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Editor's Note: For notes to sections of the general city charter which were repealed by ch. 242, Laws 1921, see Wis.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

construed. Gramling v. Wauwatosa, 44 W (2d) 634, 171 NW (2d) 897.

62.05 History: 1889 c. 326 s. 1; Ann. Stats. 1889 s. 925c; 1893 c. 312 s. 1; Stats. 1898 s. 925—1; 1921 c. 242 s. 3; 1921 c. 590 s. 55; Stats. 1921 s. 62.05; 1961 c. 677.

When a city passes from a lower to higher class, it remains in the class attained, notwithstanding a subsequent decline in population, at least in the absence of adoption of an ordinance or resolution by the common council and publication of such fact in compliance with the provisions of statute. 9 Atty. Gen. 476.

A city with required population, as shown by the last federal census, to pass from fourth to third class, is a city of the third class within the meaning of 87.02 and 87.04, Stats. 1923, relating to apportionment of the cost of bridge construction, although the formalities of effecting such change provided by 62.05 have not been complied with. 12 Atty. Gen. 344.

62.071 History: 1957 c. 195, 672; Stats. 1957 s. 62.071; 1967 c. 92 s. 22; 1969 c. 55.

62.075 History: 1949 c. 315; Stats. 1949 s. 62.075; 1955 c. 13 s. 4; 1959 c. 212, 226; Sup. Ct. Order, 17 W (2d) xx; 1969 c. 276 s. 590 (1).

62.08 History: 1889 c. 326 s. 14; Ann. Stats. 1889 s. 925e sub. 14; 1893 c. 312 s. 7; Stats. 1898 s. 925—14; 1901 c. 36; 1905 c. 123; Supl. 1906 s. 925—14; 1911 c. 497; 1913 c. 430; 1915 c. 171; 1919 c. 448; 1921 c. 242 s. 18; Stats. 1921 s. 62.08; 1925 c. 418; Stats. 1925 s. 62.08, 62.26 (8); 1941 c. 197; 1947 c. 388; Stats. 1947 s. 62.08; 1953 c. 419; 1965 c. 252.

For discussion concerning division of a city into wards and the election of aldermen and supervisors see 51 Atty. Gen. 199.

62.09 (1) History: 1889 c. 326 s. 23; Ann. Stats. 1889 s. 925g sub. 23; 1893 c. 312 s. 11; 1895 c. 236; 1897 c. 139 s. 1; Stats. 1898 s. 925—23; 1901 c. 60 s. 1; 1905 c. 92 s. 1; Supl. 1906 s. 925—23, 925—23a, 926—107; 1913 c. 503; 1913 c. 773 s. 33; Stats. 1913 s. 925—23, 926—107; 1917 c. 554; 1919 c. 267; 1921 c. 242 s. 19; Stats. 1921 s. 62.09 (1); 1931 c. 86, 296; 1935 c. 421; 1935 c. 553 s. 3; 1955 c. 103; 1957 c. 80; 1961 c. 33; 1965 c. 20, 617; 1969 c. 317, 433.

The council may create such minor offices as it may deem necessary to promote trade and commerce, at any time, and may fix salaries for the incumbents. State ex rel. Elliott v. Kelly, 154 W 482, 143 NW 153.

The right to elect a city engineer in a city of the third class was a duty imposed upon the council, and such election was not subject to veto by the mayor. A competent vote for a city officer elects, and the election is not subject to rescission and the election of another. A city engineer must be a citizen of the state, but need not be a resident of the city. State ex rel. Schneider v. Darby, 179 W 147, 190 NW 994.

See note to 270.58, citing Matczak v. Mathews, 265 W 1, 60 NW (2d) 352.

A library board member is a city officer within the meaning of 62.09 (1); he is prohibited from insuring city buildings, particularly the library. 12 Atty. Gen. 429.

A member of a city waterworks commission is a city officer and may not sell material or services to the city nor to a commission. 12 Atty. Gen. 642.

A charter ordinance purporting to abandon the city-manager form of government under ch. 64 and to restore the mayor-alderman plan under ch. 62 must not conflict with ch. 62. 26 Atty. Gen. 43.

62.09 (2) History: Stats. 1919 s. 925—27, 925—38b, 925—249, 926—161, 926—170, 961; 1921 c. 242 s. 20; Stats. 1921 s. 62.09 (2); 1935 c. 421; 1949 c. 231; 1955 c. 71; 1959 c. 432, 499, 603.

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

It is competent for the legislature to provide that "if any member of the common council shall, while a member, be elected to any other office of said city, such election shall be void." State ex rel. Tesch v. Von Baumbach, 12 W 310.

A person who was ineligible when elected to office may hold the office if his disability is removed before the commencement of his term. State v. Trumpf, 50 W 103, 5 NW 876, 6 NW 512.

The charter of Milwaukee provides that eligibility to the office of health commissioner shall consist of a continuous residence for one year prior to appointment. The word "residence" was held to be used in the broad sense of domicile requisite to citizenship. Kempster v. Milwaukee, 97 W 343, 72 NW 743.

Where the mayor of Milwaukee appointed a city officer whose appointment was rejected by the council, and within a year reappointed the same person to the same office, which appointment was again rejected, and 3 months later appointed the same person a third time, and the last appointment was confirmed, the appointee was ineligible at the time of the second and third appointments and his confirmation was unavailing. State ex rel. Gillen v. Braman, 173 W 596, 181 NW 729.

The acceptance by the incumbent of one office of an incompatible office vacates the first, except in a case where the official cannot, by his own act, vacate such first office. A municipal judge, by accepting the incompatible office of city attorney, thereby created a vacancy in the office of judge. State ex rel. Stark v. Hines, 194 W 34, 215 NW 447.

One who acted as deputy city clerk, but who could not, because of minority, be considered as a de jure deputy city clerk, may nevertheless be a de facto deputy, whose acts bind the city clerk and the city. State ex rel. Sisson v. Kalk, 197 W 573, 223 NW 83.

The offices of alderman and county clerk are compatible and may be held by the same person. 5 Atty. Gen. 607.

An alderman in a city of the fourth class cannot hold the office of justice of the peace. 13 Atty. Gen. 123.

The offices of city attorney and municipal judge are incompatible. 19 Atty. Gen. 188.

A ward supervisor is not eligible to the office of city relief director. 25 Atty. Gen. 48.

The office of assemblyman or state senator is compatible with the office of alderman. 25 Atty. Gen. 254.

A hardware and electrical equipment dealer

drawing a salary as mayor cannot be paid by a municipal light and water commission to solicit business. He cannot bid for or sell to to the board of education appointed by the council any equipment or wiring on a new high school. 25 Atty. Gen. 407.

The office of alderman and employment as a teacher in city schools in the same city are incompatible. 26 Atty. Gen. 582.

An alderman may be elected to and hold the office of police justice provided his term as alderman expires prior to the time he takes office as police justice. 27 Atty. Gen. 478.

A person who is not a resident of a city is eligible to appointment on the board of vocational and adult education of that city. The removal of the residence of a member of a city board of vocational and adult education to a place outside the city limits does not create a vacancy. 39 Atty. Gen. 73.

62.09 (3) History: 1889 c. 326 s. 25; Ann. Stats. 1889 s. 925g sub. 25; 1893 c. 312 s. 13; 1897 c. 70 s. 1; 1897 c. 139 s. 2; Stats. 1898 s. 925—25; 1901 c. 60 s. 1; 1905 c. 215 s. 1; Supl. 1906 s. 925—25; 1907 c. 493, 604; Stats. 1911 s. 925—25, 925—38b; 1921 c. 242 s. 21; Stats. 1921 s. 62.09 (3); 1935 c. 206, 421; 1935 c. 520 s. 3; 1937 c. 432; 1939 c. 152; 1965 c. 20, 617.

On election or appointment of statutory officers see notes to sec. 9, art. XIII.

62.09 (3) , Stats. 1967, which permits the mayor of a city operating under the general charter laws to appoint officers subject to confirmation by the council, contains no provision for limiting the number of persons to be considered by him when making the appointment. Gramling v. Wauwatosa, 44 W (2d) 634, 171 NW (2d) 897.

Choosing of members of a board of police and fire commissioners may be made elective under the procedure outlined in 62.09 (3) (b), Stats. 1931. 21 Atty. Gen. 350.

62.09 (4) History: 1889 c. 326 s. 34, 35; Ann. Stats. 1889 s. 925g subs. 32, 35; Stats. 1898 s. 925—34, 925—35; 1907 c. 493; Stats. 1911 s. 925—29a, 925—34, 925—35; 1915 c. 385 s. 8; 1919 c. 362 s. 15; 1919 c. 679 s. 41, 42; 1921 c. 242 s. 22; Stats. 1921 s. 62.09 (4); 1927 c. 473 s. 17; 1929 c. 164; 1929 c. 262 s. 11; 1929 c. 516 s. 6; 1949 c. 231.

A pound master who is appointed from time to time by a council does not hold an "office or place of trust" and need not take and subscribe an oath under a charter which uses the quoted words. Wilcox v. Hemming, 58 W 144, 15 NW 435.

There is no presumption that one elected as successor has qualified. O'Connor v. Fond du Lac, 101 W 83, 76 NW 1116.

Under sec. 925—29a, Stats. 1913, from which 62.09 (4) was partly derived, where the common council elected a city attorney and made a proper record thereof, such election was not invalidated by a postponement by the aldermen under the supposition that there had been no election, nor by the failure of the mayor to declare the attorney elected, nor by the failure of the city clerk to issue a certificate of election. State ex rel. Burdick v. Tyrrell, 158 W 425, 149 NW 280.

62.09 (5) History: 1889 c. 326 s. 26, 28; Ann. Stats. 1889 s. 925g subs. 26, 28; 1893 c. 312 s. 14, 15; 1895 c. 316 s. 13; 1897 c. 70, 95; 1897 c. 139 s. 3; Stats. 1898 s. 925—26, 925—28; 1901 c. 443 s. 1; 1903 c. 28 s. 1; 1905 c. 233 s. 1; Supl. 1906 s. 925—26a, 926—147; 1907 c. 7; 1909 c. 227; Stats. 1911 s. 925—26, 925—26a, 925—28; 1921 c. 242 s. 23, 311; Stats. 1921 s. 62.09 (5); 1927 c. 473 s. 17; 1943 c. 66; 1945 c. 23, 67, 505; 1947 c. 312; 1949 c. 231; 1953 c. 245; 1965 c. 20.

It is customary for officers to begin their terms upon noon of the day fixed by statute and such custom has the force of law. State ex rel. Emberson v. Byrne, 98 W 16, 73 NW 320.

62.09 (6) History: 1889 c. 326 s. 30; Ann. Stats. 1889 s. 925g sub. 30; 1893 c. 312 s. 16; 1895 c. 183; Stats. 1898 s. 925—30; 1907 c. 493; Stats. 1911 s. 925—30, 925—31c; 1913 c. 347; 1917 c. 230; Stats. 1917 s. 925—30, 925—31c, 926—21; 1921 c. 242 s. 24; 1921 c. 590 s. 56; Stats. 1921 s. 62.09 (6); 1929 c. 311; 1935 c. 421; 1937 c. 137, 432; 1949 c. 185; 1959 c. 362, 603; 1967 c. 24.

If the resolution of a council appointing night watchmen for one year fixes the salary to be paid during that time, a person so appointed cannot recover more than the sum so fixed though he did not know that such resolution reduced the compensation he had received for service in the preceding year. Doolan v. Manitowoc, 48 W 312, 4 NW 475.

Where a city surveyor submitted a claim for compensation for the preparation of sewer plans, and this work was outside the scope of the official duties prescribed by the council, he was entitled to recover. Kollock v. Madison, 105 W 187, 80 NW 608.

An agreement between a city officer and the mayor, after the appointment of the former, by which he was to receive a smaller compensation than that fixed by the council, is void. Rettinghouse v. Ashland, 106 W 595, 82 NW 555.

The incumbent has the same right to the salary as to the office. Signing an agreement to take less is not an estoppel. Nelson v. Superior, 109 W 618, 85 NW 412.

The proviso in sec. 925-30, Stats. 1898, relates to compensation as well as to salary and the council may fix a specific fee for a duty rather than a salary. Rudolph v. Hutchinson, 134 W 283, 114 NW 453.

Sec. 925-30, Stats. 1913, does not apply to officials holding newly-created offices, whose salaries may be fixed whenever they are lawfully appointed. State ex rel. Elliott v. Kelly, 154 W 482, 143 NW 153.

An officer receiving a pension from the city is not debarred from drawing the salary of his office. State ex rel. Kleinsteuber v. Kotecki, 155 W 66, 144 NW 200.

Payments, beyond salary, by the city clerk of Milwaukee, to an employe receiving an annual salary, of additional sums for his services as an expert performed outside of regular office hours, were recoverable by the city. Milwaukee v. Reiff, 157 W 226, 146 NW 1130.

The requirement that salaries of city officers shall be fixed by the common council at its first meeting in February is mandatory, and the first regular meeting in March does not constitute an adjournment of the Febru-

ary meeting where there was merely an informal agreement at the February meeting to postpone the matter. A change in the amount of salaries at such March meeting was ineffectual and the salaries as last lawfully fixed continued the lawful salaries. Smith v. Phillips, 174 W 54, 182 NW 338.

A city engineer who, after receiving the full amount of his fixed salary, returned 10 per cent of it at the city's request for use for relief purposes, was not entitled subsequently to recover such amount from the city, since it constituted a voluntary contribution to the city. Where, however, the city levied a 40 per cent contribution on the city engineer's fixed salary, and the city engineer entered into a compromise by which the city retained only 20 per cent, he was entitled to recover the amount retained, since in such situation he did not make a voluntary contribution to the city. Schuh v. Waukesha, 220 W 600, 265 NW 699.

The purpose of 62.09 (6) (a) and (b), Stats. 1939, was to remove questions of compensation of officers from the influence of partisan elections and to inform a candidate in advance of his election as to the salary he would receive. In enacting 10.43, authorizing in general terms the initiation of city ordinances by petition, the legislature did not intend to overrule the public policy embodied in 62.09 (6) (a) and (b), relative to the fixing or changing of salaries, and did not intend to permit the electors to do what the council was prohibited from doing. An ordinance proposing to change the salaries of aldermen, initiated by a petition under 10.43, presented to the common council after its first regular meeting in February, was not presented to the council at a time when it might lawfully change salaries so as to affect aldermen to be elected at the spring election. Feavel v. Appleton, 234 W 483, 291 NW 830.

Although a city officer cannot be coerced to waive part of his salary, he may voluntarily make a gift of a part of his salary to the city, and a determination of whether he has made a gift should not be made to turn on the mere mechanics of the operation nor be made to depend on the system of bookkeeping used in effecting the gift. Payments made to the city treasurer in excess of his legal salary were unlawful, and could be recovered by the city. Maxwell v. Madison, 235 W 114, 292 NW 301.

Only if the expense allowance is patently for the purpose and design of permitting the office holder to convert the allowance to his own use regardless of whether any expenses have been incurred should the money be regarded as compensation and within the prohibition of the statute. Geyso v. Cudahy, 34 W (2d) 476, 149 NW (2d) 611.

62.09 (7) (a) History: 1889 c. 326 s. 54; Ann. Stats. 1889 s. 925i sub. 54; Stats. 1898 s. 925—54; 1921 c. 242 s. 25; Stats. 1925 s. 62.09 (7) (a).

62.09 (7) (b) History: 1889 c. 326 s. 48, 264; Ann. Stats. 1889 s. 925h sub. 48, 925x sub. 264; Stats. 1898 s. 925—48, 925—264; 1919 c. 662; Stats. 1919 s. 925—48, 925—264, 926—146n; 1921 c. 242 s. 26; Stats. 1921 s. 62.09 (7) (b).

Members of a common council, compelled by mandamus to issue to plaintiff a renewal of his taxicab license, were not liable in such proceeding in damages to the plaintiff, they not having acted fraudulently or corruptly in refusing to grant the plaintiff's application for a renewal of his permit, but having so refused because of their mistaken interpretation of the applicable city licensing ordinance. Corrao v. Mortier, 7 W (2d) 494, 96 NW (2d) 851.

62.09 (7) (c) History: 1921 c. 242 s. 27; Stats. 1921 s. 62.09 (7) (c).

62.09 (7) (d) History: 1889 c. 326 s. 254; Ann. Stats. 1889 s. 925x sub. 254; Stats. 1898 s. 925—254; 1921 c. 242 s. 29; Stats. 1921 s. 62.09 (7) (e); 1959 c. 603 s. 3; 1959 c. 641 s. 14; Stats. 1959 s. 62.09 (7) (d).

62.09 (7) (e) History: 1917 c. 190; Stats. 1917 s. 959—140; 1921 c. 242 s. 29a; Stats. 1921 s. 62.09 (7) (f); 1959 c. 603 s. 3; 1959 c. 641 s. 14; Stats. 1959 s. 62.09 (7) (e).

Editor's Note: In connection with this provision see Kempster v. Milwaukee, 103 W 421, 79 NW 411 (1899).

The word "may," as used in statutes, means "must" or "shall" only in cases where the public interests or rights are concerned and where the public or third persons have a claim de jure that the power should be exercised. Curry v. Portage, 195 W 35, 217 NW 705.

Public officers, discharging legislative and quasi-judicial functions and acting within their jurisdiction, are not liable to an individual for damages either for mistake, errors of judgment or corrupt conduct, except as to damages resulting from an unjustifiable invasion of private property. Wasserman v. Kenosha, 217 W 223, 258 NW 857.

62.09 (8) History: 1889 c. 326 s. 38, 40; Ann. Stats. 1889 s. 925h sub. 38, 40; 1893 c. 312 s. 16; 1895 c. 316 s. 3; Stats. 1898 s. 925—38, 925—40; 1917 c. 470; 1921 c. 242 s. 30; Stats. 1921 s. 62.09 (8).

If, after the commencement of an action against a city, the plaintiff's attorney becomes the mayor thereof he may appear afterward for the plaintiff on the trial of the action. McKeigue v. Janesville, 68 W 50, 31 NW 298.

The acting mayor can perform no official duty as mayor while absent from the city. Appointment of a commission by the acting mayor while absent from the city is void, as the mayor can perform no official act while so absent. State ex rel. Emberson v. Byrne, 98 W 16, 73 NW 320.

