boundaries. 45 Atty. Gen. 23.

See note to 101.60, citing 55 Atty. Gen. 231.

See note to 160.02, citing 55 Atty. Gen. 268.

Role of local government in water law. Saltoun, 1959 WLR 117.

2. Acquisition and Disposal of Property.

Village officers have no power to give away real estate of the village, to aid a private manufacturing enterprise, and their unauthorized deed is void. Suring v. Suring State Bank, 189 W 400, 207 NW 944.

An appropriation by a village board of a sum for rent of a private library and building for a civic center was valid. Koester v. Pardeeville, 199 W 54, 225 NW 204.

See note to 62.22 (1), citing Hermann v. Lake Mills, 275 W 537, 82 NW (2d) 167, and Nowell v. Kenosha, 7 W (2d) 516, 96 NW (2d) 845.

See note to 60.01, citing Polanski v. Eagle Point, 30 W (2d) 507, 141 NW (2d) 281.

Village funds created by sale of an electric light plant may not be used for the construction or extensive repair of a district schoolhouse, although the boundaries of the school district and village coincide. 20 Atty. Gen. 151.

61.35 History: 1925 c. 204; Stats. 1925 s. 61.35; 1927 c. 369; 1929 c. 178; 1941 c. 203; 1965 c. 252.

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 planning and zoning authority of counties see notes to 59.97; on zoning authority of towns see notes to 60.74; on city planning and zoning authority see notes to 62.23; on mobile home parks see notes to 66.058.

A party who appeals under 61.35 (4), Stats. 1919, may not attack the validity of the zoning ordinance placing his property within a residential district, nor can he attack the constitutionality of the statute providing for such ordinances. The amount of the damages sustained is the only question to be considered. Pera v. Shorewood, 176 W 261, 186 NW 623.

The owner of a tract of land, which was in an apartment zone when he applied for permits to build a group of apartment buildings thereon, and on which building project he had made large investments which would result in loss to him if the permits were withheld, had acquired vested rights to complete such building project, so that he could not be deprived thereof by a village ordinance, adopted after the filing of the applications for building permits, and rezoning such tract so as to restrict it to single-family dwellings. State ex rel. Schroedel v. Pagels, 257 W 376, 43 NW (2d) 349.

Restrictions contained in a zoning ordinance must be strictly construed, and a violation occurs only when there is a plain disregard of limitations imposed by express words. A village zoning ordinance defining the term "family" as one or more individuals living, sleeping, cooking, or eating on premises as a single housekeeping unit was not intended to restrict the use and occupancy of premises in a single-family residence district to persons related by blood or marriage. Missionaries of La Salette v. Whitefish Bay, 267 W 609, 66 NW (2d) 627.

A zoning ordinance which excludes a church from a particular district must pass two tests, (1) whether it can reasonably be said that use for a church would have such an effect on the area that exclusion of such use will promote the general welfare, and (2) whether the exclusion imposes a burden on freedom of worship which is not commensurate with the protection of general welfare secured, and the ultimate test thereon is whether the regulation is an undue infringement on the protected freedom. A village zoning ordinance appearing to exclude churches from the entire village was invalid in that form. State ex rel. Lake D. B. Church v. Bayside Board of Trustees, 12 W (2d) 585, 108 NW (2d) 288.

A comprehensive zoning ordinance dividing a village into residential, business, commercial, and other districts, which established 2 separate business classifications, one designated as a limited local-business district and the other classified as a general local-business district was neither arbitrary nor unreasonable. State ex rel. American Oil Co. v. Bessent, 27 W (2d) 537, 135 NW (2d) 317.

The requirement in 62.23 (7), Stats. 1963, that a board of appeals be appointed as a prerequisite or accompanying enactment if zoning regulations are to be adopted by a city, is made applicable to villages by 61.35. Wind Point v. Halverson, 38 W (2d) 1, 155 NW (2d) 654.

61.36 History: 1933 c. 187 s. 3; Stats. 1933 s. 61.69; 1943 c. 205; Stats. 1943 s. 61.36; 1959 c. 453.

On discontinuance of streets and alleys see note to 66.296.

A village board has discretion in the matter of improving streets, and only such portion thereof may be improved as the board deems necessary. It is likewise within the power of the board to provide for the building of a sidewalk 10 feet from the property line. Coon Valley v. Spellum, 190 W 140, 208 NW 916.

