version of municipal funds to some use other than that set forth in the tax budget, is applicable only to the general funds of a municipality, and the governing body has no power thereunder to divert to other uses moneys impressed with a trust, such as those of the rubbish-removal fund and the utility-district fund. Bayside v. Milwaukee, 267 W 448, 66 NW (2d) 129.

For a discussion of procedure under 65.90 see 30 Atty. Gen. 304.

This section does not require separate treatment in a county budget of county advancements or reimbursable expenditures in re state-county administration of highway laws with respect to construction, maintenance and acquisition of rights of way. 30 Atty. Gen. 356.

Machinery and equipment operations account so kept as to result in machinery and equipment fund sustained by rentals received, state aids, labor and other items, need not be set forth with particularity in a county budget prepared to conform to 65.90 (2), Stats. 1941, if the budget elsewhere reflects with particularity estimated receipts to and disbursements from said fund. 30 Atty. Gen. 367.

Appropriation of moneys in a county contingent fund for a purpose that is not within other budget items or accounts is not a budgetary change so as to be subject to publication requirements of 65.90 (5). 32 Atty. Gen. 301.

A resolution adopted by a county board granting general authority to the county highway committee to transfer moneys from one appropriation for highway purposes to other appropriations for such purposes is contrary to 65.90 (5). 33 Atty. Gen. 34.

A county operating on an annual budget under this section may not authorize acceptance of deposits for perpetual care of burial lots under ch. 157 without making provision for payment of interest. 34 Atty. Gen. 247.

The property tax levied for any year must be in substantially the same amount as that shown in the budget to be required to meet proposed expenditures. It is not within a county's power to include in a budget an appropriation to create a surplus by the device of loose or false designation of purposes. 34 Atty. Gen. 345.

A county board may not transfer surplus money from the general fund to another fund or appropriate it for a different purpose without a two-thirds vote. 35 Atty. Gen. 259.

The municipal budget law does not prescribe procedure for setting up proposed county budget by the county board budget committee and such committee in reporting its recommended budget to the county board is not obliged to include rejected items as well as recommended items in the absence of specific directions on the matter from the county board. 35 Atty. Gen. 405.

A county budget formulated under this section may appropriate a lump sum for a given department without subdividing the amount as to purpose. 36 Atty. Gen. 512.

Where a budget adopted by a county board made no provision for fireproofing a county asylum, an appropriation of money from the general fund to be used for such fireproofing is a change in the budget within 65.90 (5). 36 Atty. Gen. 646.

A budget adopted under 65.90 which sets aside specific amounts for specific objects, in and of itself constitutes an appropriation for purposes and in amounts stated, and no other or further action by the county board is necessary to constitute an appropriation. When a county budget adopted under this section sets aside a specified sum for county normal school repairs without specifying any particular building on which the repairs must be made, the money made available may be used to repair any existing building which is part of the school. The money set aside in said budget for repairs could not be used for construction of a new building or buildings without altering the budget as provided in 65.90 (5). 37 Atty. Gen. 243.

Accumulation of annual appropriations for use in building a county courthouse, unexpended funds in the county road and bridge fund raised by taxes pursuant to 83.065, reasonable amount of funds kept as a working balance, unexpended proceeds of taxes levied for park purposes under 27.06, and funds set aside as an insurance reserve under 59.07 (23), are not surplus funds on hand which a county must apply in reduction of tax levies. 37 Atty. Gen. 586.

Where steps are taken which will make valid the expenditure for which the tax was levied originally, the money may be spent accordingly where the county board in its budget for the next year authorizes the same and a two-thirds vote is not required. 38 Atty. Gen. 38.

65.90 (5) must be followed in transferring surplus appropriation from one item in a county highway department budget to another. 38 Atty. Gen. 556.

A county budget must be passed upon annually, and a budget for 1955 cannot include an appropriation for 1956 which will be beyond the power of the county board to change when it conducts budget hearings for 1956. 44 Atty. Gen. 8.

Where a county board by definite appropriation for a specific purpose creates a fund with the monies thereof derived from general property taxes and not "earmarked" by statute for some particular use, such fund cannot be considered as "funds on hand" within the meaning of that term as employed in 65.90 (1), Stats. 1965, nor can it be considered as part of the general fund of the county. 56 Atty. Gen. 152.

Transfer of funds from the contingent fund in excess of that permitted under 65.90 (5), Stats. 1967, requires a two-thirds vote of the entire membership of the county board. 57 Atty. Gen. 134.