A removal proceeding by the common council was not invalidated by the participation in an advisory capacity of the mayor, city clerk and city attorney. State ex rel. Cleveland v. Common Council, 177 W 537, 188 NW 601.

A resolution by a city council authorizing the purchase of land for a city hall which was not submitted to the mayor for approval did not constitute a legal offer to purchase nor a basis of a contract to purchase, the mayor being a part of the law-making power of the city. Winninger v. Waupun, 183 W 32, 197 NW 249.

The offices of mayor and commissioner of

public health are incompatible. 1902 Atty. Gen. 211.

An attorney who is mayor of a city may not defend persons charged with violation of city ordinances or the state criminal law. If he does so, he is liable to disbarment. 11 Atty. Gen. 473.

The offices of city mayor and justice of the peace are incompatible. 17 Atty. Gen. 328.

62.09 (9) History: 1889 c. 326 s. 43, 125, 152; Ann. Stats. 1889 s. 925h sub. 43, 925q sub. 125, 925r sub. 152; 1893 c. 312 s. 21; Stats. 1898 s. 925—43, 925—125, 925—152; 1901 c. 194 s. 1; Supl. 1906 s. 925—152; 1911 c. 477; 1913 c. 490, 704; 1921 c. 242 s. 31; Stats. 1921 s. 62.09 (9); 1933 c. 435 s. 3; 1937 c. 22; 1949 c. 330; 1957 c. 610; 1959 c. 92; 1963 c. 190, 365; 1963 c. 436 s. 8; 1967 c. 92 s. 22.

The offices of city treasurer and constable may be held by the same person in a city of the fourth class. 7 Atty. Gen. 224.

The offices of city treasurer and of justice of the peace are incompatible. 15 Atty. Gen. 184.

No special provisions are necessary to make the city treasurer's bond cover school board funds. No separate bond for school funds is necessary. 20 Atty. Gen. 59.

62.09 (10) History: 1889 c. 326 s. 45, 125; Ann. Stats. 1889 s. 925h sub. 45, 925q sub. 125; 1893 c. 312 s. 23; Stats. 1898 s. 925—45, 925—125; 1921 c. 242 s. 32; Stats. 1921 s. 62.09 (10); 1941 c. 129; 1949 c. 80; 1959 c. 174.

Sec. 925-45, Stats. 1919, is mandatory and no city contract is valid until countersigned by the comptroller. The rule that parties are bound by their fully performed contracts the same as if validly executed, does not apply to city contracts. White C. Co. v. Beloit, 178 W 335, 190 NW 195.

Where the common council of a city of the fourth class provided that the duties of comptroller be performed by the city clerk, and the council, acting as the board of public works and as such managing the city's utilities, designated the city clerk as cashier of such utilities without additional salary, the duties of comptroller and cashier were lawfully delegated to the clerk as part of his official duties as clerk, and were covered by the clerk's bond, which was renewed after the extra duties had been imposed upon him. Rice Lake v. United States F. & G. Co. 216 W 1, 255 NW 130.

A provision of 62.09 (10), that no contract with a city shall be valid until countersigned by the comptroller, is inapplicable to city orders. Lurye v. State, 221 W 68, 265 NW 221.

A city council cannot be said to have ratified a void construction contract without first providing funds, since 62.09 (10) prohibits the comptroller or official performing his function from countersigning contracts unless sufficient unappropriated funds are available. Ellerbe & Co. v. Hudson, 1 W (2d) 148, 83 N W(2d) 700.

A contract of a city, imposing a pecuniary obligation payable out of the revenue of the current year, not countersigned by the comptroller as provided by a chapter of the city charter, was invalid. Superior v. Norton, 63 F 357.

62.09 (11) History: 1889 c. 326 s. 41, 125, 261; Ann. Stats. 1889 s. 925h sub. 41, 925q sub. 125, 925x sub. 261; 1893 c. 312 s. 20; Stats. 1898 s. 925—41, 925—125, 929—261; 1919 c. 39; 1921 c. 242 s. 33; Stats. 1921 s. 62.09 (11); 1935 c. 199; 1941 c. 129; 1947 c. 362 s. 2; 1961 c. 534; 1965 c. 252.

62.09 (12) History: 1889 c. 326 s. 42, 260; Ann. Stats. 1889 s. 925h sub. 42, 925x sub. 260; Stats. 1898 s. 925—42, 925—260; 1903 c. 150 s. 1; Supl. 1906 s. 926—160; 1907 c. 135; Stats. 1911 s. 925—42, 925—260, 926—160; 1921 c. 242 s. 34; Stats. 1921 s. 62.09 (12); 1959 c. 275.

The objection to an action by a city that the city attorney had not been directed to bring it is not ground for demurrer, but must be raised by the answer. Milwaukee v. Zoehrlaut Co. 114 W 276, 90 NW 187.

A city's action for a penalty for disorderly conduct because of unlawful assemblage need not be dismissed on motion of the city attorney, and, where he then withdrew, the court properly called a member of the bar to appear for the city, as against the contention that only the city council could appoint an attorney, and that, in the absence of such appointment, resort to mandamus was the only remedy. Guinther v. Milwaukee, 217 W 334, 258 NW 865.

A city attorney may not be paid, in addition to his salary, compensation for services rendered to a municipally owned public utility. 25 Atty. Gen. 406.

62.09 (13) History: 1889 c. 326 s. 259; Ann. Stats. 1889 s. 925x sub. 259; Stats. 1898 s. 925—259; 1901 c. 272 s. 1; Supl. 1906 s. 925—259; 1921 c. 242 s. 34a; Stats. 1921 s. 62.09 (13); 1955 c. 330; 1957 c. 284; 1961 c. 495.

62.09 (13), requiring police officers "to arrest with or without process * * * every person * * * violating any law of the state," gives those officers the powers of constables to arrest without warrant any person found violating any law of the state, but not giving them the right to find a person guilty of an offense by means of illegal arrest or illegal search. If a search and arrest were illegal, no matter which preceded the other, the whole proceeding was void if either was made the means of discovering an offense. Knowledge of the commission of an offense must come to an officer before he arrests without warrant. Allen v. State, 183 W 323, 197 NW 323.

The words "every person" within 62.09 (13), authorizing city police officials to arrest every person found in the city engaged in violating any law or ordinance, include female offenders. Janesville v. Tweedell, 217 W 395, 258 NW 437.

It would seem that the governing body of a city of the 4th class may grant to police officers the right to accept recognizances or admit to bail for violation of a city ordinance, but in the absence of such action by the city council police officers of the city have no right to accept recognizances or admit to bail. 27 Atty. Gen. 307.

Under 60.55 (22), 62.09 (13) and 361.03, Stats. 1943, a city police officer may go anywhere in the state to make an arrest, but may not be sent outside the state to return a fugitive who has waived extradition unless he be first

sworn in as a deputy sheriff so as to be within 59.29. 34 Atty. Gen. 44.

62.09 (14) History: 1925 c. 132; Stats. 1925 s. 62.09 (14.)

62.11 (1) History: 1889 c. 326 s. 49; Ann. Stats. 1889 s. 925i sub. 49; 1893 c. 312 s. 24; Stats. 1898 s. 925—49; 1921 c. 242 s. 36; Stats. 1921 s. 62.11 (1); 1943 c. 66.

It is against public policy for a registered pharmacist, who owns and operates a drug store, holds a pharmacist's liquor permit and is a member of the city council, to serve on the license and ordinance committee of the council. 24 Atty. Gen. 292.

62.11 (2) History: 1889 c. 326 s. 50; Ann. Stats. 1889 s. 925i sub. 50; Stats. 1898 s. 925—50; 1915 c. 150; 1921 c. 242 s. 37; Stats. 1921 s. 62.11 (2).

62.11 (3) History: 1889 c. 326 s. 51; Ann. Stats. 1889 s. 925i sub. 51; 1897 c. 138 s. 7; Stats. 1898 s. 925—51; 1921 c. 242 s. 38; Stats. 1921 s. 62.11 (3); 1923 c. 307 s. 8.

Under a provision that the vote on the passage of every resolution requiring work on the streets shall be taken by yeas and nays and duly entered in the journal, a separate vote on each resolution of that kind is not essential. Wright v. Forrestal, 65 W 341, 27 NW 52.

The power conferred upon the common council of the city of Milwaukee by sec. 6, ch. 324, Laws 1882, to "judge of the election and qualification of its own members", does not exclude the common-law jurisdiction of the courts to determine the right to the office of alderman. State ex rel. Anderton v. Kempf, 69 W 470, 34 NW 226.

An ordinance which has not as yet become absolutely binding may be reconsidered. Waukesha H. S. Co. v. Waukesha, 83 W 475, 53 NW 675.

The rules for the construction of statutes and municipal ordinances are the same. Where an ordinance provides that a former ordinance "is hereby amended so as to read as follows," any provisions of the former ordinance not found in the latter one are repealed. Ashland W. Co. v. Ashland County, 87 W 209, 58 NW 235.

If the void part of an ordinance is the compensation for or the inducement to the valid portion of it, the whole will be held void. Gilbert-Arnold L. Co. v. Superior, 91 W 353, 64 NW 999.

A void provision will not invalidate an entire ordinance if it is independent of the valid parts, and was not the inducement to the latter. State ex rel. Milwaukee v. Newman, 96 W 258, 71 NW 438.

The enacting clause of an ordinance which reads "the mayor and common council do ordain" is good under sec. 925—49, Stats. 1919, as the statement in regard to the mayor will be treated as surplusage. State ex rel. Dunlap v. Nohl, 113 W 15, 88 NW 1004.

The duties of a committee appointed to buy a horse, and decide upon its suitability for the purpose intended, are more than merely ministerial in character. The action of 2 members, without notice to their associate, is invalid. Kavanaugh v. Wausau, 120 W 611, 98 NW 550.

An ordinance may by reference adopt provisions of statutes or prior ordinances, and in such case the statute need not be set out in totidem verbis and entered on the minutes of a corporation. Milwaukee v. Krupnik, 201 W 1, 229 NW 43.

The absolute privilege under secs. 15 and 16, art. IV, of members of the legislature does not apply to proceedings before the common council of cities; and while situations may arise under which statements made or published by a council member in such proceedings are privileged as a matter of law, the privilege involved is nevertheless a qualified or conditional privilege, and it is essential to a conditional privilege that the statements be made or published in good faith. Branigan v. State, 209 W 249, 244 NW 767.

62.11 (4) History: 1889 c. 326 s. 52; Stats. 1898 s. 925—52; 1919 c. 285; Stats. 1919 s. 925—46t, 925—52 (68); 1921 c. 242 s. 39; Stats. 1921 s. 62.11 (4); 1929 c. 79; 1931 c. 104; 1939 c. 107; 1957 c. 560; 1959 c. 435; 1961 c. 622; 1965 c. 252.

62.11 (5) History: Stats. 1919 s. 925—52; 1921 c. 242 s. 40; Stats. 1921 s. 62.11 (5).

Editor's Note: Prior to the enactment of 62.11 (5) by ch. 242, Laws 1921 (revision of city charter law), cities possessed specified powers. Their powers were limited to those expressed in the statutes and those necessarily implied by the expressed powers. All other powers were regarded as having been denied. That rule was changed by said chapter. Since then cities possess all powers not denied them by the statutes or the constitution. Instead of the the powers being specified, as formerly, the limitations are now enumerated.

On exercises of police power and taxing power see notes to secs. 1 and 13, art. I; on the rule of taxation (real property) 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 direct legislation see notes to 9.20; on eminent domain see notes to various sections of ch. 32; on special schools see notes to 41.15—41.215; on exception as to first-class cities see notes to 62.03; on intent and construction of ch. 62 see notes to 62.04; on county and city civil service see notes to various sections of ch. 63; on municipal budget systems see notes to various sections of ch. 65; 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 of ch. 67; on general property taxes see notes to various sections of ch. 70; on weights and measures see notes to various sections of ch. 98; on local health officials see notes to various sections of ch. 141; on intoxicating liquor licenses see notes to 176.05; on powers of state and local authorities over traffic regulation see notes to various sections of ch. 349; and on peddlers, truckers, transient merchants, secondhand dealers and showmen see notes to 440.81—440.96.

Authority conferred upon a city council in permissive language must be exercised if there are persons who have an absolute right to have it exercised. But if the power is discretionary the city is not liable for the nonexercise of it. Kelley v. Milwaukee, 18 W 83.

An ordinance which fixes the maximum speed for railroad trains in cities at less than the rate allowed by the general law of the state is void. Horn v. Chicago & Northwestern R. Co. 38 W 463.

Unless restricted in that respect by its charter, a city may submit a disputed claim to arbitration. Kane v. Fond du Lac, 40 W 495.

Under authority to manage and control the finances and all the property of the city and to exercise its corporate powers and manage its concerns the city authorities may lease a hall which it owns for concert, theater and other entertainments. Bell v. Platteville, 71 W 139, 36 NW 831.

Under its police power a city may provide by ordinance that whenever it shall be necessary to cross the line of any existing electric, telegraph or telephone line, the person making such crossing shall supply all necessary safeguards for the same. Wisconsin T. Co. v. Janesville S. R. Co. 87 W 72, 57 NW 970.

An action by a city to recover a penalty for the violation of a municipal ordinance prohibiting an act which is a crime or misdemeanor and punishable at common law or by statute, and prescribing a penalty for its violation is quasi-criminal. Although an act is a penal offense under the laws of the state, further penalties for its commission may, under proper legislative authority, be imposed by municipal bylaws or ordinances, and the enforcement of the one does not preclude the enforcement of the other. State ex rel. City of Milwaukee v. Newman, 96 W 258, 71 NW 438.

Under ch. 37, Laws 1889, and its charter, the city of La Crosse had no power to accept a privilege, granted to it by the legislature of Minnesota, of constructing a highway over territory within such state, subject to liability for all damage caused by the improper construction or want of repair of such highway. Becker v. La Crosse, 99 W 414, 75 NW 84.

A city cannot, without express authority, exact a license fee from a telephone company, operating within its limits, which has paid a state license fee. Wisconsin T. Co. v. Oshkosh, 62 W 32, 21 NW 828; Wisconsin T. Co. v. Milwaukee, 126 W 1, 104 NW 1009. See also Milwaukee v. Milwaukee E. R. & L. Co. 147 W 458, 133 NW 593.

A municipal corporation may sue in equity to prevent encroachment upon or obstruction of a highway by land or water within its charge. Milwaukee v. Gimbel Brothers, 130 W 31, 110 NW 7.

A city cannot surrender the police power it possesses or tie its hands to the embarrassment of its future governmental functions, no matter what the consideration may be. Superior v. Railroad Comm. 154 W 345, 141 NW 250.

A city council possesses a large measure of power to legislate for the benefit of trade and commerce. State ex rel. Elliott v. Kelly, 154 W 482, 143 NW 153.

An ordinance may make an act punishable by penalty collectable in a civil action, although a statute already makes the act a misdemeanor. The term "fine" or "punishment by fine" in a city ordinance implies a penalty collectable by civil action in the name of the city; and in such action the city has the right of appeal. Milwaukee v. Ruplinger, 155 W 391, 145 NW 42.

The power to enact police regulations by ordinance need not be given to a city in express words. Mehlos v. Milwaukee, 156 W 591, 146 NW 882.

Ch. 566, Laws 1911, does not furnish a complete scheme for the regulation of weights; and a city may adopt reasonable regulations for the weighing and sale of coal not in conflict with any statute of the state. An ordinance should not be wholly annulled because some of its provisions are found unreasonable, unless the court can say that the valid and void parts cannot be separated. Brittingham & Hixon L. Co. v. Sparta, 157 W 345, 147 NW 635.

The general welfare clause confers upon cities the power to regulate the use of billboards, and the courts will interfere with the exercise of that power only when there has been a clear abuse of it. Cream City B. P. Co. v. Milwaukee, 158 W 86, 147 NW 25.

The fact that in its proprietory capacity a city has, as a part of its contractual powers, the incidental authority to limit the hours of labor on public works, does not prevent it in its governmental capacity from enforcing the limitation by ordinance. Milwaukee v. Raulf, 164 W 172, 159 NW 819.

A city, without possessing any right or interest in land for street purposes by dedication or condemnation, attempted to acquire such right by special contract with a bridge company by which the city obligated itself to maintain at its own cost as a highway one of the approaches to a bridge, such maintenance being a legal duty of the bridge company. That contract was void. State ex rel. Superior v. Duluth & Superior B. Co. 171 W 283, 177 NW 332.

Except as limited by statutory or constitutional provision a city may borrow money for all lawful municipal purposes. Miles v. Ashland, 172 W 605, 179 NW 779.

A city had no authority under the provisions of sec. 925—52 (31), Stats. 1919, to require an interurban railway, which had laid its tracks upon its own private right of way before the city was organized, to move its tracks from such right of way which it still owned to another portion of the street so as to bring the tracks in the center thereof. State ex rel. West Allis v. Milwaukee L. H. & T. Co. 173 W 225, 180 NW 938.

62.11 (5) does not delegate power to a city council to purchase land for city purposes without the approval of the mayor. It must be construed in connection with the veto power. Such approval is not ministerial, but legislative. Winninger v. Waupun, 183 W 32, 197 NW 249.

In the operation and maintenance of its waterworks system, a city acts in a proprietary capacity. The city had the right to contract with the owner of a dam to relieve the owner from the obligation of maintaining a bridge across a race way, in consideration of the reconstruction of the dam by the

owner, making the water in the mill pond available to the city for fire protection. Generally, a contract entered into by a city in its proprietary capacity cannot be rescinded or modified in any degree without the consent of both parties. West Bend v. West Bend H. & L. Co. 186 W 184, 202 NW 350.

A city engaged in its proprietary capacity may exercise such powers as a private concern engaged in a like business exercises. Chicago, St. P., M. & O. R. Co. v. Black River Falls, 193 W 579, 215 NW 455.

See note to 102.04, on public employers, citing Burlington v. Industrial Comm. 195 W 536, 218 NW 816.

Cities are not 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. In re Application of Racine, 196 W 604, 220 NW 398, 221 NW 109.