Narrowing of a street is not a "discontinuance" requiring a written petition of abutting property owners as the basis for action by a village board; under 61.34 (12), Stats. 1931, and the changing of a 60-foot street by vacating the outer 11 feet of each side by vote of the board without such petition is valid. Huening v. Shenkenberg, 208 W 177, 242 NW 552.

Where a portion of a highway in a town was brought within the limits of a village as the result of annexation of territory by the village, proceedings by the village for the discontinuance of that portion of the highway within the village limits were governed by the procedure prescribed by 80.11 and 80.12, and not by the procedure prescribed by 61.38, Stats. 1941. Welch v. Chatterton, 239 W 523, 300 NW 922.

61.39 History: 1957 c. 131 s. 2; Stats. 1957 s. 61.39.

61.44 History: 1897 c. 287 s. 95; Stats. 1898 s. 925d; 1899 c. 284 s. 2; Supl. 1906 s. 925d; 1907 c. 47; 1913 c. 577; Stats. 1913 s. 925d, 925d-1, 925d-2; 1917 c. 566 s. 16; 1919 c. 691 s. 47 to 49; Stats. 1919 s. 61.44; 1921 c. 242 s. 135 to 137; 1941 c. 12; 1957 c. 131 s. 3.

61.46 History: R. S. 1858 c. 70 s. 42; 1872 c. 188 s. 54; R. S. 1878 s. 914; 1880 c. 212; 1885 c. 265 s. 2 to 4; 1887 c. 78; Ann. Stats. 1889 s. 914, 914a; 1897 c. 287 s. 67, 68; Stats. 1898 s. 914, 914a; 1919 c. 691 s. 51, 52; Stats. 1919 s. 61.46; 1939 c. 107.

The provision in this section limiting "corporation taxes" which may be levied by a village board is not a limitation upon the school taxes. 8 Atty. Gen. 330.

61.47 History: 1872 c. 188 s. 53; R. S. 1878 s. 912; 1881 c. 108; 1882 c. 213; Ann. Stats. 1889 s. 912, 912a; 1897 c. 287 s. 66; Stats. 1898 s. 912; 1919 c. 443 s. 1; 1919 c. 691 s. 53, 53a; 1919 c. 702 s. 83, 84; Stats. 1919 s. 61.47.

61.50 History: R. S. 1849 c. 52 s. 25, 51; R. S. 1858 c. 70 s. 25; 1872 c. 188 s. 48, 49; 1872 c. 188 s. 51 sub. 13; R. S. 1878 s. 891; 1897 c. 287 s. 45; Stats. 1898 s. 892 [891]; 1909 c. 388; 1919 c. 691 s. 58; Stats. 1919 s. 61.50; 1929 c. 177; 1933 c. 187 s. 4; 1933 c. 436 s. 18; 1937 c. 432; 1939 c. 107; 1957 c. 560; 1961 c. 584; 1965 c. 252; 1967 c. 35.

It is only when the ordinance itself imposes the penalty or forfeiture, and not when its violation is punished by a general law, that publication is necessary. Oak Grove v. Juneau, 66 W 534, 29 NW 644.

Courts take notice of acts and ordinances of municipalities only upon due proof thereof; and where publication is required proof of publication must be made; but where a village ordinance, proved to have been regularly passed and recorded, has been in force for 31 years, the court should, in the absence of any showing to the contrary, presume that the clerk did his duty and published the ordinance. Osceola v. Beyl, 168 W 386, 170 NW 252.

61.51 History: R. S. 1849 c. 52 s. 26 to 33; R. S. 1858 c. 70 s. 26 to 33; 1872 c. 188 s. 59, 60; R. S. 1878 s. 893; 1897 c. 287 s. 47; Stats. 1898 s. 894 [893]; 1919 c. 691 s. 59; Stats. 1919 s. 61.51; 1929 c. 455; 1939 c. 107; 1941 c. 61; 1945 c. 43; 1955 c. 488; 1957 c. 560.

A claim for personal injuries caused by a defective street is not an account or demand within the meaning of sec. 893, R. S. 1878, and need not be presented for audit and allowance. Barrett v. Hammond, 87 W 654, 58 NW 1053.

An account allowed in part need not be again presented. Sharp v. Mauston, 92 W 629, 66 NW 803.

In an action against a village for equitable relief by abatement of a nuisance by injunction plaintiffs were not required first to file a claim with the village, although the action also included a demand for damages. Hasslinger v. Hartland, 234 W 201, 290 NW 647.