CHAPTER 66.

General Municipality Law.

66.01 History: 1925 c. 198, 355; Stats. 1925 s. 66.001, 66.006; 1929 c. 262 s. 12; 1929 c. 267; Stats. 1929 s. 66.01; 1931 c. 211; 1935 c. 193, 248; 1945 c. 44; 1951 c. 261 s. 10; 1965 c. 252; 1965 c. 666 s. 22 (26), (27), (29), (30), (31), (32); 1967 c. 353; 1969 c. 55.

On legislative power generally see notes to

sec. 1, art. IV; and on municipal home rule see notes to sec. 3, art. XI.

When the city legislates upon a subject, and such legislation is in conflict with state legislation upon that subject, the city legislation prevails over the state legislation unless the state enactment shall with uniformity affect every city or every village. State ex rel. Sleeman v. Baxter, 195 W 437, 219 NW 858.

The procedure for enacting a charter ordinance is discussed and set forth in State ex rel. Coyle v. Richter, 203 W 595, 234 NW 909.

A charter ordinance of a city is not subject to a statute dealing with local affairs unless such statute affects with uniformity every city. Van Gilder v. Madison, 222 W 58, 267 NW 25, 268 NW 108.

The charter ordinances provided for must deal with local affairs, which annexation proceedings are not, in that annexation affects not only the people of the annexing city or village but also the people in the area proposed to be annexed and the people in the town losing such area. Wauwatosa v. Milwaukee, 266 W 59, 62 NW (2d) 718.

66.01, Stats. 1967, makes it clear that a city or village is to manifest its election not to be governed by a state law by the passage of a charter ordinance, and the legislature intended thereby that the constitutional right to determine their local affairs and government be exercised by the passage of a charter ordinance electing not to be governed by a legislative enactment that would otherwise limit municipal activity. West Allis v. Milwaukee County, 39 W (2d) 356, 159 NW (2d) 36.

The word "charter", as used in 66.01 (2) (b), Stats. 1967, does not refer exclusively to ch. 62, but by definition includes ordinances which amend the city's charter, which upon enactment become part of the city's charter. Gramling v. Wauwatosa, 44 W (2d) 634, 171 NW (2d) 897.

Prohibiting the blowing of whistles by locomotives crossing city streets is not a charter ordinance, and a certified copy of such ordinance is not required to be filed in the office of the secretary of state. 20 Atty. Gen. 802.

A city may adopt a charter ordinance providing for election of a health officer by direct vote of the people instead of by appointment. 21 Atty. Gen. 1.

Where a charter ordinance purports to abandon the city manager form of government under ch. 64, and restore the mayor-alderman plan under ch. 62, it must not conflict with ch. 62, and provisions of said chapter are controlling over those portions of the charter ordinance which are in conflict therewith. 26 Atty. Gen. 43.

A charter ordinance of a city initiated under 10.43, Stats. 1943, increasing the number of wards, changing the number of aldermen from 2 to one per ward, and adopted at the spring election, may not be resubmitted at the fall election, as the specific provision of 66.01 (8) is applicable and controls over the general provision of 10.43. 27 Atty. Gen. 593.

66.013 History: 1959 c. 261, 641; Stats. 1959 s. 66.013; 1963 c. 395; 1967 c. 211 s. 21 (1).

Interim Committee Note, 1959: It is the intent of this bill [Bill No. 226,A] to provide more comprehensive state level control over the development of new municipalities to assure that the creation of such units is in the public interest. Existing statutes relating to village and city incorporations are substantially revised by ss. 66.013 to 66.019, and the provisions are made uniformly applicable to both village and city incorporation proceedings.

The circuit court and the state director of regional planning are directed to examine all proposed incorporations in terms of minimum standards relating to the size, shape and content of the territory. Particular attention is devoted to establishing minimum standards which are relevant to the problems presented by governmental organization in metropolitan areas. This bill also recognizes the special problems of rural or "isolated" areas by providing somewhat different standards for proposed incorporations in such areas.