An ordinance forbidding the keeping of a junk yard without a license did not vest in the city council purely arbitrary power to grant and revoke licenses. But the council's act in denying a permit for a junk yard should not be disturbed except for clear abuse of discretion. Lerner v. Delavan, 203 W 32, 233 NW 608.

"That 62.11 confers power far beyond that conferred in the so-called general welfare clause of the general character as it stood prior to 1921 is plain, and a city operating under the general charter, finding no limitations in express language, has under the provisions of this chapter all the powers that the legislature could by any possibility confer upon it." Hack v. Mineral Point, 203 W 215, 219, 233 NW 82, 84.

If a city refuses to act, a taxpayer may maintain an action in its behalf to recover from its officers money illegally paid out under street improvement contracts, but the city must be a party to the action. Coyle v. Richter, 203 W 590, 234 NW 906.

An ordinance providing for the revocation of a license by the mayor "for the good order of the city" was not a delegation of a legislative function, as it leaves to the mayor only the administrative function of ascertaining the existence of facts because of which revocation is necessary or expedient for such good order. A licensee, seeking to set aside the revocation of a license, is precluded from asserting that the ordinance under which the license was granted and under which he claims is invalid. State ex rel. Bluemound Amusement Park v. Mayor, 207 W 190, 240 NW 847.

In an action to restrain the city from interfering with the use of real property, the evidence is held to show that refusal by the council of a permit for erection of a filling station was not arbitrary, it appearing with reasonable certainty that the application was denied because the council believed that the establishment of such a station at the point in question would create an additional traffic hazard. Wadhams Oil Co. v. Delavan, 208 W 578, 243 NW 224.

The safety requirements fixed by the industrial commission for buildings pursuant to ch. 101 are to be considered as minimum requirements, and they do not preclude city ordinances including severer regulations, when reasonably necessary, than the state code. This section, empowering cities to enforce their ordinances by suppression, confiscation and other convenient means, does not give a city the right to create remedies to be applied by the courts, or entitle a city to an injunction against an ordinance violation not constituting a nuisance per se. Caeredes v. Platteville, 213 W 344, 251 NW 245.

A city council was without authority to use money, ostensibly borrowed to pay current expenses, to pay a bonus to a company to induce it to locate a plant in the city. Wendlandt v. Hartford A. & I. Co. 222 W 204, 268 NW 230.

A municipality does not become liable by reason of any act of its officers or agents, either for money, services, or goods, where the municipality had no power originally to make itself liable by contract. Shulse v. Mayville, 223 W 624, 271 NW 643.

The city may determine and may change the public use to which land dedicated as a public square without restriction may be devoted and no prescriptive right can be acquired to any particular form of public use. A city ordinance which prohibited peddlers and transient merchants from occupying any part of the public square longer than 15 minutes is construed as intended to prohibit the use of the square by peddlers and transient merchants for vending purposes and as so construed is valid. Stevens Point v. Bocksenbaum, 225 W 373, 274 NW 505.

A city ordinance prohibiting any marathon, walkathon or similar endurance contest was not superseded by or in conflict with the subsequent statutory enactment (352.48 (1), Stats. 1935) prohibiting like contests wherein any person participates for a stated period. Fox v. Racine, 225 W 542, 275 NW 513.

Although a city, under the general police powers conferred by 62.11 (5), has power to enact an ordinance for licensing the erection and maintenance of structures for the sale of gasoline and other petroleum products, an ordinance prohibiting the erection or maintenance of a gasoline or oil bulk or filling station within the city limits without first obtaining a permit from the common council, but not providing or indicating any standard to guide the council, is not a lawful exercise of a purely arbitrary power. Juneau v. Badger Co-op. Oil Co. 227 W 620, 279 NW 666.

Under 62.11 (5), 66.05 (7) and 146.11 (2), Stats. 1937, regulatory control over rendering plants is not vested in the state board of health to the exclusion of cities, and cities have the power to enact ordinances providing for the licensing of such plants. A city ordinance, prohibiting the conduct of any rendering business in the city without obtaining a license from the common council, and containing provisions for the prevention of offensive odors, is not void as conferring arbitrary powers on the council to grant or deny licenses without prescribing any standards to be considered thereby. La Crosse Rendering Works v. La Crosse, 231 W 438, 285 NW 393.

A city ordinance requiring that, before proceeding with the erection of any building within fire limits, the owner shall obtain a permit from the mayor and chief engineer,

and that they are authorized in their discretion to grant permits, is void for want of prescribing any standard to control the granting or the refusing of a permit. Algoma v. Peterson, 233 W 82, 288 NW 809.

A city ordinance imposing a license tax of $10 per day for carrying on a business of a transient photographer is beyond the power of the city and void as designed to suppress, rather than to regulate, a lawful business. Racine v. Weyhe, 241 W 133, 5 NW (2d) 747.

Under its police power, broadly granted by 62.11 (5) a city has authority to prohibit the use or occupancy of a building for failure to comply with valid requirements of a building ordinance where the owner or occupant fails to make the building comply after notice of his violation thereof; and such prohibition does not violate the due-process clause of either the state or the federal constitution. Miller v. Foster, 244 W 99, 11 NW (2d) 674.

Where a contract by which a city agreed to pay money to a corporation if the corporation would move its plant to the city was ultra vires, and where the acts of all concerned did not result in a benefit to the city nor proceed so as to create special circumstances, the city may recover from the corporation the money paid, but the directors of the corporation, acting in good faith and not knowing that the city would rescind the transaction, are not individually liable. In respect to individual liability for the return of money received by a corporation pursuant to a transaction subsequently rescinded by the other contracting party, the corporate officers and directors are not "agents" and the corporation is not their "principal" in the usual sense, but they are the alter ego of the corporation in acting in the transaction; and the corporation itself, acting per se by means of its own authorized organization, is alone responsible in its ordinary and usual transactions, unless its officer injects his individual responsibility by doing some act such as a wilful wrong. Kiel v. Frank Shoe Mfg. Co. 245 W 292, 14 NW (2d) 164.

See note to 260.05, citing State ex rel. Keefe v. Schmiege, 251 W 79, 28 NW (2d) 345.

Under 62.04 and 62.11 (5), the council of Prairie du Chien was acting within its powers in accepting a deed of the Villa Louis from the owner thereof, and in later joining with the original owner in a contract to convey the property to the State Historical Society as an historical site. State ex rel. State Historical Society v. Carroll, 261 W 6, 51 NW (2d) 723.

A city ordinance relating to disorderly conduct and prohibiting "any fighting" is not invalid as being so vague, uncertain and ambiguous as to fail to inform a defendant what conduct will make him liable to its penalty; the term "fighting" having a common and ordinary meaning sufficiently definite to be understood with reasonable certainty by persons of ordinary intelligence. Such ordinance is not invalid as exceeding the authority delegated to cities by 62.11 (5). Stoughton v. Powers, 264 W 582, 60 NW (2d) 405.

Municipal corporations, presumed to have full knowledge of local conditions, are prima facie the sole judges respecting the necessity and reasonableness of ordinances under their police power, and every intendment is to be made in favor of the lawfulness and reasonableness of such ordinances. The use of railway crossings is a proper subject for reasonable regulation under the police power of a city, and the public interest requires such regulation. Madison v. Chicago, M., St. P. & P. R. Co. 2 W (2d) 467, 87 NW (2d) 251.

"Cities are bodies politic and corporate, established by law to assist in the civil government of the state and to regulate and administer the internal or local affairs of the territory within their corporate limits. Cities have only such powers as are expressly granted to them by the legislature and such others as are necessary and convenient to the exercise of the powers expressly granted." Madison v. Tolzmann, 7 W (2d) 570, 573, 97 NW (2d) 513, 515.

The city of Madison may not, under the general powers granted to cities by 62.11 (5), or under special acts relating to the city, enact an ordinance requiring an annual license fee for boats operated on the navigable lakes within the boundaries of the city or bordering thereon. Madison v. Tolzmann, 7 W (2d) 570, 97 NW (2d) 513.

The transportation of passengers for hire in a taxicab upon the streets of a city is not an inherent right, but a privilege which the city, in the exercise of its discretion, may grant or refuse, with the exception and limitation contained in 349.24 (2), Stats. 1957. Courtesy Cab Co. v. Johnson, 10 W (2d) 426, 103 NW (2d) 17.

It will not be an abuse of discretion by the Madison city council to spend $5,500,000 of city funds to build a civic auditorium and parking ramp on filled-in land on the bed of Lake Monona, which bed is owned by the state and for the use of which the state has granted to the city only a revocable permit. Jackson v. Madison, 12 W (2d) 359, 107 NW (2d) 164.

The city council of a city of the fourth class could authorize the construction of a municipal television-translator tower to improve the quality of television reception in the local community, as a permissible municipal activity in promotion of public health, safety and welfare, and an expenditure of public funds for a public purpose. Beardsley v. Darlington, 14 W (2d) 369, 111 NW (2d) 184.

A municipal corporation has the power to submit to arbitration any claims asserted by or against it, whether based on contract or on tort. Madison v. Frank Lloyd Wright Foundation, 20 W (2d) 361, 122 NW (2d) 409.

See note to 66.95, citing Meihost v. Meihost, 29 W (2d) 537, 139 NW (2d) 116.

62.11 (5) confers power to enact an ordinance licensing retail food sellers which is valid even though the seller (a bakery) is also required to have a state license under 97.10, since different activities are regulated. Johnston v. Sheboygan, 30 W (2d) 179, 140 NW (2d) 247.

See note to 97.36, citing Johnston v. Sheboygan, 30 W (2d) 179, 140 NW (2d) 247.

When the validity of a city ordinance enacted under its police power is challenged, the following established rules are applied by the courts in determining whether or not the ordinance is constitutional: (1) The ordinance is presumed constitutional and the attacking party must establish its invalidity beyond a

reasonable doubt; (2) the ordinance must be sustained if there is any reasonable basis for its enactment, and the courts will only interfere with the exercise of police power by a municipality when it is clearly illegal; and (3) the function of a reviewing court is solely for the purpose of determining whether legislative action under the power delegated to the municipality passes boundaries of its limitations or exceeds boundaries of reason. Clark Oil & Refining Corp. v. Tomah, 30 W (2d) 547, 141 NW (2d) 299.

In reviewing findings and conclusions of a trial court where the constitutionality of a municipal ordinance has been challenged, the supreme court is only bound by the usual rule (i.e., that findings and conclusions are to be upheld unless against the great weight and clear preponderance of the evidence) when such findings and conclusions concern themselves with adjudicative facts. Clark Oil & Refining Corp. v. Tomah, 30 W (2d) 547, 141 NW (2d) 299.

See note to sec. 3, art. XI, on municipal home rule, citing Wisconsin T. H. Builders, Inc. v. Madison, 37 W (2d) 44, 154 NW (2d) 232.

See note to 97.24, citing Dean Milk Co. v. Madison, 340 US 349.

The powers of cities in this state under 62.11 (5), Stats. 1925, are very broad. 15 Atty. Gen. 515.

The general rule is that municipal regulations must not directly or indirectly contravene the general law. Nor can such regulations be repugnant to the policy of the state as declared in general legislation. As a general rule, regulations which are additional to the state law do not constitute a conflict therewith. 21 Atty. Gen. 662.

Under 62.11 (5), Stats. 1935, a municipality may pass ordinances strictly regulating abandoned wells, require permits on installation of private wells, and provide penalties for failure to comply with ordinances. 24 Atty. Gen. 404.

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

Subject to possible doubt created by the preamble to the state rent law, 234.26, Stats. 1949, any city, including Milwaukee, under proper conditions, has power under 62.11 (5), to enact ordinances limiting maximum rents and imposing conditions upon terminations of tenancies. 39 Atty. Gen. 407.

The authority of a city to protect the public health, whether under 62.11 (5) or 144.06, Stats. 1949, is not limited to the construction of a sewer pipe to the basement of a residence, but extends to the installation at the owner's expense of such facilities as are necessary to permit the drainage of household sewage into the public sewer system. 39 Atty. Gen. 499.

Under 62.11 (5), Stats. 1951, the city council has the management and control of city property and may pursuant to valid contract convey real estate by the form of conveyance contemplated by 235.19 (2) without the mayor's signature, but the action of the council must be submitted to the mayor for his veto under 62.09 (8) (c) and if he vetoes the council's action, it will be necessary to override the veto by a three-fourths vote of the members of the council. 40 Atty. Gen. 134.

See notes to 145.06, citing 36 Atty. Gen. 381 and 42 Atty. Gen. 113.

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.

62.115 History: 1923 c. 269; 1925 c. 79; 1925 c. 454 s. 19; Stats. 1925 s. 62.115; 1943 c. 275 s. 26.

62.12 (1) History: 1889 c. 326 s. 120; Ann. Stats. 1889 s. 925q sub. 120; Stats. 1898 s. 925—120; 1907 c. 349; 1921 c. 242 s. 41; Stats. 1921 s. 62.12 (1).

62.12 (2) History: 1889 c. 326 s. 142; Ann. Stats. 1889 s. 925r sub. 142; 1893 c. 312; 1895 c. 199; 1897 c. 138 s. 3; Stats. 1898 s. 925—142; 1899 c. 186 s. 2; Supl. 1906 s. 925—142; 1921 c. 242 s. 42; Stats. 1921 s. 62.12 (2).

On municipal budget systems see notes to various sections of ch. 65.

Under sec. 102, ch. 124, Laws 1891, relating to the city of Superior, the estimates required are merely aids to the judgment of the council, not limitations on its general power, and the levy of a certain sum for the "general fund" is not invalid because it was not included in the estimates filed, nor because there was no detailed statement of the items of which it was made up. Hayes v. Douglas County, 92 W 429, 65 NW 482.

62.12 (3) History: 1882 c. 325; 1883 c. 165; 1889 c. 326 s. 53, 76, 243; Ann. Stats. 1889 s. 925i sub. 53, 921L sub. 76, 925w sub. 243, 927b; 1895 c. 182; Stats. 1898 s. 925—53, 925—76, 925—243, 927—1; 1911 c. 233; Stats. 1911 s. 925—53, 925—76, 925—95c, 925—243, 927—1; 1913 c. 490, 661; 1915 c. 160; 1919 c. 571 s. 2; 1921 c. 242 s. 43; Stats. 1921 s. 62.12 (3); 1935 c. 421.

62.12 (4) History: 1895 c. 199; 1897 c. 138 s. 3; Stats. 1898 s. 925—142a; 1899 c. 262 s. 1; Supl. 1906 s. 925—142a; 1921 c. 242 s. 44; Stats. 1921 s. 62.12 (4); 1947 c. 201.

A city organized in 1891 under a special charter had the power to adopt the general city charter law in 1896, and after it had taken such action taxes levied in excess of the amount authorized by said law were invalid. Somo Lumber Co. v. Lincoln County, 110 W 286, 85 NW 1023.

A city may levy a tax for all purposes, including its city school budget, to the extent of 43 mills on the assessed value, as the statute does not require the designation of any part of the levy as a special tax. Sheldon v. Tomahawk, 197 W 202, 221 NW 656.

When a school board expends money in excess of the amount authorized by law, its members are personally liable to the city for the excess, but the city's right to recover the same is easily lost by laches or acquiescence. Where a city maintains its own schools the 3½ per cent tax authorized by this section for "municipal purposes" is available for

school purposes as well as for other city purposes. 11 Atty. Gen. 769.

A city council may levy a tax more than sufficient to cover operating expenses of the school system and create a fund to be used for building a high school, provided said levy, together with levy for all other purposes, does not exceed 3½ per cent of the assessed valuation plus eight-tenths of one per cent on said valuation. 13 Atty. Gen. 590.

62.12 (5) History: 1889 c. 326 s. 132; Ann. Stats. 1889 s. 925q sub. 132; 1893 c. 312 s. 41; Stats. 1898 s. 925—132; 1921 c. 242 s. 45; Stats. 1921 s. 62.12 (5.)

62.12 (6) History: 1889 c. 326 s. 121, 122, 123, 124; Ann. Stats. 1889 s. 925q sub. 121, 925q sub. 122, 925q sub. 123, 925q sub. 124; 1893 c. 312 s. 38; Stats. 1898 s. 925—121, 925—122, 925—123, 925—124; 1921 c. 242 s. 46; Stats. 1921 s. 62.12 (6); 1941 c. 129; 1947 c. 362 s. 6.

Money which has been received by taxation for a specific purpose constitutes money appropriated by law for that purpose. Weik v. Wausau, 143 W 645, 128 NW 429.

62.12 (7) History: 1889 c. 326 s. 127 to 129; Ann. Stats. 1889 s. 925a sub. 128, 925q sub. 127, 129; 1893 c. 312 s. 40; 1897 c. 22; Stats. 1898 s. 925—127, 925—128, 925—129; 1911 c. 130; Stats. 1911 s. 925—127, 925—127a, 925—128, 925—129; 1913 c. 773 s. 34; Stats. 1913 s. 925—127, 925—128, 925—129, 926—175m; 1921 c. 242 s. 47 to 50; Stats. 1921 s. 62.12 (7); Spl. S. 1931 c. 1 s. 1; 1933 c. 435 s. 2; 1941 c. 129.

The sureties on a depository bond securing municipal deposits are entitled upon payment of a judgment in favor of the city to offset against their indebtedness to the bank the amount paid on such judgment. Rice Lake v. Citizens' State Bank, 204 W 228, 235 NW 398.

62.12 (8) History: 1889 c. 326 ss. 134, 135; Ann. Stats. 1889 ss. 925q subs. 134, 135; Stats. 1898 ss. 925-134, 925-135; 1917 c. 553 s. 2; 1921 c. 242 ss. 51, 52; Stats. 1921 s. 62.12 (8); 1939 c. 107; 1945 c. 43.

A claim was presented to the council when it was filed with the city clerk. Bacon v. Antigo, 103 W 10, 79 NW 31; Mason v. Ashland, 98 W 540, 74 NW 357; Oshkosh W. W. Co. v. Oshkosh, 106 W 83, 81 NW 1040.

This section does not apply to the fixing or the paying of salaries of officials. State ex rel. Elliott v. Kelly, 154 W 482, 143 NW 153.

Tort claims are not included in the claims specified in this section and required to be "itemized," but are required to be presented to the common council by 62.25 (1) for allowance or disallowance; and a claim for a specified amount as damages to a stock of goods by flooding caused by the negligent construction of a sewer, was "not too indefinite." J. F. Rappel Co. v. Manitowoc, 182 W 141, 195 NW 399.