61.54 History: 1905 c. 364; Supl. 1906 s. 926—157, 926—158, 926—159; 1911 c. 118; 1915 c. 459; 1919 c. 691 s. 63; Stats. 1919 s. 61.54; 1949 c. 231.

61.55 History: 1872 c. 188 s. 81; R. S. 1878 s. 921; Stats. 1898 s. 921; 1907 c. 245; 1915 c. 459; 1919 c. 691 s. 64; Stats. 1919 s. 61.55; 1957 c. 177; 1959 c. 628.

On public works, contracts and bids see notes to 66.29.

The fact that the method of building a garbage incinerator is patented does not render a contract for construction invalid, since all the work was done at the expense of the village and the use of the patent was offered it and all contractors at a fixed price, there being full competition as to everything else. Kilvington v. Superior, 83 W 222, 53 NW 487.

Where a street commissioner appointed by the village board employs men and teams by days work to repair the streets, it is not necessary that the contract be let to the lowest bidder. State ex rel. McClure v. Wallschlager, 137 W 136, 118 NW 643.

In an action to enjoin the execution of a contract between a village and a contractor on the ground that it had not been let to the lowest bidder, a judgment that a referendum gave validity to the contract is res adjudicata as to the question of validity in an action against the village by a holder of mortgage certificates. Morris v. Ellis, 221 W 307, 266 NW 921.

Where a village desired to have an engine generating set fabricated and delivered for use in a municipal electric plant which it was operating, and competitive bids could have been obtained from more than 30 manufacturers, the letting of a contract therefor was governed by 61.55, Stats. 1937, a contract made by the village board without asking for bids was in violation of the statute, and performance of the contract could be enjoined. Victora v. Muscoda, 228 W 455, 279 NW 663.

61.56 History: 1949 c. 145; Stats. 1949 s. 61.56.

61.61 History: R. S. 1849 c. 52 s. 34; R. S. 1858 c. 70 s. 34; R. S. 1878 s. 894; 1897 c. 287 s. 48; Stats. 1898 s. 894a [894]; 1915 c. 341; 1915 c. 604 s. 78, 79; 1919 c. 691 s. 73; Stats. 1919 s. 61.61; 1921 c. 576 s. 12.

61.65 History: 1937 c. 148; Stats. 1937 s. 61.65; 1939 c. 513 s. 17; 1941 c. 227; 1947 c. 206, 362; 1961 c. 85, 281; 1969 c. 158 s. 106; 1969 c. 385.

See notes to sec. 32, art. IV, and note to sec.

3, art. XI, citing Barth v. Shorewood, 229 W 151, 282 NW 89.

For interpretation of chs. 206 and 556, Laws 1947, as they apply to policemen and firemen outside of cities of the first class, see 36 Atty. Gen. 489.

61.71 History: 1933 c. 187 s. 3; Stats. 1933 s. 61.71.

61.72 History: 1933 c. 187 s. 3; Stats. 1933 s. 61.72; 1943 c. 229; 1969 c. 276 s. 583 (1).

61.73 History: 1949 c. 198; Stats. 1949 s. 61.73; 1963 c. 369.

61.74 History: 1953 c. 422; Stats. 1953 s. 61.74.

Detachment is subject to the requirement that the 200 acres be in one continuous area. Lands separated from this area and not containing 200 acres cannot be detached. Stohr v. Twin Lakes, 9 W (2d) 451, 101 NW (2d) 673.

CHAPTER 62.

Cities, General Charter Law.

62.01 History: 1921 c. 242 s. 2; Stats. 1921 s. 62.01; 1935 c. 421 s. 3; 1955 c. 488; 1957 c. 97.

Revisor's Note, 1921: It is the purpose of this section to effect the transition from special charter to general charter, and from the old revision to the new, without disturbing any existing or pending right or proceeding or any ordinance, and without the necessity for special elections. It is the intention to take care of schools under the chapter devoted to that subject. No change is made in existing systems of school or health administration. By the re-enactment of the sections covering these matters in later sections of this bill, all special charter provisions and statutes are preserved. (Bill 21-S, s. 2)

Subsection (4): Some of the cities have offices, terms of office and manner of selection of officers that are not in accord with the uniform provisions of the revised general charter and wish to retain their present official organizations until such time as a change seems desirable. [Bill 21-S, s. 2]

62.02 History: 1921 c. 242 s. 2; Stats. 1921 s. 62.02.

Editor's Note: For notes to sections of the general city charter which were repealed by ch. 242, Laws 1921, see Wis. Annotations, 1914, and annotations in Wis. Statutes, 1919.