The circuit court initially reviews all incorporations to determine that certain specified area, population and density requirements are met—this type of review is presently required in village incorporations. Present law is changed by the additional requirement that a state agency shall apply other more flexible tests intended to show whether the incorporation is in the public interest. The provision for review of proposed incorporations by both the executive and judicial branches of state government, rather than by the courts alone, was deemed necessary in light of the Wisconsin supreme court decision in the case of In re Incorporation of Village of North Milwaukee, 93 W 616 (1896). The North Milwaukee case held that determining whether the creation of a municipality was in the public interest was a legislative matter that could not be handled by the judicial branch of the government. It was the opinion of legal experts that requiring a state administrative officer to make recommendations to the court based on statutorily prescribed standards provided sufficient legislative guidance to maintain the purely judicial function of the courts.

This bill authorizes the director to alter the boundaries of a proposed incorporation prior to the referendum, if such a boundary adjustment would promote orderly land use development. It is further provided that if a contiguous municipality submits a resolution indicating a willingness to annex the area, the director may consider whether such annexation would better serve the public interest. If the director finds that this purpose would be served, a referendum on annexation, rather than incorporation, would be ordered. Upon a favorable vote, the annexation resolution would be deemed an annexation ordinance. [Note: The last 2 sentences are not applicable due to the deletion by amendment from the bill of the provisions on which based.]

Another important feature of this revision is the requirement that the director consider "the impact, financial and otherwise, upon the remainder of the town from which the territory is to be incorporated." This is intended to protect the towns from the situation where incorporation of part of the town territory leaves the remainder without sufficient tax base to finance needed services. The

impact of an incorporation on a metropolitan community must also be considered. To prevent fragmentation of an urban area the director is required to make "an express finding that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community" of which the territory is a part.

This bill also revises present consolidation and annexation procedures. Consolidation of town territory with neighboring incorporated municipalities and certain annexation must be reviewed by the court and the director to determine whether these boundary changes are in the public interest and whether these procedures are being used to evade the new incorporation standards. [Bill 226-A]

Editor's Note: Sections 61.01 to 61.15 and 61.17, Stats. 1957, relating to incorporation of villages, and 62.06 relating to the incorporation of cities, were repealed by ch. 261, Laws 1959. For cases construing those sections see citations in Wis. Annotations, 1950 and Wis. Statutes, 1957.

On prohibition of special and private laws see notes to sec. 31, art. IV; and on general laws on enumerated subjects see notes to sec. 32, art. IV.

66.014 History: 1959 c. 261; Stats. 1959 s. 66.014; 1963 c. 395; 1965 c. 252; 1967 c. 211 s. 21 (1).

Interim Committee Note, 1959: Section 66.014 draws together in a single section present procedural provisions relating to the incorporation of villages [present provisions are contained in ss. 61.01 to 61.15 and 61.17] and cities [present provisions are found in s. 62.06]. It is the intention to consolidate and simplify existing procedures relating to incorporation and to co-ordinate, where appropriate, incorporation procedures with the new annexation procedures set forth in s. 66.021 [ch. 676, laws of 1957].

This section is a departure from existing law in that it establishes a comprehensive system of judicial and administrative review of all proposed incorporations. Legislative standards are established for this review by ss. 66.015 and 66.016.

Sub. (1) is a restatement of the present law relating to city incorporation found in s. 62.06 (2) (b), with the exception that the requirement is deleted that notice be posted in 8 public places. The posting requirement is no longer considered an effective or essential means of giving notice.

Sub. (2) sets forth the revised petition requirements. Par. (a) is intended to simplify existing law by setting a reasonable and uniform requirement for the number of signatures needed on incorporation petitions. It represents an increase in the number presently required in village incorporations [s. 61.01 requires "not less than 5 taxpayers and residents"]. In the case of cities, this paragraph lowers the existing requirement that the petition be signed by 100 persons who are electors and taxpayers [s. 62.06 (2) (a)].

Par. (b) applies to all incorporations the present requirement that village incorporation petitions be submitted to the circuit court. The last phrase of this paragraph imposes the same time limitation on the validity of the incorporation petition as pertains currently to annexation petitions under s. 66.021 (4) (c).

Par. (c) specifies the contents of the petition in terms of the basic changes made in the incorporation procedure. The requirement that the petition include a scale map and a description of the territory is taken from s. 66.021 (4) (a).

Par (d) is entirely new. It relates to sub. (6) of this section and is intended to fully advise signers of the petition of the possible future actions which might result from submission of an incorporation petition. [Note: Par. (d) was deleted from the bill by amendment.]

Par. (e) is identical to s. 66.021 (4) (b), and par. (f) repeats the language of the first sentence of s. 66.021 (4) (c).