A city has no authority to pay in advance for services to be performed in the future or to pay out city funds for services that have not been rendered or performed. State ex rel. Madison v. Maxwell, 224 W 17, 271 NW 393.

See note to 62.25 (1), citing Trustees of University Co-operative Co. v. Madison, 233 W 100, 288 NW 742.

Failure of a superintendent of city schools governed by 40.50 to 40.60 to comply with 62.12 (8) is a bar to his action since filing with the city clerk precedes council action. Seifert v. School Dist. 235 W 489, 292 NW 286.

The general method for presenting claims against cities does not apply to presenting claims for expense of municipally owned public utilities if the council provides for a method of auditing and paying such claims, as provided by 66.06 (10) (d), Stats. 1923. 13 Atty. Gen. 254.

62.12 (9) History: 1963 c. 365; Stats. 1963 s. 62.12 (9); 1969 c. 276 s. 589 (2) (a).

62.13 (1) History: 1897 c. 247; Stats. 1898 s. 959—40, 959—41; 1899 c. 178 s. 1; Supl. 1906 s. 959—41; 1907 c. 61; 1909 c. 181, 187; 1911 c. 418; 1911 c. 663 s. 113; Stats. 1911 s. 959—40, 959—41, 959—41L, 959—41m; 1919 c. 362 s. 35; 1921 c. 242 s. 53; Stats. 1921 s. 62.13 (1); 1949 c. 14.

The provision that not more than 2 of the commissioners shall belong to the same political party does not exclude anyone from eligibility and is not unconstitutional. State ex rel. Kleinsteuber v. Kotecki, 155 W 66, 144 NW 200.

As to removal of a member of the police and fire commissioners see note to 17.12, citing State ex rel. Kidder v. Steele, 241 W 198, 5 NW (2d) 764.

Fire and police commissioners of a city are not required to be residents of the city. 25 Atty. Gen. 490.

A pensioned fireman is not eligible to membership on the board of police and fire commissioners. 25 Atty. Gen. 607.

62.13 (2) History: 1911 c. 418; Stats. 1911 s. 959—41o; 1913 c. 744; 1915 c. 145; 1921 c. 242 s. 54; Stats. 1921 s. 62.13 (2); 1955 c. 488.

62.13 (3) History: 1897 c. 247; Stats. 1898 s. 959—41, 959—45; 1899 c. 178 s. 1, 3; Supl. 1906 s. 959—41, 959—45; 1907 c. 61; 1911 c. 443; 1917 c. 464; 1921 c. 242 s. 55; Stats. 1921 s. 62.13 (3).

Where a chief of police had been appointed by the board and where the board thereafter had been abolished the chief of police could not be removed from office without proof of good cause. State ex rel. Monty v. Tilleson, 231 W 110, 285 NW 501.

Under the provisions of 62.13 (3) and (4), Stats. 1937, that the board of police commissioners of a city shall appoint the chief of police and that the chief shall appoint subordinates, a captain of police is a "subordinate", so that the board has no authority to appoint a permanent captain of police and endow him with the right to hold the office or employment until discharged for cause. Walsh v. Richland Center, 231 W 265, 285 NW 791.

Out-of-state candidates being eligible to be appointed chief of police in a city operating under the city-manager plan, the expenses of such candidates in coming to the city for interviews, approved by the board of police and fire commissioners, should be paid by the city. Evjue v. Howell, 255 W 232, 38 NW (2d) 476.

See note to 64.11, citing State ex rel. Evjue v. Weatherly, 255 W 225, 38 NW (2d) 472.

62.13 (4) History: 1897 c. 247; Stats. 1898 s. 959—41 to 959—44, 959—46; 1899 c. 178 s. 1, 2; Supl. 1906 s. 959—41, 959—44; 1907 c. 61; 1921 c. 108; 1921 c. 242 s. 56, 57, 58; 1921 c. 541; Stats. 1921 s. 62.13 (4); 1925 c. 161; 1943 c. 344; 1945 c. 368; 1949 c. 459; 1959 c. 642.

62.13 (4) (d) does not apply to the city of Milwaukee, which is excluded by 62.03 (1) from being subject to ch. 62, and which city has not adopted 62.13 (4) (d), as against a contention that 62.13 (12) has modified such exclusion so far as relating to 62.13 (4) (d). State ex rel. Lund v. Seramur, 269 W 1, 68 NW (2d) 570.

62.13 (5) History: 1897 c. 247; Stats. 1898 s. 959—45; 1899 c. 178 s. 3; Supl. 1906 s. 959—45; 1907 c. 61; 1911 c. 443; 1917 c. 464; 1921 c. 242 s. 59; Stats. 1921 s. 62.13 (5); 1945 c. 245; 1959 c. 478; 1969 c. 87.

This subsection provides for the removal of a policeman for cause, not for a discharge pursuant to an ordinance reducing the police force. State ex rel. Miller v. Baxter, 171 W 193, 176 NW 770.

See note to sec. 8, art. VII, on extraordinary writs to non-judicial agencies and officers, citing State ex rel. Meissner v. O'Brien, 208 W 502, 243 NW 314.

On an appeal to the circuit court from an order of a police and fire commission suspending a police captain and reducing him in rank, the sole question for determination is, as expressly prescribed by 62.13 (5) (h), Stats. 1943, authorizing the appeal, whether on the evidence the order of the commission was reasonable. Petition of Heffernan, 244 W 104, 11 NW (2d) 680.

Ch. 586, Laws 1911, is applicable to the city of Milwaukee, but, by virtue of exclusionary provisions in 62.03 (1), the provisions of ch. 62, in particular 62.13 (5) (b) and (c), relating in part to hearings for policemen or firemen suspended by the board or chief of a city, are not applicable to Milwaukee. State ex rel. Curtis v. Steinkellner, 247 W 1, 18 NW (2d) 355.

A police patrolman was not a "public officer" either under the enumeration of officers in 62.09 (1) (a) or under any city ordinance, but was an employe, and, after certiorari proceedings in which it was determined that a board order suspending him for a year was invalid, he was not entitled to recover from the city any salary for the period of suspension, where his earnings elsewhere during such period exceeded the salary he would have received from the city had he worked in the police department during such period. Heffernan v. Janesville, 248 W 299, 21 NW (2d) 651.

The provisions of 62.13 (5) (h), as well as of ch. 586, Laws 1911, authorizing appeals to the circuit court from disciplinary orders of boards of fire and police commissioners, and providing for a review by the circuit court only as to the reasonableness of the order of the board, considered together with identical declarations of legislative intent in 62.13 (12) and 66.01 (15), indicate a legislative intent that an order of the circuit court on the reasonableness of a determination of the commissioners shall be final and conclusive and that the commissioners shall have no right to appeal therefrom, as against a contention that later-enacted amendments to ch. 274, Stats., dealing with appeals generally, and particularly 274.09, 274.10, 274.11 and 274.33 should be held to authorize an appeal in such case. Jendrzejewski v. Fire and Police Commissioners, 257 W 536, 44 NW (2d) 270.

The provision in 62.13 (5) (h) that the court shall on application fix a date of trial does not require that the application be in writing. Ford v. James, 258 W 602, 46 NW (2d) 859.

See note to 270.58, citing Matczak v. Mathews, 265 W 1, 60 NW (2d) 352.

A resolution adopted by the common council of a city directing the chief of police to file charges against a subordinate is not an unlawful interference with the executive branch of government, nor will the fact that damage will occur to the subordinate justify an injunction. Christie v. Lueth, 265 W 326, 61 NW (2d) 338.

The scope of review of the decision of the circuit court under 62.13 (5) is discussed in State ex rel. Kaczkowski v. Fire & Police Comm. 33 W (2d) 488, 148 NW (2d) 44.

62.13 (5m) History: 1933 c. 58; Stats. 1933 s. 62.13 (5m).

A pipeman who was wrongfully dismissed in disregard of his civil service status under 62.13 (5m) (b) and (c), and whose work was thereafter done by others, was not an "officer" but was merely an employe, and hence the dismissal of his complaint against the city for damages, on the ground that the situation was governed by the rule that when the salary of an "office" has been paid to a de facto officer the de jure officer cannot recover from the municipality the sums so paid, was error. Olson v. Superior, 240 W 108, 2 NW (2d) 718.

62.13 (6) History: 1913 c. 505; Stats. 1913 s. 959—40m; 1915 c. 385 s. 20; 1921 c. 242 s. 60; Stats. 1921 s. 62.13 (6); 1965 c. 666 s. 22 (8).

62.13 (7) History: 1897 c. 247; Stats. 1898 s. 959—44; 1899 c. 178 s. 2; Supl. 1906 s. 959—44; 1921 c. 242 s. 61; Stats. 1921 s. 62.13 (7).

A communication from the board of police and fire commissioners to the common council, offering a "'suggested" plan of salary waiver, disclosed a substantial compliance with this subsection, requiring a "recommendation" of the board before the council may decrease policemen's salaries, and the council may not exceed the amount of decrease so recommended. Van Gilder v. Madison, 222 W 58, 267 NW 25, 268 NW 108.

A resolution of the board of fire and police commissioners that the city council be permitted to reduce salaries of police and fire department personnel by such per cent as the council should deem proper after careful study and survey was sufficient compliance with the statute permitting reduction of salaries only on recommendation of the board. The resolution was valid even though the board was only a de facto board. Silgen v. Fond du Lac, 225 W 335, 274 NW 256.

Where policemen did not protest against reduction of salary made by city as emergency economy measure and accepted reduced salaries for several years the policemen were estopped to claim the amount deducted. Altenberg v. Superior, 228 W 272, 280 NW 342.

62.13 (7m) History: 1923 c. 24; Stats. 1923 s. 62.13 (7m); 1929 c. 36; 1937 c. 94; 1959 c. 63.

62.13 (7n) History: 1937 c. 94; Stats. 1937 s. 62.13 (7n).

62.13 (7), (7m) and (7n) give to a policeman the option to refuse to work over 8 hours on a working day and to refuse to work on a day of rest, except in emergency, or to get an express agreement for pay for overtime; and without such agreement a policeman employed at a fixed salary per month cannot recover for overtime either for working in excess of 8 hours on working days or for working on days of rest. Schoonover v. Viroqua, 244 W 615, 12 NW (2d) 912.

62.13 (8) History: 1889 c. 326 s. 72, 74, 75; Ann. Stats. 1889 s. 925L sub. 72, 74, 75; Stats. 1898 s. 925—72, 925—74, 925—75; 1921 c. 242 s. 62; 1921 c. 590 s. 58; Stats. 1921 s. 62.13 (8); 1923 c. 180; 1963 c. 295; 1969 c. 385.

62.13 (9) History: 1907 c. 214, 671; 1911 c. 663 ss. 79 to 81, 115; Stats. 1911 ss. 925—52h to 925—52u, 959—46k, 959—46L, 959—46m, 959—46o; 1917 c. 391; 1919 c. 263, 284; 1921 c. 93; 1921 c. 242 ss. 63 to 77; Stats. 1921 s. 62.13 (9); 1927 c. 285, 297; 1927 c. 541 s. 13; 1929 c. 166; 1931 c. 94; 1933 c. 175; 1935 c. 195; 1939 c. 496; 1939 c. 513 s. 10; 1947 c. 206; 1947 c. 362 s. 2; 1951 c. 492; 1961 c. 281; 1969 c. 158 s. 106; 1969 c. 177; 1969 c. 476.

Some of the sections from which this section was derived were intended to promote efficiency and continuity of service and should be interpreted accordingly. The word "fees" in sec. 925—52m, Stats. 1919, includes, in addition to rewards or gratuities, all fees earned by police officers in the service of warrants or subpoenas, for travel or making arrests or attending court, and all such fees belong to the police pension fund. The language in sec. 925—52m, namely, "except when allowed to be retained by said member by resolution of said board," whatever it may authorize in some cities, does not authorize a pension board, in a city where police officers are paid wholly by salary, to divert the fees above mentioned from the pension fund to the officers earning them. The fees mentioned include those actually collected, not those which are neither taxed nor paid because defendants have been found not guilty. Amounts taxed and collected for use of a patrol wagon are not "fees" and do not belong to the police fund. State ex rel. Board of Trustees v. Oshkosh, 166 W 391, 166 NW 37.

Under 62.13 (9) (c) the board is authorized to retire a disabled policeman only after such a finding has been made, and a policeman's petition, containing no allegation that the necessary finding by a medical officer or physician ordered by the board has been made, is insufficient to entitle him to a writ of mandamus to compel the board to retire him and award him a pension. (State ex rel. Weber v. Trustees of Policemen's Pension Fund, 119 W 436, applied.) State ex rel. Wendt v. Trustees of Police Pension Fund, 239 W 55, 300 NW 510.

Under 62.13 (9), as amended by ch. 496, Laws 1939, the legislative declaration in 62.13 (9) (c), Stats. 1939, that members of the police department shall have a vested right in police pension funds is not applicable to cities of the fourth class having a population between 3,000 and 10,000. State ex rel. McCarty v. Gantter, 240 W 548, 4 NW (2d) 153.

The provision that "a member of the [city police] department who has served 22 years or more" may be retired on pension, requires 22 years of actual service as a police officer, and not merely 22 years as a member of the department, so that periods during which a police officer was under suspension without pay by reason of his misconduct must be excluded in determining his eligibility for pension. State ex rel. Johnson v. Buchanan, 254 W 261, 35 NW (2d) 897.

The attempt of a village board, in a village subject to the provisions of this section, to base its pension liabilities on only a part of a fireman's monthly compensation, was void as conflicting with 62.13 (9) (c). Even if the fireman estopped himself to repudiate the agreement under which he received increased compensation and agreed that the increase should not be treated as compensation for pension purposes, his widow, in the absence of any conduct on her part amounting to a waiver or creating an estoppel, is entitled to enforce her separate and independent right under 62.13 (9) (c) to a pension based on his actual monthly compensation at the time of his death. Harrington v. Shorewood, 257 W 398, 43 NW (2d) 353.

A city treasurer or ex officio officer of a pension board, such as the firemen's pension board of a city, is without authority to determine the validity of an order of the board, and the city's remedy, if dissatisfied with such order, is by certiorari, wherein the court may review the board's findings. In a judicial review of the pension board's determination, the reviewing court is limited in matters of evidence to the question of whether the finding is supported by substantial evidence in view of the entire record. Graff v. Denny, 12 W (2d) 65, 106 NW (2d) 311.

Funds coming into the hands of the city treasurer as ex officio treasurer of retirement board of policemen's annuity and benefit fund are subject to the public deposits law, ch. 34. 27 Atty. Gen. 298.

Moneys owing firemen's pensioner under this section are not exempt under the provisions of this paragraph from the state's claim for income taxes owing by the pensioner. Express provisions of 74.11 (3) (c) and (4) and 74.30, Stats. 1937, prevail over 62.13 (9) (d). The state proceeding under 71.36 cannot reach pension by order of court in supplementary proceedings but can reach pension only by proceeding under 304.21. 28 Atty. Gen. 220.

For interpretations of chs. 206 and 556, Laws 1947, as they apply to police pension funds outside of cities of the first class see 36 Atty. Gen. 489.

A policeman in a city of the second or third class who joined the department on or after January 1, 1948, and who is under the Wisconsin retirement fund rather than the police pension fund created pursuant to 62.13 (9), Stats. 1955, is entitled to vote for 3 members of the board of trustees of the latter pension fund. 44 Atty. Gen. 161.

62.13 (9a) History: 1917 c. 220; Stats. 1917 s. 925—52w; 1919 c. 161; 1921 c. 242 s. 78;

Stats. 1921 s. 62.13 (9) (e); 1939 c. 496; 1943 c. 165; 1947 c. 206; 1947 c. 362 s. 2; Stats. 1947 s. 62.13 (9a); 1951 c. 492; 1961 c. 281; 1969 c. 158 s. 106.

62.13 (10) History: 1907 c. 214; 1911 c. 608; 1911 c. 663 s. 115; Stats. 1911 ss. 959—46e to 959—46k, 959—46n, 959—46p to 959—46u; 1917 c. 391; Stats. 1917 ss. 959—46e to 959—46k, 959—46n, 959—46p to 959—46v; 1921 c. 242 ss. 79 to 83; Stats. 1921 s. 62.13 (10); 1929 c. 166; 1931 c. 240; 1939 c. 496; 1943 c. 290; 1945 c. 55; 1947 c. 206; 1947 c. 362 s. 2; 1951 c. 492; 1955 c. 529; 1961 c. 281; 1963 c. 233; 1969 c. 158 s. 106; 1969 c. 476.

The time when a person has been in service as a volunteer, devoting only a portion of his time to the service, is to be measured as part of the 22 years and he is entitled to the pension if he is receiving a monthly compensation at the termination of such period. State ex rel. Schaetzle v. Knowles, 145 W 523, 130 NW 451.

The intention of sec. 959—46 L, Stats. 1917, was to exclude from the right of a pension any member of a fire department who must be permanently retired prior to 22 years of service because of disability or disease which is not the outgrowth of his performance of duty. State ex rel. Johnson v. Board of Trustees, 170 W 154, 174 NW 465.

It is the intent of the firemen's pension law to bestow a pension only for the discharge of a firemen's duties the requisite length of time. It does not contemplate the bestowal of such a pension for services, the bulk of which had no relation to those of firemen's duties. The fact that one man held 2 offices, or discharged the separate duties, would not warrant the tacking of the one to the other for the purpose of a pension. State ex rel. Klein v. Welsh, 181 W 147, 194 NW 382.

The firemen's pension board cannot retire members of a department for the purpose of making positions available to those in whom the board is interested or for the purpose of creating positions in the department for friends and relatives of members of the board. Horlick v. Swoboda, 225 W 162, 273 NW 534.

Under 62.13 (10) (e) injury means damage caused by some external violence as distinguished from damage caused by disease, and a fireman suffering from arthritis and congenital anomalies not due to his occupation is not entitled to a pension thereunder. Tilkens v. Board of Trustees, 253 W 371, 34 NW (2d) 248.

Cities maintaining fire departments consisting of both paid and volunteer firemen are required to have a firemen's pension fund. 25 Atty. Gen. 102.