62.03 History: 1921 c. 242 s. 2; Stats. 1921 s. 62.03.

Editor's Note: Ordinances and resolutions adopted by the common council of the city of Milwaukee have been considered in the following cases (among others): Milwaukee v. Rissling, 184 W 517, 199 NW 61; State ex rel. Ekern v. Milwaukee, 190 W 633, 209 NW 860; Wisconsin Asso. of Master Bakers v. Milwaukee, 191 W 302, 210 NW 707; Milwaukee v. Froelich, 196 W 444, 219 NW 954; Mittleman v. Nash Sales, Inc. 202 W 577, 232 NW 527; Milwaukee v. Kassen, 203 W 383, 234 NW 352; Milwaukee v. Burns, 225 W 296, 274 NW 273; Dallmann v. Kluchesky, 229 W 169, 282 NW 9; Milwaukee v. Snyder, 230 W 131, 283 NW 301; Milwaukee v. Milbrew, Inc. 240 W 527, 3 NW (2d) 386; Milwaukee v. Stanki, 262 W 607, 55 NW (2d) 916; Brennan v. Milwaukee, 265 W 52, 60 NW (2d) 704; Froncek v. Milwaukee, 269 W 276, 69 NW (2d) 242; Milwaukee v. Richards, 269 W 570, 69 NW (2d) 445; Huhnke v. Wischer, 271 W 66, 72 NW (2d) 915; Boden v. Milwaukee, 8 W (2d) 318, 99 NW (2d) 156; Milwaukee v. Piscuine, 18 W (2d) 599, 119 NW (2d) 442; Milwaukee v. Johnston, 21 W (2d) 411, 124 NW (2d) 690; Milwaukee v. Milwaukee Amusement, Inc. 22 W (2d) 240, 125 NW (2d) 625; Milwaukee v. Hoffmann, 29 W (2d) 193, 138 NW (2d) 223; State ex rel. Baer v. Milwaukee, 33 W (2d) 624, 148 NW (2d) 21; and Milwaukee v. Christopher, 45 W (2d) 188, 172 NW (2d) 695. By Ordinance No. 203, adopted on Feb. 6, 1933, 62.11 (5) was made applicable to the city of Milwaukee (See Common Council File No. 50790, Dallmann v. Kluchesky, 229 W 169, 175, and 55 Atty. Gen. 231, 232).

Milwaukee need not adopt a "charter ordinance" to make the election authorized by 62.03 (2). Wauwatosa v. Milwaukee, 266 W 59, 62 NW (2d) 718.

Where a city of the first class by ordinance adopts a particular section of ch. 62, constituting the general charter law, such adoption embraces any subsequent amendment which the legislature may thereafter make in the adopted statute which is not wholly incompatible with such statute as it stood at the time the adopting ordinance was enacted. State ex rel. Cities S. O. Co. v. Board of Appeals, 21 W (2d) 516, 124 NW (2d) 809.

62.04 History: 1921 c. 242 s. 2; Stats. 1921 s. 62.04.

On legislative power generally and on delegation of power see notes to sec. 1, art. IV; on general laws on enumerated subjects see notes to sec. 32, art. IV; on municipal home rule see notes to sec. 3, art. XI; and on city manager plan and commission government see notes to various sections of ch. 64.

Cities are not of a dual nature, but are creatures of the state, having imposed upon them certain duties or functions in the interest of the general welfare, and also given certain powers in respect to local self-government and local affairs. A city is not authorized to maintain an action to restrain state officials from enforcing the gasoline tax law, as it is no part of the business of a city to censor or supervise the activities of its creator, the state. In re Application of Racine, 196 W 604, 220 NW 398, 221 NW 109. See also: Marshfield v. Cameron, 24 W (2d) 56, 127 NW (2d) 809, and Kenosha v. State, 35 W (2d) 317, 151 NW (2d) 36.

See note to 144.07, citing Behnke v. Neenah, 221 W 411, 266 NW 781.

See note to 62.11 (5), citing State ex rel. State Historical Society v. Carroll, 261 W 6, 51 NW (2d) 723.

62.04 and 62.11 (5), Stats. 1967, applicable to cities of the second, third, and fourth classes, unless expressly limited, confer all broad self-governing powers upon a city operating under such laws which the legislature could confer and, when exercised, are to be liberally