Sub. (3) is primarily a restatement of s. 61.07 (3) relating to the hearing and costs under present village incorporation law. In addition it provides that the court may order the parties to post bond to cover disbursements incurred in the hearing.

Sub. (4) co-ordinates and partially revises annexation notice requirements under s. 66.021 (3) and present notice provisions relating to village incorporations.

Sub. (5) broadens existing law by permitting any party having a legitimate interest in the proposed incorporation to enter the proceedings prior to the hearing. It is the intent of this provision to give the review authorities an opportunity to hear all relevant testimony, particularly from neighboring municipalities or towns which might be affected by the incorporation.

Sub. (6) introduces a completely new feature to the incorporation procedure under existing Wisconsin law. Consistent with the basic intent of this bill, sub. (6) gives the director an opportunity to examine the merits of all available alternatives before a final determination is made regarding a proposed incorporation. By permitting a contiguous municipality to submit an annexation resolution, as provided by this subsection, consideration can be given to whether the best interests of the territory proposed for incorporation will be served by annexation to a contiguous municipality or by creation of a separate village or city.

This subsection [(6)] provides that the annexation resolution will be "deemed equivalent to an annexation ordinance if an annexation referendum under s. 66.018 is favorable." This is a departure from present requirements set forth in the annexation statutes, and is intended to contribute to the logical and orderly development of the procedure established under this section. The interests of the territory proposed for incorporation are protected by the stipulation that the municipality submitting the resolution must annex the territory if the voters in the territory favor such annexation. [Note: This paragraph not applicable, the provisions of the bill on which based having been deleted by amendment.]

Sub. (1) [(7)] is a restatement of the provision relating to actions under s. 66.021 (10) of the annexation statutes.

Sub. (8) expands the present requirement of

court review of village incorporations to both village and city incorporations. The court's review powers are limited only to examining the petition to ascertain that the area, population and density requirements specified in s. 66.015 of this bill are met. The petition then is referred to the director for a determination that the proposed incorporation meets the standards set forth in s. 66.016.

Sub. (9) is completely new. In keeping with the fundamental purpose of this bill, the director is assigned the responsibility of investigating each incorporation to determine whether it is in the public interest on the basis of the standards specified in s. 66.016.

Par. (a) to (e) specify the steps which the director must follow in arriving at his determination. If there are objections to the initial findings and determination of the director, a hearing must be held to give all interested parties an opportunity to present their testimony.

Par. (f) enumerates the 5 [3] different rulings on the petition that might be made by the director. Subd. 3 gives him the discretionary power to require that an annexation referendum shall be held in the territory proposing incorporation if the conditions under sub. (6) are met, and if the territory conforms to the standards under s. 66.021 (11) (c). [Note: The second sentence is not applicable due to the deletion of the original Subd. 3 from the bill by amendment.]

Par. (f) 4 [3] and 5 give the director discretionary power to alter the boundaries specified in the petition. This grant of power is intended to promote orderly land use development by giving the director authority to exercise some control over the size and shape of proposed incorporations and certain annexations. [The phrase "and certain annexations" is not applicable since Subd. 5 on which it is based was deleted by amendment.]

Par. (g) requires the court to order the appropriate action to implement the director's final determination. Par. (h) establishes a definite time for the ascertainment of facts regarding a proposed incorporation.

Par. (i) is taken from present s. 61.07 (3) relating to village incorporations. It imposes a one-year limitation on further incorporation petitions in the territory if the petition is dismissed or the referendum unfavorable. [Bill 226-A]

On jurisidiction of the supreme court see notes to sec. 3, art. VII; on jurisdiction of circuit courts see notes to sec. 8, art. VII, and notes to 252.03.

A circuit court having jurisdiction of proceedings for the incorporation of a village was without right, after the entry of an order of incorporation, to entertain a proceeding to determine the right of the assessor of the county wherein residents of the newly incorporated village had resided, to assess the incomes of such residents. In re Chenequa, 197 W 591, 222 NW 794.

A town, the territory of which would be affected by a proposed incorporation as a village, had an adverse interest in the incorporation proceedings and had the right to demur to the petition for incorporation. In re Village of Oconomowoc Lake, 270 W 530, 72 NW (2d) 544.

In statutory proceedings to incorporate a village or a city, residents in the territory proposed to be incorporated have an interest in the proceedings; but neither the furnishing of services nor the ownership of property by an existing city makes such city a resident in such territory so as to require its interpleader in actions contesting such incorporation proceedings. Schatzman v. Greenfield, 273 W 277, 77 NW (2d) 511.