For interpretations of chs. 206 and 556, Laws 1947, as they apply to firemen's pension funds outside of cities of the first class see 36 Atty. Gen. 489.

62.13 (10m) History: 1959 c. 46; Stats. 1959 s. 62.13 (10m).

62.13 (11) History: 1923 c. 168; Stats. 1923 s. 62.13 (11).

62.13 (11a) History: 1921 c. 236; 1921 c. 590 s. 59; Stats. 1921 s. 62.13 (8); 1923 c. 180; Stats. 1923 s. 66.15; 1943 c. 544; 1947 c. 388; Stats. 1947 s. 62.13 (11a); 1963 c. 295.

62.13 (12) History: 1935 c. 193; Stats. 1935 s. 62.13 (12).

On municipal home rule see notes to sec. 3, art. XI.

62.135 History: 1951 c. 492; Stats. 1951 s. 62.135.

See note to sec. 12, art. I, on impairment of contracts, citing 57 Atty. Gen. 172.

62.14 (1) History: 1889 c. 326 s. 78; Ann. Stats. 1889 s. 925m sub. 78; 1893 c. 312 s. 28; Stats. 1898 s. 925—78; 1921c. 242 s. 84; Stats. 1921 s. 62.14 (1); 1943 c. 193; 1947 c. 388.

An authorization by the common council for the school board to enter into a contract for the erection of a schoolhouse is not effective where it does not appear that the common council substituted the school board for the board of public works. Hoeppner-Bartlett Co. v. Rhinelander, 142 W 229, 125 NW 454.

The effect of 62.14 (1) and 66.06 (10) (g), Stats. 1931, is that in a city of the fourth class a municipal utility may be managed either by a nonpartisan commission or by a board of public works, and that the board of public works, as constituted by 62.14 (1), may be dispensed with and its duties performed by such officers and boards as the common council may designate. Rice Lake v. United States F. & G. Co. 216 W 1, 255 NW 130.

62.14 (2) History: 1889 c. 326 s. 79; Ann. Stats. 1889 s. 925m sub. 79; 1895 c. 316 s. 9; Stats. 1898 s. 925—79; 1921 c. 242 s. 85; Stats. 1921 s. 62.14 (2).

62.14 (3) History: 1889 c. 326 s. 82; Ann. Stats. 1889 s. 925m sub. 82; Stats. 1898 s. 925—82; 1921 c. 242 s. 86; Stats. 1921 s. 62.14 (3).

62.14 (4) History: 1889 c. 326 s. 84; Ann. Stats. 1889 s. 925m sub. 84; Stats. 1898 s. 925—84; 1921 c. 242 s. 87; Stats. 1921 s. 62.14 (4).

62.14 (5) History: 1889 c. 326 s. 85; Ann. Stats. 1889 s. 925m sub. 85; Stats. 1898 s. 925—85; 1921 c. 242 s. 88; Stats. 1921 s. 62.14 (5).

62.14 (6) History: 1889 c. 326 ss. 86, 88, 89; Ann. Stats. 1889 s. 925m subs. 86, 88, 89; Stats. 1898 ss. 925—86, 925—88, 925—89; 1921 c. 242 ss. 89, 91, 92; 1921 c. 590 s. 83; Stats. 1921 s. 62.14 (6).

Where an electric light company had obtained permission from the public authorities to set a pole and string its wires on certain side of a street, it should be enjoined from placing such a pole in front of the premises of a person who objected thereto until an order is obtained authorizing the placing of the pole at this point. Malone v. Waukesha Elec. Light Co. 120 W 485, 98 NW 247.

It is the duty of a city to keep its public streets, ways and thoroughfares, including bridges, which carry such thoroughfares across streams, in repair. Although a city's contractual obligation to keep up and maintain a footbridge across a river may not have been enforceable because of alleged invalidity of the contract by reason of the fact that one of the donors of the bridge was a member of the council and voted to accept the offer,

nevertheless, where the city made the bridge a part of its street system in keeping up and maintaining the bridge as a public highway or thoroughfare for more than 35 years, and improving the bridge by putting fences along its sides and installing electric lights on it, the city, quite apart from any contractual obligation, had the duty to maintain the bridge, so that the city was required to replace it after it had been washed out. Herbert v. Richland Center, 264 W 8, 58 NW (2d) 461.

62.14 (7) History: 1889 c. 326 s. 81; Ann. Stats. 1889 s. 925m sub. 81; Stats. 1898 s. 925—81; 1921 c. 242 s. 95; Stats. 1921 s. 62.14 (7).

62.15 (1) to (4) History: 1889 c. 326 s. 90, 186; Ann. Stats. 1889 s. 925m sub. 90, 925t sub. 186; 1893 c. 312 s. 29; 1895 c. 302 s. 3; Stats. 1898 s. 925—90, 925—186; 1903 c. 88 s. 1; Supl. 1906 s. 925—186; 1907 c. 493, 673; 1909 c. 539; Stats. 1911 s. 925—30d, 925—90, 925—90a, 925—186, 925—279, 925—280; 1913 c. 773 s. 35; 1915 c. 459; 1919 c. 73; 1921 c. 242 s. 96; Stats. 1921 s. 62.15 (1) to (4); 1937 c. 432; 1949 c. 461; 1951 c. 559; 1953 c. 603; 1957 c. 539, 680; 1959 c. 336, 628; 1965 c. 252.

Although by a city charter the expense of improving streets and sidewalks is not chargeable upon the city or ward, but only upon the several lots in front of which the work is done, yet such work is public work, done for the city or ward, and the officers of the city in letting the contracts act as public agents. Mitchell v. Milwaukee, 18 W 92.

The work to be done, the manner or style in which it is to be done and the material to be used must be definitely described in the plans and specifications upon which proposals are asked and in the contract. Wells v. Burnham, 20 W 112.

A contract is invalid unless due notice of the time and place of letting it is given. The amount of work intended to be included in each contract must be specified when it is practicable, and the time within which it is to be finished, the manner in which it is to be done and the quality of the materials to be furnished. Officers cannot reserve the right to divide the work after the bids are received "according to the ability of the contractors to do the same, or as they may think for the best interest of the property affected and that of the public." Kneeland v. Furlong, 20 W 437.

The notice to contractors did not define the exact size and number of the manholes connected with a sewer nor specify the quality of the cement to be used. It appeared that the cost of the manholes, as compared with the cost of the whole work was trifling and did not affect the bids, and that the best quality of cement was used. A sewer tax was not invalidated by these omissions. It is enough if the plan made is as full and perfect as it is usual for persons of competent skill to make of similar works. A requirement that the plan be filed in a designated office is satisfied if it is left there for inspection though it is not marked "filed." Houghton v. Burnham, 22 W 301, 309.

The fact that a contract for a pavement was not let within the time fixed by law and that no plan or profile of the work was filed before the letting will not authorize the interference of a court of equity if the party complaining does not show that he was injured thereby. Warner v. Knox, 50 W 429, 7 NW 372.

If the board is not required to let the whole work on a proposed improvement at one time and is unable to get satisfactory bids a contract may be let for part of it at one time and for the remainder at another. Wright v. Forrestal, 65 W 341, 27 NW 52.

Under the charter of Superior, ch. 124, Laws 1891, competition on one plan was required and where 2 or more different plans or processes for public work were submitted, and neither adopted by the council prior to the bidding, the contract was invalid. Stocking v. Warren Brothers Co. 134 W 235, 114 NW 789.

Bidders must be guided by the plans and specifications filed, and have no right to rely upon any other statements or estimates furnished by officials. Hanrahan v. Janesville, 145 W 457, 130 NW 482.

Publication of notice for one week instead of for 2 successive weeks did not affect the jurisdiction of the common council to make the improvement and assess the cost. Newton v. Superior, 146 W 308, 130 NW 242, 131 NW 986.

A city ordinance limiting the hours of employment on public works does not conflict with a provision in the city charter requiring all contracts for such works to be let to the lowest bidder. Milwaukee v. Raulf, 164 W 172, 159 NW 819.

A provision that all work done for, or material purchased by, a city, exceeding in cost a specified sum, shall be let to the lowest responsible bidder does not require the common council to procure such work or material at the lowest possible cost. A wide field of discretion is vested in such council and it has the power and responsibility of determining questions of public policy affecting the community as a whole. A city council has power to determine the grade or quality of material to be used in public works. The motives which prompt a legislative body to act on a matter within its power are not subject to judicial scrutiny. An ordinance providing a minimum wage scale to be paid to all city employes engaged upon public work, and to be paid by all contractors carrying on such work, is not so unreasonable, as matter of law, as to invalidate it, where it was the voluntary act of the city and was subject to change at will by the city. Wagner v. Milwaukee, 180 W 640, 192 NW 994.

City officers cannot let a contract for a water reservoir without specifications on file and without advertising for bids. Such action is malfeasance in office. Equity may refuse, however, to compel a restoration of the contract price under some circumstances, whatever the remedy may be at law. Ellefson v. Smith, 182 W 398, 196 NW 834.

A municipality has no power to make contracts for public improvements unless it proceeds in the manner prescribed by law, and a contract entered into without complying with the charter provisions is void. Such a contract is not validated by complete per-

formance but remains void. Bechthold v. Wauwatosa, 228 W 544, 277 NW 657, 280 NW 320.

A surety for the performance of a contract, who signed the contract, thereby bound himself. That was a substantial compliance with the statute. Luebke v. Watertown, 230 W 512, 284 NW 519.

A contract entered into by the utility commission of a city pursuant to authorization of the common council, whereby a firm of consulting engineers was employed and paid to make certain surveys and prepare plans and specifications relating to a proposed rebuilding and extension of the electric plant of the city, was not within 62.15 (1), requiring that "public work" be let to the lowest responsible bidder. Flottum v. Cumberland, 234 W 654, 291 NW 777.

As used in 62.15 (1) the term "public work" contemplates something more comprehensive than the mere purchase of materials, which only become a part of public work when other materials and labor are added. Standard Oil Co. v. Clintonville, 240 W 411, 3 NW (2d) 701.

Where a city entered into a contract for the construction of sidewalks, which specified that the contractor was to furnish sufficient filling, in the form of cinders, slag, or small broken stone, the city engineer had no authority to specify sand, and the contractor is not entitled to recover for the sand, nor is he entitled to recover as for extras, the contract making no provision for extras. Probst v. Menasha, 245 W 90, 13 NW (2d) 504.

The fact that a taxpayer was acting as attorney for a city during a period when the mayor ordered work to be done without any bids taken or any formal contract let or any authorization received from the common council, and a first payment of $500 was made out of the general funds of the city for the work, did not estop such taxpayer from subsequently maintaining an action on behalf of all taxpayers in respect to the matter, even though he might have been subject to estoppel himself alone as an individual taxpayer. Leuch v. Egelhoff, 255 W 29, 38 NW (2d) 1.

See note to 59.08, citing State ex rel. Grosvold v. Board of Supervisors, 263 W 518, 58 NW (2d) 70.

Where a contract was awarded by a common council to a bidder who was not the lowest bidder, the trial court did not abuse its discretion in quashing a writ of certiorari to obtain a review, on behalf of the lowest bidder, of the action of the common council in thus awarding the contract. State ex rel. Hron Brothers Co. v. Port Washington, 265 W 507, 62 NW (2d) 1.

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

Since 62.15, Stats. 1965, requires public construction which exceeds $1,000 to be let by contract to the lowest responsible bidder, any person who, ignoring the statutory requirement, performs work under such a contract let to another cannot claim to be a party thereto without violating the statute. Ledges Construction Co. v. Butler, 42 W (2d) 227, 166 NW (2d) 202.

The condition of defeasance in 62.15 (3), Stats. 1963, providing that liability on the bid bond ceases when the bidder enters into a formal work contract with the municipality and gives bond for the faithful performance of such contract, has nothing to do with what is to be paid in the event of breach of the bid agreement, but only with the termination of liability where there is no breach. Lake Geneva v. States Imp. Co. 45 W (2d) 50, 172 NW (2d) 176.

See note to 83.05, citing 38 Atty. Gen. 175.

Municipal non-liability for extras furnished without compliance with statutory mode of contracting. 29 MLR 70.

62.15 (4m) History: 1959 c. 164; Stats. 1959 s. 62.15 (4m).

62.15 (5) History: 1889 c. 326 s. 90, 187; Ann. Stats. 1889 s. 925m sub. 90, 925t sub. 187; 1893 c. 312 s. 29; Stats. 1898 s. 925—90, 925—187, 926—157; 1905 c. 364 s. 1; Supl. 1906 s. 926—157; 1907 c. 673; Stats. 1911 s. 925—90, 925—187, 925—282, 926—157; 1915 c. 459; 1919 c. 691 s. 68; 1921 c. 242 s. 97; Stats. 1921 s. 62.15 (5); 1939 c. 80.

62.15 (6) History: 1889 c. 326 s. 91; Ann. Stats. 1889 s. 925m sub. 91; Stats. 1898 s. 925—91; 1921 c. 242 s. 98; Stats. 1921 s. 62.15 (6).

If the lowest bidder does not comply with the offer he has made he may be regarded as an irresponsible bidder and the contract may be let to the next lowest. Houghton v. Burnham, 22 W 301.

62.15 (7) History: 1909 c. 417; Stats. 1911 s. 925—90b; 1919 c. 40; 1921 c. 242 s. 99; Stats. 1921 s. 62.15 (7).

Sec. 921, R. S. 1878, requiring that contracts be let to the lowest bidder, did not apply to the construction of a garbage incinerator, the method of constructing which was patented, the right to use the method being obtainable by all at a fixed price, and competition as to everything else being free. Kilvington v. Superior, 83 W 222, 53 NW 487.

The Milwaukee charter requires competitive bidding as to patented improvements. The city may deal directly with the owner of the patent, and when it has acquired the right to use a patented article, the work of improving a street must be let to the lowest bidder. Allen v. Milwaukee, 127 W 605, 106 NW 1099.

62.15 (8) History: 1909 c. 417; Stats. 1911 s. 925—90c; 1919 c. 40; 1921 c. 242 s. 100; Stats. 1921 s. 62.15 (8).

62.15 (9) History: 1903 c. 88; Supl. 1906 s. 926—105; 1907 c. 673; 1909 c. 539; Stats. 1911 s. 925—281, 926—105, 959—30d; 1921 c. 242 s. 101; Stats. 1921 s. 62.15 (9).

62.15 (10) History: 1889 c. 326 s. 94; Ann. Stats. 1889 s. 925m sub. 94; 1893 c. 312 s. 30; Stats. 1898 s. 925—94; 1921 c. 242 s. 102; Stats. 1921 s. 62.15 (10); 1937 c. 432; 1939 c. 157; 1951 c. 546; 1965 c. 127.

62.15 (11) History: 1889 c. 326 s. 92; Ann. Stats. 1889 s. 925m sub. 92; Stats. 1898 s. 925—92; 1921 c. 242 s. 104; Stats. 1921 s. 62.15 (11).

Under a charter which required the city to provide in contracts for street improvement that the contractor "shall put up and maintain such barriers and lights as will effectually prevent the happening of any accident," where this has been done and the barrier put up has been removed by some unknown person, the city is not liable for an accident without proof that it had actual or implied notice of the removal of the barrier and that a reasonable time had elapsed for guarding against the resulting danger. Klatt v. Milwaukee, 53 W 196, 10 NW 162.

A contractor doing street work cannot avoid liability for damages resulting from an unlighted excavation on the ground that the duty to place lights was retained by the city in the contract. Clausen v. Eckstein, 7 W (2d) 409, 97 NW (2d) 201.

That provision of 62.15 (11), Stats. 1963, which places the duty to safeguard street obstructions on the contractor subjects it to absolute liability, regardless of who commits the negligent act. So much of 62.15 (11) as renders the contractor liable for damages caused by the negligent digging up of streets, or which may result from his carelessness in the prosecution of such work, renders the contractor responsible only for damages caused by his negligence, and such liability is not absolute. Frew v. Dupons Construction Co. 37 W (2d) 676, 155 NW (2d) 595.

Where a contractor, engaged to replace deteriorated sidewalks and curbs, removed old slabs by power equipment thereby impairing lateral support of adjoining pieces of sidewalk, but erected no surrounding barricade, it violated 62.15 (11), Stats. 1961, and a city ordinance containing like requirements, by creating a potential danger to pedestrians, and such violation constituted negligence per se. Burke v. Poeschl Brothers, Inc. 38 W (2d) 225, 156 NW (2d) 378.

62.15 (12) History: 1889 c. 326 s. 93, 221; Ann. Stats. 1889 s. 925m sub. 93, 925v sub. 221; Stats. 1898 s. 925—93, 925—221; 1921 c. 242 s. 105; Stats. 1921 s. 62.15 (12).

The provisions of ch. 67, relating to municipal borrowing and municipal bonds, alone govern a contract arising out of a bid for municipal bonds, and as to such a contract the provision in this subsection requiring that contracts by a city shall be countersigned by the comptroller and approved as to form by the city attorney, is inapplicable, at least to the extent that a city may not refuse to return the deposit of a bond bidder merely because of the absence of such countersigning or approval. Milwaukee Co. v. Tomahawk, 238 W 452, 300 NW 257.

62.15 (14) History: 1927 c. 423; Stats. 1927 s. 62.15 (14).

62.16 (1) History: 1889 c. 326 ss. 172, 173; Ann. Stats. 1889 s. 925t subs. 172, 173; 1893 c. 312 s. 45; Stats. 1898 ss. 925—172, 925—173; 1921 c. 242 ss. 107, 108; Stats. 1921 s. 62.16 (2) (a), (b); 1957 c. 131 ss. 6, 7; Stats. 1957 s. 62.16 (1).

On taking private property for public use see notes to sec. 13, art. I; on special assessments and charges see notes to 66.60.

The right to recover damages is not affected because the officers of the city failed to comply with the charter by filing profiles, etc. Goodrich v. Milwaukee, 24 W 422.

The right to recover damages is not affected because they had not established any general system of grades for streets. Stonewall v. Milwaukee, 31 W 523.

If there is a change in the established grade of a street the lot owner who is affected thereby may recover the expense necessary to restore his premises to their former position relative to the street. If the ordinances of a city require that the alleys shall conform to the grade of the street adjoining them the expense of grading that part of a lot which fronts on an alley may be recovered. Church v. Milwaukee, 31 W 512 and 34 W 66.

Under a charter which provided that where the grade of a street once established is changed "all damages, cost and charges arising therefrom shall be paid by the city to the owner of any lot or parcel of land or tenement which may be affected or injured in consequence of the alteration of such grade," the damages sustained by the owner or occupant of the adjoining tenement by reason of inconvenience in the transaction of his business, or the interruption or total suspension of it, or of the loss of his trade, custom or profits necessarily caused by the making and carrying on of the work of public improvement, and while it progresses, and until completion, or so caused by the work of restoring the adjacent premises to the same relative position or condition as before the change of grade, are not to be considered. The injuries contemplated are those to land or buildings, and costs or charges necessary to restore them to their former relative condition and usefulness. Stadler v. Milwaukee, 34 W 98.

The right to recover damages is not affected because the person who was injured signed the petition for the alteration in the grade. Luscombe v. Milwaukee, 36 W 511.

If a property owner fills a street in front of his land to conform to a new grade, with knowledge that the order under which he acted was void, he cannot recover for the damages caused his property. If he does it believing that the order was valid and fails to appeal from the assessment it will be presumed that he was satisfied therewith. And if he does it without taking steps to ascertain whether the proceedings were regular or not he will still be considered to be bound to take the amount awarded. Owens v. Milwaukee, 47 W461, 3 NW 3.

The damages which may be recovered include all necessary expenses in changing the grade of the lot to conform it properly to the new grade, and also the expense of repaving the street, where that has been charged upon the lot and rendered necessary by the change of grade, although the expense of conforming the grade of the lot to that of the street as finally established has been no more than it would have been if the final grade was determined upon originally. French v. Milwaukee, 49 W 584, 6 NW 244.

If the value of property adjacent to a street, the grade of which has been changed, is as great after such change was made as before, the owner of it cannot recover dam-

ages. There can be no recovery for a change of grade which has been ordered but not made. Tyson v. Milwaukee, 50 W 78, 5 NW 914.

If a city causes a street to be graded without proceeding as its charter requires it to do in order that the work may be lawful, it is liable for resulting injuries to adjoining property. Meinzer v. Racine, 68 W 241, 32 NW 139 and 70 W 561, 36 NW 260; Addy v. Janesville, 70 W 401, 35 NW 931.

A city has a right to change the natural course of surface water by improvements on its streets, even though the flow of such water to and upon adjoining land is thereby changed. Stoecker v. Cedarburg, 161 W 34, 152 NW 445.

Damages for change of grade can be recovered only when the facts of the case fall within the terms of the statute. Henry v. La Crosse, 165 W 625, 162 NW 174.

A compliance with 62.16 (2) (b), Stats. 1923, providing that no street shall be worked until the grade is established and recorded, is a condition precedent to making a special assessment or reassessment, and failure to establish the grade is not a mere irregularity. Bekkedal v. Viroqua, 183 W 176, 196 NW 879, 197 NW 707.

Where a city, without intending to change a street grade by virtue of the power granted by 62.16 (2) (a) and (b), Stats. 1923, adopted plans and specifications for a pavement on a new and different grade, the established grade was not legally changed and an abutting property owner was entitled to recover any damage suffered by him which was caused by constructing the pavement above established grade. As the grade was not changed his remedy was by action for damages. The change of a street grade can be effected only by a clear exercise by a city council, either by ordinance or resolution, of its power to change. Van Hecke v. Stevens Point, 183 W 654, 198 NW 732.

Changing the "permanently established grade of any street," embraces a change in grade of a public sidewalk which lies within the boundaries of the street. McDonald v. De Pere, 8 W (2d) 16, 98 NW (2d) 407.

The true measure of damages resulting from a change in grade of a public sidewalk is the value of the affected adjoining property before and after the change in grade, but the cost to the owners of replacing improvements to make the property usable is material evidence of such difference. McDonald v. De Pere, 8 W (2d) 16, 98 NW (2d) 407.

The mere establishment by ordinance of a paper grade changing an existing grade will not, in itself, give rise to an action by a landowner, but if, after a paper grade is established, a landowner makes improvements to his property in reliance on such grade, and then such grade is changed and a street or public sidewalk is improved or built according to the newly established grade, a cause of action accrues to the damaged property owner grounded on estoppel. Where an adjoining landowner has built improvements, such as paved driveways, on his land to conform to the level of a public improvement constructed by a city at a lower level than the established grade therefor, and has thereby acted to his prejudice in reliance on the city's action, the city should be estopped to deny that the public improvement was built at the previously established grade therefor. McDonald v. De Pere, 8 W (2d) 16, 98 NW (2d) 407.

62.16 (2) History: 1889 c. 326 s. 223; Ann. Stats. 1889 s. 925v sub. 223; 1893 c. 312 s. 61; Stats. 1898 s. 925—223; 1907 c. 220; 1917 c. 569; 1921 c. 242 s. 129; Stats. 1921 s. 62.16 (8); 1957 c. 131 s. 8; Stats. 1957 s. 62.16 (2); 1969 c. 500 s. 30 (2) (e).

Under a city charter prohibiting the paving of streets in which gas and water mains were located without first requiring connections therewith to be made and pipes run therefrom to the curb, a substantial compliance with the charter provisions is sufficient, in equity, to sustain the proceedings. Gleason v. Waukesha, 103 W 225, 79 NW 249.

62.18 History: 1889 c. 326 s. 208, 230; Ann. Stats. 1889 s. 925v sub. 208, 230; 1893 c. 224; 1895 c. 316 s. 11; 1897 c. 167; Stats. 1898 s. 925—208, 925—230, 926—3; 1921 c. 242 s. 156, 172, 181; Stats. 1921 s. 62.18 (1), (13), (16); 1931 c. 186; 1933 c. 161; 1957 c. 13 s. 11.

Editor's Note: The foregoing history shows only the history of the 3 subsections remaining after the repeal of the major part of the whole section in 1957. For the histories of the repealed subsections see Wis. Annotations, 1950.

All cities organized under special charters, being authorized to repair and keep in order their streets, are "authorized by their charters to construct sewers" within the meaning of ch. 224, Laws 1893, since the authority first mentioned carries with it the latter. Johnson v. Milwaukee, 88 W 383, 60 NW 270.

A municipality has no more right to create a nuisance to the injury of another than has an individual, and hence damages are recoverable where a sewer outlet is a private nuisance, so that a municipality will be liable where a sewer is maintained by it so as to discharge sewage and filth on private property, or to emit offensive odors creating an insanitary and dangerous condition interfering with the safe and comfortable enjoyment of such property so as to impair its value. Legislative authority to install a sewer carries no implication of authority to create or maintain a nuisance and, if such nuisance is created, the same remedies may be invoked as if the perpetrator were an individual. Briggson v. Viroqua, 264 W 47, 58 NW (2d) 546.

Where a city annexes an area receiving sewer service from a sanitary district, the city may put the area into a special district and levy assessments to pay the remaining cost of installing sewers. Williams v. Madison, 15 W (2d) 430, 113 NW (2d) 395.

62.185 History: 1931 c. 266; Stats. 1931 s. 62.185.

62.19 History: 1961 c. 550; Stats. 1961 s. 62.19.

62.20 History: 1889 c. 326 s. 188, 189, 190, 205, 215, 220, 234; Ann. Stats. 1889 s. 925t sub. 188, 925t sub. 189, 925t sub. 190, 925u sub. 205, 925v sub. 215, 925v sub. 220, 234; 1893 c. 312 s. 52, 64; 1897 c. 138 s. 6; Stats. 1898 s. 925—188, 925—189, 925—190, 925—205,

925—215, 925—220, 925—234; 1899 c. 173 s. 2; 1901 c. 215 s. 3; 1905 c. 159 s. 1; 1905 c. 453 s. 1; Supl. 1906 s. 925—205, 925—220, 926—118; 1907 c. 174, 673, 674; 1909 c. 425, 539; 1911 c. 129; 1911 c. 663 s. 100; 1913 c. 375; 1913 c. 535; 1919 c. 489 s. 2; 1921 c. 242 s. 198, 199, 200; Stats. 1921 s. 62.20; 1925 c. 342 s. 2, 3; 1927 c. 406 s. 1; 1937 c. 204; 1947 c. 143.

Editor's Note: For a qualified repeal of section 62.20, see 62.211.

62.21 History: 1921 c. 242 s. 202 to 204; Stats. 1921 s. 62.21; 1925 c. 324 s. 1, 3; 1927 c. 406; 1929 c. 472; 1931 c. 194; 1933 c. 169, 179; 1935 c. 201; 1937 c. 403; 1947 c. 143.

Editor's Note: For a qualified repeal of 62.21, see 62.211.

62.211 History: 1943 c. 278; Stats. 1943 s. 62.211.

62.22 (1) History: 1889 c. 326 s. 97, 154, 170; Ann. Stats. 1889 s. 925n sub. 97, 925s sub. 154, 170; 1893 c. 312 s. 45; 1895 c. 294 s. 4; Stats. 1898 s. 925—97, 925—154, 925—170; 1919 c. 571 s. 2, 3; 1919 c. 703 s. 17; 1921 c. 242 s. 206, 207; Stats. 1921 s. 62.22 (1); 1937 c. 55; 1939 c. 107; 1947 c. 172; 1957 c. 98.

On taking private property for public use see notes to sec. 13, art. I; on property taken by municipality see notes to sec. 2, art. XI; on acquisition of lands by state and subdivisions see notes to sec. 3a, art. XI; and on eminent domain see notes to various sections of ch. 32.

Under a city charter which empowered the city to purchase and hold real and personal property sufficient for the convenience of the inhabitants and to sell and convey the same, the council could convey a lot, previously acquired as a site for buildings, as part payment for a more expensive lot, and could issue orders on the city treasurer to pay the balance of the purchase price. Konrad v. Rogers, 70 W 492, 36 NW 261.

A city may accept devises of property to enable it to carry out any of its legal duties or powers, and such devises may be made to it directly or in trust. Although a city may not be authorized to maintain a businessmen's club room, yet a devise to it for the establishment and maintenance of such a room and a library is not void, it being the intention to make the library the important element of the trust. Beurhaus v. Cole, 94 W 617, 69 NW 986.

A city having express authority under its charter to grade and pave streets and to purchase and hold all real estate necessary or convenient for its use, has, by implication therefrom, authority to use all reasonable methods of executing the same, including that of purchasing a stone quarry within or without its corporate limits for the purpose of obtaining therefrom raw material from which to manufacture crushed rock. Schneider v. Menasha, 118 W 298, 95 NW 94.

A city, unless prohibited by charter, may accept a gift of land for a street. Hathaway v. Milwaukee, 132 W 249, 111 NW 570, 112 NW 455.

Where the mayor and a real estate agent who held an option of purchase of land from the city made false representations inducing the city's grantor to execute to the city a release from the conditions in a deed which reserved to the grantor the right to wreck the building on the land and to purchase the salvage, the grantor could not recover from the city because of the false representations, since the land purchased by the city was not acquired for any of the purposes specified in 62.22 (1), Stats. 1937, and hence the transactions were void and afforded no basis for an action for fraud against the city. Waisman v. Wagner, 227 W 193, 278 NW 418.

A city may condemn and acquire lands for the benefit of a public library which is a private corporation, such acquisition being for a public purpose, and it being immaterial that the city has no control over the library and no voice in the election of the officers of the library. The maintenance and operation of a library by a nonprofit corporation for the use of the general public is a public purpose, and the use of lands on which public library buildings are to be constructed and operated is a use for the benefit of the public and therefore a public use. Rehfuss v. La Crosse, 240 W 619, 4 NW (2d) 125.

Although a city under its administrative powers may have the right to deprive the owner of the use of crypts in a mausoleum in a public cemetery operated by the city, if the city exercises such right in an unlawful manner, and authorizes the wrongful act and adopts the result, the city may be held liable for the damage done. Speth v. Madison, 248 W 492, 22 NW (2d) 501.

A city, unless so required by statute, is not required to lease city-owned property by the competitive-bid method. Municipalities, unless restricted by statute, have the same right to convey property as they have to acquire property, and such matters are within the reasonable discretion of the proper municipal authorities. Kranjec v. West Allis, 267 W 430, 66 NW (2d) 178.

Before a court will void the sale of municipal property authorized by a vote of the city council, a plaintiff taxpayer must establish, (1) illegality, (2) fraud, or (3) a clear abuse of discretion on the part of such governing body. Hermann v. Lake Mills, 275 W 537, 82 NW (2d) 167; Newell v. Kenosha, 7 W (2d) 516, 96 NW (2d) 845.

See note to 62.23 (5), citing Scanlon v. Menasha, 16 W (2d) 437, 114 NW (2d) 791.

62.22 (1m) History: 1965 c. 105; Stats. 1965 s. 62.22 (1m).

62.22 (2) History: 1949 c. 596; Stats. 1949 s. 62.22 (2); 1957 c. 560.

62.22 (3) History: 1897 c. 201; Stats. 1898 s. 959—39; 1921 c. 242 s. 209; Stats. 1921 s. 62.22 (3).

62.22 (4) History: 1899 c. 326 s. 155 to 158, 165; Ann. Stats. 1889 s. 925s sub. 155 to 158, 165; Stats. 1898 s. 925—155 to 925—158, 925—165; 1921 c. 242 s. 210 to 214; Stats. 1921 s. 62.22 (4).

The adoption of a resolution by a city council declaring the necessity for condemnation of designated lands is a condition precedent to institution of court proceedings. In re Condemnation of Lands in Beaver Dam, 205 W 299, 237 NW 119.

Vacation of platted alley or estoppel as

preventing opening after long period is discussed in Jefferson v. Eiffler, 16 W (2d) 123, 113 NW (2d) 834.

62.23 (1) History: 1909 c. 162; Stats. 1911 s. 959—17a to 959—17e; 1917 c. 404 s. 2; 1919 c. 362 s. 35; 1919 c. 400 s. 1; 1921 c. 242 s. 218; Stats. 1921 s. 62.23 (1); 1941 c. 203, 328; 1953 c. 517; 1959 c. 67; 1963 c. 459.

In cities operating under the general charter law a city plan commission may not be composed of more than 7 members. 36 Atty. Gen. 430.

62.23 (2) History: 1909 c. 162; Stats. 1911 s. 959—17f to 959—17h; 1919 c. 400 s. 1; 1921 c. 242 s. 219 to 221; Stats. 1921 s. 62.23 (2); 1937 c. 402; 1941 c. 203.

Under 62.23, Stats. 1965, city planning is an administrative function of the city planning commission, and adoption of a "master plan" for the physical development of a municipality is the function of the commission (and administrative body), the purpose and effect of the adoption of a master plan being solely to aid the commission and the council in the performance of their duties. Heider v. Wauwatosa, 37 W (2d) 466, 155 NW (2d) 17.

62.23 (3) History: 1941 c. 203; Stats. 1941 s. 62.23 (3).

62.23 (4) History: 1941 c. 203; Stats. 1941 s. 62.23 (4).

62.23 (5) History: 1941 c. 203; Stats. 1941 s. 62.23 (5).

The power of a council to sell real estate under 62.22 (1) is qualified by 62.23 (5) where a city plan commission has been created, and a sale of land without referring it to the commission is void. Scanlon v. Menasha, 16 W (2d) 437, 114 NW (2d) 791.

62.23 (6) History: 1941 c. 203; Stats. 1941 s. 62.23 (6); 1951 c. 447; 1955 c. 434, 607; 1961 c. 445; 1965 c. 93, 252.

Under the provision of 62.23 (6) (d), the board of appeals must grant a permit to erect a building in the bed of a proposed street if the property owner would be substantially damaged by a denial of the permit; although the board can impose reasonable requirements as a condition of granting the permit, such conditions likewise must not substantially damage the property owner. State ex rel. Miller v. Manders, 2 W (2d) 365, 86 NW (2d) 469.

Wisconsin's official map law. Kucirek and Beuscher, 1957 WLR 176.

62.23 (7) History: 1941 c. 203; Stats. 1941 s. 62.23 (7); 1949 c. 231; 1953 c. 540; 1955 c. 451; 1957 c. 16, 65; 1959 c. 73, 79, 391; 1959 c. 660 s. 44; 1961 c. 324, 550; 1961 c. 622 s. 29; 1965 c. 79, 252; 1969 c. 28, 481.

On exercises of police power see notes to secs. 1 and 13, art. I; on legislative power generally see notes to sec. 1, art. IV; 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 village planning and zoning authority see notes to 61.35; on mobile home parks see notes to 66.058.

The right to erect a garage at a particular place in a city having been lawfully acquired, the subsequent amendment of the ordinance under which the right was acquired cannot impair that right. A garage in a local business district does not necessarily constitute a nuisance, and its erection will not be enjoined unless it clearly appears that a nuisance will necessarily result. A provision in an ordinance leaving to the property owners the power to determine whether a garage should be built in a particular place was void as an unlawful delegation of legislative power. Wasilewski v. Biedrzycki, 180 W 633, 192 NW 989.

The zoning of cities for the purpose of excluding offensive business structures from established residence sections may be a valid exercise of the police power. But the extent of the restriction and the reasonableness of the means are subject to judicial review. State ex rel. Carter v. Harper, 182 W 148, 196 NW 451.

A violation of a zoning ordinance by the erection of a store building in a residence district may be redressed by the city by an action at law. Private individuals may have injunction to prevent the erection if it will cause them special and irreparable damage or injury. Holzbauer v. Ritter, 184 W 35, 198 NW 852.

Equity may restrain the violation of a municipal zoning law, even though an act violating the ordinance is not a nuisance per se. Bouchard v. Zetley, 196 W 635, 220 NW 209.

A statute permitting oral proof in certiorari proceedings directed to the board of appeals did not extend to a writ directed to the city manager. State ex rel. Wasserman v. O'Brien, 201 W 356, 230 NW 59.

A board of appeals to review orders under a zoning ordinance had no jurisdiction of appeal from revocation of permit under a building ordinance. State ex rel. Wasserman v. Cooper, 201 W 359, 230 NW 50.

The zoning power of a city must be reasonably exercised, but within the delegated field the acts of a city will not be disturbed by the courts unless there is a clear abuse of discretion. La Crosse v. Elbertson, 205 W 207, 237 NW 99.

Restrictions imposed by zoning ordinances or the laws of the state are not "incumbrances" which entitle a purchaser to declare a contract at an end. (Genske v. Jensen, 188 W 17, 205 NW 548, and Rusch v. Wald, 202 W 462, 232 NW 879, distinguished.) Miller v. Milwaukee Odd Fellows Temple, Inc. 206 W 547, 240 NW 193.

Rezoning of premises after execution of a land contract did not authorize purchasers' cancellation of the land contract on ground of misrepresentations or violation of agreements. Kend v. Herbert F. Co. 210 W 239, 246 NW 311.

Parties seeking to avoid the effect of a zoning ordinance because it is unreasonable must show that it is unreasonable in respect to their property, and cannot predicate and sustain their contention on the fact that the ordinance may be unreasonable or discriminatory as to the property of others. Rowland v. Racine, 223 W 488, 271 NW 36.

Where the owner of 3 adjoining lots had built apartments on the end lots, allocating parts of the middle lot for sideyard purposes to comply with a zoning ordinance,

and mortgaged the end lots to an association and the middle lot to K., who later became the owner thereof, the association was entitled to enjoin him from bringing any action which would affect the rights of the association to the use of the middle lot for sideyard purposes, since he took subject to the burden of the zoning ordinance, and had failed to appeal from a decision of the board denying his application for a permit to build on all of the middle lot. Welfare B. & L. Asso. v. Krieger, 226 W 105, 275 NW 891.

The policy of zoning is a matter within legislative discretion, and it is only when the bounds of the field of legislative discretion are clearly exceeded that the courts will deny validity to a zoning ordinance. Geisenfeld v. Shorewood, 232 W 410, 287 NW 683.

Where it is fairly debatable whether the determination of a municipal legislative body zoning property within a particular restricted district was an arbitrary or unreasonable exercise of power, the courts will not substitute their judgment for that of the legislative body charged with the primary duty and responsibility of determining the question. State ex rel. Normal Hall, Inc. v. Gurda, 234 W 290, 291 NW 350.

Under 62.23 (5) (c), Stats. 1939, the council has power to amend an original zoning ordinance, at least unless the amendment frustrates or destroys the purpose and effect of the original zoning ordinance as a whole. An amending ordinance, which created a 2-acre public utility district so as to permit the erection of a railroad passenger depot therein in a first class single residence district of the original zoning ordinance, did not frustrate or destroy the purpose and effect of the original ordinance as a whole. Higbee v. Chicago, B. & Q. R. Co. 235 W 91, 292 NW 320.

In certiorari to review the action of a board of zoning appeals, the provision that the court may take further evidence and may consider the same in reaching its determination, may warrant the court's overruling the board's findings of fact if the additional evidence received shows them to be erroneous, but incompetent additional evidence can be given no effect. State ex rel. Morehouse v. Hunt, 235 W 358, 291 NW 745.

Although owners of property who built private dwellings in a district restricted to single-family residences under the original zoning ordinance of a city may suffer an annoyance from the council's amendment of the ordinance by rezoning so as to permit the building of apartment houses in a certain area within such district, they have no legally protected rights against such rezoning merely because of their reliance on the original zoning ordinance, since property is always held subject to the police power, and rights granted by legislative action under the police power, as in the case of a zoning ordinance, can be taken away when in the valid exercise of its discretion the legislative body sees fit. Eggebeen v. Sonnenburg, 239 W 213, 1 NW (2d) 84.

Provisions in statutes and ordinances authorizing slight variations in the application of zoning laws are generally upheld as against contentions that such provisions are unlawful delegation of legislative power. Thalhofer v. Patri, 240 W 404, 3 NW (2d) 761.

Where an unzoned parcel of land, owned by a railroad company adjacent to its right of way and leased to a wholesale fruit company, was surrounded to such an extent by properties used for industrial, commercial and railroad purposes as to render such parcel largely valueless for residential purposes, and was separated by the railroad right of way from property classified by the city zoning ordinance as "C" residential and was not within a mile of any "A" residential, the attempted application to such parcel of an ordinance provision classifying property, not specifically included within a district or zone, as "A" residential, was arbitrary, unreasonable and unjustly discriminatory and hence, there being no other zoning classification applicable to such parcel, the ordinance furnished no ground for a refusal to issue a permit to build on such parcel an addition to the warehouse of the fruit company. State ex rel. Scandrett v. Nelson, 240 W 438, 3 NW (2d) 765.

If the apartment house was being occupied by 3 families at the time of adoption of the zoning ordinance, the mere fact that it may have been occupied thereafter by more than 3 families would not defeat the right to continue to use it for occupancy by 3 families. State ex rel. Robst v. Board of Appeals, 241 W 188, 5 NW (2d) 783.

The petition for a writ of certiorari to review a decision of the zoning board of appeals having been presented within the 30-day period, the petition was properly before the court. The quashing of the writ first issued did not dismiss the action, the motion to quash being in effect a demurrer for insufficiency of facts stated. Such being the case, the court, on quashing the first writ and although after the 30-day period, could properly permit the petition to be amended to incorporate the names of the members of the board, where the court was of opinion that this was necessary to the bringing up of the board's record. An aggrieved property owner's petition, naming the city building inspector and the zoning board of appeals, was sufficient, and a writ of certiorari issued thereon to review a decision of the board addressed in the name of the state and directed to the inspector by name and to the board merely as such, was not misdirected. Although the original writ of certiorari to review a decision of the zoning board of appeals was superseded by an order of the court, the petition remained and, being sufficient in itself to support the original writ, it was also sufficient to support the second writ, the petition having been timely presented to the court. In the absence of express statutory provision, service of a writ of certiorari, addressed to the zoning board of appeals, on the chairman of the board, was sufficient to cause return of the board's record in the matter to be reviewed. State ex rel. Robst v. Board of Appeals, 241 W 188, 5 NW (2d) 783.

A lot owner objecting to a decision of the zoning board of appeals, directing the city building inspector to issue building permits allowing a variance from ordinance requirements, should have followed the method of

obtaining a review of such decision specified by (7) (e) 10 and 11, and could not, instead, obtain a review by bringing an action to enjoin the holders of the building permits from proceeding thereunder. Ferch v. Schroedel, 241 W 457, 6 NW (2d) 176.

In considering the validity of the application of a zoning ordinance to particular facts and circumstances, each case must be decided on its own facts. Chrome Plating Co. v. Milwaukee, 246 W 526, 17 NW (2d) 705.

A second application for a building permit in this case was not an application for review of a ruling made by the zoning board of appeals on a first application, but was a new and separate proceeding based on new evidence, and so designated by the board, so that the applicant was not barred from obtaining a review by the circuit court of the decision of the board on the second application by reason of the fact that he had sought no court review of the decision of the board on the first application, and that the time for obtaining a court review of that decision had expired under 62.23 (7) (e) 10. State ex rel. Schleck v. Zoning Board of Appeals, 254 W 42, 35 NW (2d) 312.

Under 62.23 (7) (f) 2, (8), a city was authorized to bring an action to enjoin the erection of a building, which allegedly would violate provisions of the city zoning ordinance, and to compel the surrender of a building permit, and the city was not required first to exhaust certain administrative remedies provided by the ordinance. (Ferch v. Schroedel, 241 W 457, distinguished.) Lake Mills v. Veldhuizen, 263 W 49, 56 NW (2d) 491.

Under 62.23 (7) (a) the term "general welfare" includes considerations of public convenience and general prosperity. The means adopted in a zoning ordinance to promote the health, safety, morals, or the general welfare of the community, must bear a reasonable relation to the declared purpose. A classification, to be valid, must rest on a difference which bears a fair, substantial, natural, reasonable, and just relation to the object, act, or persons in respect to which it is proposed. There is no unconstitutional or otherwise illegal discrimination in a city zoning ordinance by reason of its exclusion of private high schools from Class "A" residence zones while permitting public schools of the same rank therein. State ex rel. Wisconsin Luth. H. S. Conference v. Sinar, 267 W 91, 65 NW (2d) 43.

The decision of the zoning board of appeals of a city, that the owners' proposed use of part of their residence as a studio for portrait photography was not a use of the residence for a "professional office" nor a use for "home occupation" within the meaning of the city zoning ordinance, was not illegal or unreasonable. State ex rel. A. Hynek & Sons Co. v. Board of Appeals, 267 W 309, 66 NW (2d) 623.

The protection or preservation of property values by means of a zoning ordinance is an objective which falls within the exercise of the police power to promote the "general welfare," and it is immaterial whether the zoning ordinance is grounded solely on such objective or that such purpose is but one of several legitimate objectives. State ex rel. Saveland P. H. Corp. v. Wieland, 269 W 262, 69 NW (2d) 217.

A zoning ordinance requiring, as a condition precedent to the issuance of a building permit, a finding by the building board of the village that the exterior "architectural appeal" and functional plan of the proposed structure will not be so at variance with that of structures already constructed, or being constructed, "as to cause a substantial depreciation in the property values" in the immediate neighborhood, is not void as being grounded largely on aesthetic considerations; but even if it were grounded purely on aesthetic considerations, it is doubtful that it would be void for such reason. State ex rel. Saveland P.H. Corp. v. Wieland, 269 W 262, 69 NW (2d) 217.

The purpose of a provision in such zoning ordinance, requiring a public hearing prior to the board of appeals' decision on land use permissible in an agricultural district, is to give interested parties an opportunity to express their opinions, but the ordinance does not make such opinions binding on the board, and such provision does not render the ordinance invalid as requiring a "plebiscite" of the neighborhood. Smith v. Brookfield, 272 W 1, 74 NW (2d) 770.

A city zoning ordinance, so far as providing that lands in an agricultural district shall be used only for certain enumerated uses, including gravel pits, and only if the "location and plan of operation" has been submitted to and approved by the board of appeals, considered in connection with the purposes set forth in the preamble of the ordinance is not invalid as failing to furnish sufficient standards or guides for the board in exercising the discretion vested in it. Smith v. Brookfield, 272 W 1, 74 NW (2d) 770.

A city zoning ordinance cannot prevent a county from constructing a jail as required by 59.68. Green County v. Monroe, 3 W (2d) 196, 87 NW (2d) 827.

A zoning ordinance providing that a proposed amendment or change, disapproved by the plan commission, shall not be passed except by "three-fourths vote" of the full membership of the council, is not in conflict with "majority vote" provision in 64.07 (3), nor with other statutes, including 62.23 (7), granting zoning powers to cities, and such "three-fourths vote" requirement is valid. Vaicelunas v. Fechner, 7 W (2d) 14, 95 NW (2d) 786.

Where premises are devoted to a single nonconforming use carried on in several buildings integral to the use, total loss of one building by fire does not bar its restoration if the value of the lost building before the fire was not more than 50 per cent of the value of all lawfully constructed buildings then on the premises. "Building" is construed to be plural under authority of 990.001 (1). Where property is exempt from taxation the valuations are to be based on fair market value. State ex rel. Covenant H. Bible Camp v. Steinke, 7 W (2d) 275, 96 NW (2d) 356.

A city board of zoning appeals, constituted pursuant to 62.23 (7) (e), may revoke a building permit issued by the city building inspector. State ex rel. Cities S. O. Co. v. Board of Appeals, 21 W (2d) 516, 124 NW (2d) 809.

Insurers are "persons aggrieved" for purposes of appeal where the insured owner refused to start proceedings to review an adverse ruling of the zoning board of appeals.

An ordinance is invalid which prohibits repair of a building if damaged more than 50 per cent of appraised value where the appraisal is substantially below market value. State ex rel. Home Ins. Co. v. Burt, 23 W (2d) 231, 127 NW (2d) 270.

See note to 60.18, on town board acting as village board, citing State ex rel. Humble Oil & Ref. Co. v. Wahner, 25 W (2d) 1, 130 NW (2d) 304.

The hardship which justifies a board of appeals in granting a variance must be one which originates in the zoning ordinance, and when the claimed hardship arises because of the actions of the applicant, the board is without power to grant a variance. Self-created hardship which will bar the granting of a variance may consist of affirmative action in ignorance of existing zoning restrictions or upon a misinterpretation thereof. State ex rel. Markdale Corp. v. Board of Appeals, 27 W (2d) 154, 133 NW (2d) 795.

One occupying premises under an occupancy permit contrary to zoning restrictions and in violation of a city ordinance prohibiting illegal nonconforming use of property who before entering into occupancy obtained from the city a certificate purporting to permit the illegal nonconforming use, could not, in an action by the city to revoke the permit, successfully defend on the ground that the city was estopped in that some years prior to his acquisition of title illegal nonconforming use of the property had been permitted and that he in reliance on the illegal permit expended a considerable sum of money to ready the building for his occupancy. Milwaukee v. Leavitt, 31 W (2d) 72, 142 NW (2d) 169.

A protest filed by adjacent landowners against an initial city zoning ordinance purporting to create a new zoning district, which ordinance was not acted upon by the common council but ordered filed, was not operative against or applicable to a second ordinance substantially differing from the first to such an extent as to require legislative reprocessing. Only landowners adjacent to the land where the proposed change is to be made (or those included in such proposed change or owning land directly opposite the area) are to be considered in determining whether the 20% requirement under 62.23 (7) (d) is met. Prescher v. Wauwatosa, 34 W (2d) 421, 149 NW (2d) 541.

Rezoning a single parcel of land in the city limits, from a classification restricting land use to single-family dwellings to one permitting business use, so as to enable the owners to operate a dental office, exceeded the bounds of legislative discretion, where under the evidence it was established that the rezoned parcel was not unfit for residential use, the surrounding area was principally residential, the ordinance adversely affected the value of such properties, bore no relation to the comprehensive city-wide planning, and did not promote health, safety, morals, or the general welfare of the community. Cushman v. Racine, 39 W (2d) 303, 159 NW (2d) 67.

The former doctrine that mere cessation of nonconforming use under the terms of a zoning ordinance did not destroy the right to continue it or prevent its resumption was rejected by the legislature in enacting 62.23 (7) (h). A city ordinance modeled on the enabling legislation implemented the accepted doctrine of sound zoning law, i.e., restricting rather than increasing a nonconforming use, and eliminating such uses as speedily as possible. State ex rel. Peterson v. Burt, 42 W (2d) 284, 166 NW (2d) 207.

A zoning restriction adopted under 62.23 (7) (d), Stats. 1947, is not a charter ordinance. It may be enacted by a majority vote unless a city council has adopted a rule to the contrary, or unless a petition is filed by property owners as described in the said statute. 36 Atty. Gen. 519.

The council of a city which has in existence a valid zoning ordinance has no statutory authority to repeal and recreate such ordinance without following the procedure for amendment prescribed by 62.23 (7) (d), Stats. 1947. 38 Atty. Gen. 12.

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

Regulations excluding churches from residential districts. 1962 WLR 358.

Effect of restrictive convenants on zoning. Church, 1963 WLR 321.

62.23 (7a) History: 1963 c. 241; Stats. 1963 s. 62.23 (7a); 1965 c. 252.

An ordinance enacted pursuant to 62.23 (7a), by which the common council of a city declared that there should be prepared a comprehensive zoning ordinance for all of its extraterritorial zoning jurisdiction and ordered that its existing zoning uses in such extraterritorial zoning jurisdiction should be preserved in force and effect for 2 years thereafter while the comprehensive zoning plan was being prepared, was not invalid because of the restrictions of 62.23 (2). Walworth County v. Elkhorn, 27 W (2d) 30, 133 NW (2d) 257.

62.23 (8) History: 1941 c. 203; Stats. 1941 s. 62.23 (8).

Under 62.23 (8) a property owner can maintain an action to compel a neighbor to remove a garage constructed too close to the lot line where the trial court found that the garage denied plaintiff full use of light and air and blocked their view. The fact that defendant had been issued a building permit is not a bar, nor is the fact that there were many nonconforming uses in the area. Jelinski v. Eggers, 34 W (2d) 85, 148 NW (2d) 750.

62.23 (9) History: 1941 c. 203; Stats. 1941 s. 62.23 (9); 1965 c. 252; 1969 c. 134.

Where a city ordered demolition of a building under a fire ordinance as a nuisance without giving the insurer thereof an opportunity to be heard, the insurer was entitled to a hearing in the courts. New Hampshire Fire Ins. Co. v. Murray, 105 F (2d) 212.

62.23 (9a) History: 1941 c. 203; Stats. 1941 s. 62.23 (9a).

62.23 (10) History: 1917 c. 560; Stats. 1917 s. 959—35n; 1921 c. 242 s. 230; 1921 c. 590 s. 107; Stats. 1921 s. 62.23 (10); 1941 c. 203; 1961 c. 202.

62.23 (11) History: 1903 c. 46 s. 1; 1907 c. 619; Stats. 1911 s. 959—35m; 1917 c. 471; Stats. 1917 s. 925—52 sub. (76), 959—35m;

1921 c. 242 s. 231; 1921 c. 590 s. 107; Stats. 1921 s. 62.23 (11).

62.23 (12) History: 1919 c. 400 s. 2; Stats. 1919 s. 959—17m; 1921 c. 242 s. 232; 1921 c. 590 s. 107; Stats. 1921 s. 62.23 (12).

62.23 (13) History: 1909 c. 162; Stats. 1911 s. 959—17j; 1919 c. 400 s. 1; 1921 c. 242 s. 233; 1921 c. 590 s. 107; Stats. 1921 s. 62.23 (13).

62.23 (14) History: 1923 c. 347; Stats. 1923 s. 62.23 (14); 1943 c. 553 s. 9; 1957 c. 131 s. 17.

62.23, Stats. 1929, relating to city planning, does not furnish an alternative plan for laying out an ordinary street. An assessment of benefits resulting from opening a portion of such a street by a city proceeding under the provisions of this section and especially subsec. (14) thereof cannot be sustained. Bennett v. Milwaukee, 206 W 443, 240 NW 139.

62.23 (15) History: 1923 c. 347; Stats. 1923 s. 62.23 (15); 1957 c. 97.

62.23 (16) History: 1923 c. 347; Stats. 1923 s. 62.23 (16); 1957 c. 97.

62.23 (17) History: 1909 c. 162; Stats. 1911 s. 959—17i, 959—17j; 1919 c. 400 s. 1; 1921 c. 242 s. 222 to 224; Stats. 1921 s. 62.23 (3); 1941 c. 203; Stats. 141 s. 62.23 (17).

On acquiring and selling property see notes to 62.22.

Under the home-rule amendment, sec. 3, art. XI, and statutes enacted pursuant thereto, particularly 62.23 (17), a city, which had acquired land in good faith for the site of a public building but which subsequently constructed the building in good faith on other land across the street, had the power to lease the unnecessary real estate to an individual although he was to use it in his private business in competition with the business of the plaintiff, so that the plaintiff was not entitled to an injunction restraining the city from so doing. Smith v. Wisconsin Rapids, 273 W 58, 76 NW (2d) 595.

62.23 (18) History: 1889 c. 326 s. 52 sub. 65th; Ann. Stats. 1889 s. 925i sub. 52, para. 65th; Stats. 1898 s. 925—52 sub. 65; 1921 c. 242 s. 225; Stats. 1921 s. 62.23 (4); 1925 c. 83; 1941 c. 203; Stats. 1941 s. 62.23 (18).

62.25 (1) History: 1889 c. 326 ss. 58, 59, 258; Ann. Stats. 1889 ss. 925j subs. 58, 59, 925x sub. 258; 1893 c. 312 s. 27; Stats. 1898 ss. 925—58, 925—59, 925—258; 1899 c. 127 s. 1; 1901 c. 68 s. 1; Supl. 1906 s. 926—100; 1907 c. 663; 1917 c. 553 ss. 2, 3; Stats. 1917 ss. 925—58, 925—59, 925—60, 926—100; 1921 c. 242 ss. 250 to 254; Stats. 1921 s. 62.25 (1); 1943 c. 286; 1959 c. 29; 1967 c. 276 s. 40; 1969 c. 87.

See note to 62.11 (5), citing Kane v. Fond du Lac, 40 W 495.

A provision of a city charter (ch. 27, Laws 1889) that "no suit of any kind or any claim of any character shall be brought against" the city and that "the comptroller shall examine all claims presented against the city, whether founded on contract or otherwise," includes claims for torts. Koch v. Ashland, 83 W 361, 53 NW 674.

A claim presented for one cause of action cannot, after being rejected, and on appeal, be changed into a different cause; as where the claim was for damages resulting from the legal grading of a street under a valid ordinance and damages were recovered on appeal for an illegal and unauthorized grading thereof under a void ordinance. While it is not necessary that the claim filed with the clerk should have all the essentials of a formal pleading, it should intelligibly present the facts on which liability is claimed, to give the council an opportunity to act upon these facts in the first instance before the contention goes to any court. Smith v. Eau Claire, 83 W 455, 53 NW 744.

The claim filed was "for damage caused by change of grade, $1,500." It was disallowed without regard to its informality. Upon appeal a stipulation for formal pleadings recited the filing and disallowance of the claim and stated that damages were claimed for changing the grade of a street; and the complaint claimed damages by reason of an unlawful change of said grade. A judgment against the plaintiff, rendered on the theory that the claim filed was based on a lawful change of grade and therefore was insufficient to sustain the action, was reversed. (Smith v. Eau Claire, 83 W 455, 53 NW 744 distinguished, on the ground that in the latter the claim stated the facts in detail and clearly showed that the damage claimed was for a lawful change of grade.) Drummond v. Eau Claire, 85 W 556, 55 NW 1028.

Where a claim for a personal injury was presented (although this was unnecessary) and compromised between the claimant and council, and afterwards the city attempted to repudiate the compromise and the claimant brought an action on contract for the agreed sum, it was not necessary to again present the claim on the contract. Sharp v. Mauston, 92 W 629, 66 NW 803.

Where the city charter (ch. 151, Laws 1883) provides that no action in tort shall be maintained unless a claim be presented, an action to recover taxes will not lie unless the condition is complied with and the complaint so alleges. Flieth v. Wausau, 93 W 446, 67 NW 731.

Where a city council, acting under authority of the charter (ch. 27, Laws 1889), allowed certain claims based upon debts which the city had power to contract, but no orders for the payment thereof were issued because of a lack of funds, no action on such claims could be maintained. Gutta Percha & Rubber Mfg. Co. v. Ashland, 100 W 232, 75 NW 1007.

The requirement of the Ashland charter (ch. 27, Laws 1889) for an appeal within the time limited is jurisdictional and the question can be raised for the first time in the supreme court. Telford v. Ashland, 100 W 238, 75 NW 1006.

The city council cannot again consider the claim after the time for appeal has expired. Seegar v. Ashland, 101 W 515, 77 NW 880.

Allowing a claim after the limitation had run was ineffectual under the Ashland charter (ch. 27, Laws 1889). Ashland W. Co. v. Bardon, 103 W 297, 79 NW 226.

If the common council be guilty of an actionable tort in maliciously encouraging a prosecution for official misconduct, its members are individually liable, not the city. Kempster v. Milwaukee, 103 W 421, 79 NW 411.

Where a claim filed against a city is ambiguous, proof should be allowed in the trial court showing who the claimant in fact was as bearing upon the question whether the appeal was taken by the claimant. Hanrahan v. Janesville, 137 W 1, 118 NW 194.

Sec. 925—58, Stats. 1911, does not apply to an action for equitable relief, even though full relief will include money damages. Carthew v. Platteville, 157 W 322, 147 NW 375.

The time does not begin to run until service of the notice of disallowance. Lyon v. Grand Rapids, 121 W 609, 99 NW 311.

An action for money had and received may be brought by the state against a city to recover for the benefit of the school fund the fines collected within the city and not accounted for to the county or to the state, without first filing a claim therefor with the city clerk. State v. Milwaukee, 158 W 564, 149 NW 579.

The word "fail" in 62.25, Stats. 1923, means neglect or default after opportunity to act. Hence an action brought before the next meeting of the city council after the filing of the claim, is premature. This section and 74.73, being in pari materia, must be construed together; and an action to recover an illegal tax must be begun within one year after the payment and after a refund claim has been disallowed or been on file for at least 60 days without action. Worthington P. & M. Corp. v. Cudahy, 182 W 8, 195 NW 717.

See note to 62.12 (8), citing J. F. Rappel Co. v. Manitowoc, 182 W 141, 195 NW 399.

A county cannot maintain an action against a city for the balance due for construction of a bridge where no claim or demand, verified as required by statute, had been filed. Sauk County v. Baraboo, 211 W 428, 248 NW 418.

The purpose of requiring a claimant to present his claim to a city before bringing action is to give the city an opportunity to pay or adjust the claim without unnecessary expense if it deems the claim valid; and no great amount of formality is required as to the form in which claims should be presented, and claims presented should not be narrowly construed. Trustees of University Co-operative Co. v. Madison, 233 W 100, 288 NW 742.

Failure of a superintendent of city schools, which are governed by 40.50 to 40.60, Stats. 1939, to comply with this section or 62.12 (8) is a bar to his action. Seifert v. School Dist. 235 W 489, 292 NW 286.

The fact that a claim is signed by a guardian ad litem before his appointment does not make it defective if it is presented after the appointment. Rogers v. Oconomowoc, 16 W (2d) 621, 115 NW (2d) 635.

The failure to file a claim against a city under 62.25 (1) does not bar an action for contribution nor a cross-complaint for indemnification against a city. Hennington v. Valuch, 19 W (2d) 260, 120 NW (2d) 44.

Under 62.25 (1) (a), Stats. 1961, the Frank Lloyd Wright Foundation was not required to file its claim for architect's fees, based on an architectural-service contract with the city of Madison, as a condition precedent to any arbitration proceeding pursuant to such contract, and the failure of the Foundation to file any claim under the statute was not fatal to its demand for arbitration under the contract. Madison v. Frank Lloyd Wright Foundation, 20 W (2d) 361, 122 NW (2d) 409.

Where a city failed to serve notice of disallowance of a claim, the 6 months' limitation did not apply. Oral advice to claimant at a committee meeting that the claim could not be allowed is not sufficient. Vollert v. Wisconsin Rapids, 27 W (2d) 171, 133 NW (2d) 786.

The requirement in 62.25 (1) (c) and (e) that notice of disallowance of a claim be served by the city clerk upon the claimant if the claimant in writing furnished the address of his usual place of abode, in order to start the 6-months' statutory period within which an action against the city must be commenced, is construed to include a situation where the claimant furnishes the name of his attorney and the latter's address. Novak v. Delavan, 31 W (2d) 200, 143 NW (2d) 6.

See note to 895.43, citing Pattermann v. Whitewater, 32 W (2d) 350, 145 NW (2d) 705.

A complaint in a tort action against a village or a city is demurrable when the complaint fails to allege that a claim has been presented to the board or council and has been disallowed. Foreway Express, Inc. v. Hilbert, 32 W (2d) 371, 145 NW (2d) 668.

The language in 62.25, Stats. 1965, with respect to notice of claim against cities, that "no action shall be maintained against a city * * * until the claimant shall first present his claim," creates a condition precedent to recovery and not to commencement of the action. Schwartz v. Milwaukee, 43 W (2d) 119, 168 NW (2d) 107.

The failure to file a claim under 62.25 does not prevent a railroad from impleading a city in an action for damages, where the railroad claims the city was responsible because of failure to trim a tree under 195.29 (6). Bosin v. M. St. P. & S. S. M. R. Co. 183 F Supp. 820.

"Nonresidents" does not include actual residents who have resided in this state less than one year. 6 Atty. Gen. 440.

In the absence of statutory authority a city may not refund valid assessments paid by property owners for installation of water mains laid in streets fronting upon their property. 26 Atty. Gen. 208.

62.25 (2) History: 1889 c. 326 s. 252; Ann. Stats. 1889 s. 925x sub. 252; Stats. 1898 s. 925—252; 1913 c. 451, 452, 482; Stats. 1913 ss. 925—260m, 925—269m, 925x—252; 959—35y; 1921 c. 242 ss. 255, 256, 258; Stats. 1921 s. 62.25 (2).

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

62.26 (1) History: 1889 c. 326 s. 253; Ann. Stats. 1889 s. 925x sub. 253; Stats. 1898 s. 925—253; 1921 c. 242 s. 260; 1921 c. 590 s. 95; Stats. 1921 s. 62.26 (1).

62.26 (2) History: Stats. 1919 s. 925—52 sub. (29); 1921 c. 242 s. 261; Stats. 1921 s. 62.26 (2).

62.26 (3) History: 1889 c. 326 s. 257; Ann. Stats. 1889 s. 925x sub. 257; Stats. 1898 s. 925—257; 1921 c. 242 s. 262; Stats. 1921 s. 62.26 (3).

62.26 (4) History: 1889 c. 326 s. 265; Ann. Stats. 1889 s. 925x sub. 265; Stats. 1898 s.

925—265; 1921 c. 242 s. 263; Stats. 1921 s. 62.26 (4).

On rules governing rewards, see Kinn v. First Nat. Bank, 118 W 537, 95 NW 969.

62.26 (6) History: 1895 c. 320 s. 2; Stats. 1898 s. 925—269; 1903 c. 102 s. 1; Supl. 1906 s. 925—269; 1915 c. 87; 1921 c. 242 s. 265; Stats. 1921 s. 62.26 (6); 1961 c. 614; 1965 c. 617; 1967 c. 276.

62.26 (7) History: 1897 c. 108 s. 1 to 4; Stats. 1898 s. 959—36, 959—37; 1921 c. 242 s. 266; 1921 c. 590 s. 60; Stats. 1921 s. 62.26 (7).

CHAPTER 63.

County and City Civil Service.

63.01 History: 1917 c. 259; Stats. 1917 s. 772—1, 772—2; 1919 c. 121; 1919 c. 365 s. 6, 7; 1919 c. 671 s. 16; Stats. 1919 s. 16.31; 1939 c. 301; 1947 c. 499; 1955 c. 40; 1959 c. 228 s. 45, 72; 1959 c. 397; Stats. 1959 s. 63.01.

63.02 History: 1917 c. 259; Stats. 1917 s. 772—3; 1919 c. 365 s. 8; Stats. 1919 s. 16.32; 1945 c. 234; 1959 c. 228 s. 45, 72; Stats. 1959 s. 63.02.

Under 63.02 (1) the commission may adopt a rule requiring civil service employes to take a 60-day leave of absence before the election if they are candidates. The waiver of the rule in the case of another employe does not prove discrimination. State ex rel. Parks v. Gross, 267 W 595, 66 NW (2d) 331.

63.03 History: 1917 c. 259; Stats. 1917 s. 772—4; 1919 c. 365 s. 9; Stats. 1919 s. 16.33; 1927 c. 22 s. 2; 1929 c. 253, 284; 1937 c. 293; 1943 c. 125; 1947 c. 192; 1949 c. 25, 393; 1953 c. 316; 1959 c. 228 s. 45, 72; 1959 c. 327; 1959 c. 660 s. 5; Stats. 1959 s. 63.03; 1961 c. 495; 1963 c. 66, 510, 565; 1965 c. 69, 74; 1967 c. 172; 1969 c. 372.

See note to 16.105, citing State ex rel. Thein v. Milwaukee, 229 W 12, 281 NW 653, and Unger v. Gregory, 249 W 161, 23 NW (2d) 480.

63.04 History: 1917 c. 259; Stats. 1917 s. 772—5; 1919 c. 365 s. 10; Stats. 1919 s. 16.34; 1959 c. 228 s. 45, 72; Stats. 1959 s. 63.04.

63.05 History: 1917 c. 259; Stats. 1917 s. 772—6; 1919 c. 365 s. 11; Stats. 1919 s. 16.35; 1929 c. 72; 1931 c. 79 s. 2; 1939 c. 241; 1959 c. 228 s. 45; Stats. 1959 s. 63.05; 1967 c. 175; 1969 c. 276 s. 611.

63.05 (2), Stats. 1965, provides for a preference to honorably discharged veterans in certification of eligibles, but is inapplicable in a county which has not adopted the civil service system. 54 Atty .Gen. 221.

63.06 History: 1941 c. 102; Stats. 1941 s. 16.351; 1955 c. 652 s. 3m; 1959 c. 228 s. 45; Stats. 1959 s. 63.06; 1961 c. 660.

63.065 History: 1963 c. 116; Stats. 1963 s. 63.065.

63.07 History: 1941 c. 232; Stats. 1941 s. 16.352; 1957 c. 610; 1959 c. 228 s. 45; Stats. 1959 s. 63.07.

63.08 History: 1917 c. 259; Stats. 1917 s. 772—7; 1919 c. 365 s. 12; Stats. 1919 s. 16.36; 1935 c. 223; 1959 c. 228 s. 45; 1959 c. 508; 1959 c. 660 s. 6; Stats. 1959 s. 63.08; 1969 c. 366 s. 117 (2) (e).

63.09 History: 1917 c. 259; Stats. 1917 s. 772—8; 1919 c. 365 s. 13; Stats. 1919 s. 16.37; 1943 c. 457; 1947 c. 483; 1959 c. 228 s. 45; Stats. 1959 s. 63.09.

63.10 History: 1917 c. 259; Stats. 1917 s. 772—9; 1919 c. 365 s. 14; Stats. 1919 s. 16.38; 1947 c. 192; 1959 c. 228 s. 45; Stats. 1959 s. 63.10; 1963 c. 425.

A city civil service commission's order suspending an employe provided for reconsideration upon expiration of the suspension unless the appointing officer recommended reinstatement. Such provision was void since it attempted to delegate the commission's power of dismissal and commission's dismissal upon such reconsideration was a nullity. State ex rel. Sullivan v. Benson, 211 W 47, 247 NW 450.

A hearing is required on all suspensions, demotions and dismissals, and a rule not providing for a hearing or a long-standing interpretation of the statute to that effect is invalid. State ex rel. Irany v. Milw. County C.S. Comm. 18 W (2d) 132, 118 NW (2d) 137.

A hearing is not necessary if an employe is separated from service during the probationary period. State ex rel. Dela Hunt v. Ward, 26 W (2d) 345, 132 NW (2d) 523.

63.11 History: 1917 c. 259; Stats. 1917 s. 772—10; 1919 c. 365 s. 15; Stats. 1919 s. 16.39; 1955 c. 106; 1959 c. 228 s. 45; Stats. 1959 s. 63.11.

63.12 History: 1917 c. 259; Stats. 1917 s. 772—11; 1919 c. 365 s. 16; Stats. 1919 s. 16.40; 1959 c. 228 s. 45, 72; Stats. 1959 s. 63.12.

63.13 History: 1917 c. 259; Stats. 1917 s. 772—12; 1919 c. 365 s. 17; Stats. 1919 s. 16.41; 1959 c. 228 s. 45, 72; Stats. 1959 s. 63.13.

63.14 History: 1917 c. 259; Stats. 1917 s. 772—13; 1919 c. 365 s. 18; Stats. 1919 s. 16.42; 1935 c. 218; 1945 c. 76; 1955 c. 106; 1959 c. 228 s. 45, 72; Stats. 1959 s. 63.14.

63.15 History: 1917 c. 259; Stats. 1917 s. 772—15; 1919 c. 365 s. 20; Stats. 1919 s. 16.43; 1959 c. 228 s. 45, 72; Stats. 1959 s. 63.15.

63.16 History: 1917 c. 259; Stats. 1917 s. 772—16; 1919 c. 121; 1919 c. 365 s. 21; 1919 c. 671 s. 17; Stats. 1919 s. 16.44; 1959 c. 228 s. 45, 72; Stats. 1959 s. 63.16.

63.17 History: 1917 c. 259; Stats. 1917 s. 772—14; 1919 c. 365 s. 19; Stats. 1919 s. 4548r; 1925 c. 4; Stats. 1925 s. 348.272; 1955 c. 696 s. 244; Stats. 1955 s. 16.441; 1959 c. 228 s. 45, 72; Stats. 1959 s. 63.17.

63.18 History: 1919 c. 572 s. 2; Stats. 1919 s. 16.45; 1959 c. 228 s. 45; Stats. 1959 s. 63.18.

63.19 History: 1919 c. 572 s. 2; Stats. 1919 s. 16.46; 1959 c. 228 s. 45; Stats. 1959 s. 63.19.

Where employes of an independent contractor performed services under contract between such contractor and the city and such employes were (1) required to abide by general rules and regulations of the city pertaining to such services, (2) given mental and physical tests by the city before being eligible