See note to 60.81, citing Schatzman v. Greenfield, 273 W 277, 77 NW (2d) 511.

Characteristics of land required for incorporation or expansion of a municipality. Cutler, 1958 WLR 6.

66.015 History: 1959 c. 261; Stats. 1959 s. 66.015; 1967 c. 211 s. 21 (1).

Interim Committee Note, 1959: This section consolidates and completely revamps present statutory provisions relating to the area, population and density requirements for village and city incorporations. The circuit court is empowered to review all incorporations to determine that the minimum requirements under this section are met.

For each of the types of municipalities defined in s. 66.013 (2) different minimums are established. The minimums vary according to the proximity of the proposed incorporation to a metropolitan center. The requirements for creation of a village or city near a metropolitan community are more stringent to avoid the creation of governmental units without sufficient area or population to economically supply services or perform functions which are needed. [Bill 226-A]

Where territory comprising a town consisted of agricultural land of about 15,000 acres, a residential area of about 1,000 acres, a commercial area of about 27 acres, and an industrial area of about 1,000 acres, with a total population of less than 1,500 people, and the residential, commercial and industrial areas were principally along both sides of a highway in a strip less than a mile wide and about 9 miles long, and the land lying on either side of this strip was practically all agricultural except some summer cottages and a few permanent homes overlooking a river, the territory in question did not have the characteristics of a village and hence was not subject to incorporation as a village. In re Town of Hallie, 253 W 35, 32 NW (2d) 185.

If the statutory qualifications exist and the area within the proposed boundaries has the characteristics of a village, the size of the village and the location of its boundaries are matters within the choice of the electors of the territory proposed to be incorporated and not within the discretion of the court, and it is immaterial that the proposed village limits do not include all of the territory which might have been included, or that the proposed area is so thickly settled as to leave little or no room for new residents. It is also immaterial whether the territory proposed to be incorporated meets the qualification of a city of the fourth class in area and population, the court having no power in such case to require the territory to become a city rather than a

village. In re Village of Elm Grove, 267 W 157, 64 NW (2d) 874.

66.016 History: 1959 c. 261; Stats. 1959 s. 66.016; 1967 c. 211 s. 21 (1); 1969 c. 57.

Interim Committee Note, 1959: This section is new. It establishes the rule that in order for a proposed incorporation to be in the public interest the territory must possess certain urban characteristics. It is intended that the director examine each proposed incorporation in terms of the territory's capacity to assume the responsibilities and obligations of a municipal government. This section details the standards to be applied by the director in determining that the proposed incorporation is in the public interest. The requirements under sub. (1) must be met. Those under sub. (2) must be considered by the director, but failure to meet all these requirements would not preclude granting the incorporation petition. [Bill 226-A]

Legislative Council Note, 1969: In Scharping v. Johnson, 32 Wis. (2d) 383, the Wisconsin Supreme Court held that the requirements of 66.016 (1) (b) apply to the incorporation of an isolated village under 66.015 (1), despite the inconsistency in language.

This bill amends 66.016 (1) (b) to make the language consistent with 66.015 (1). When considering an incorporation petition concerning an isolated village, the head of the planning function shall consider the territory beyond the most densely populated one-half square mile, instead of from the most densely populated square mile as determined by the court in Scharping. [Bill 11-S]

See note to sec. 1, art. IV, on delegation of power, citing Schmidt v. Dept. of L. A. & D. 39 W (2d) 46, 158 NW (2d) 306.

While 66.016 (1), Stats. 1965, affords the director of the department some discretion, it does not give him authority to reject a petition arbitrarily, capriciously, or without reason, for the word *may* construed with the word *only* in the same sentence has the connotation of the term *shall*. Schmidt v. Dept. of L. A. & D. 39 W (2d) 46, 158 NW (2d) 306.

Determination by the director of the department that there was no dominant community center in the area proposed to be incorporated which might serve as a focal point for the town's social and business activities, that the development in the proposed area was scattered, that it was irregular in shape and lay in separate drainage areas and in 2 high school districts, and that a full range of community facilities were not available within the area so as to be described as a community center, was neither arbitrary nor capricious, since such findings established by the evidence amply supported his conclusion that the territory was not homogeneous and compact. Schmidt v. Dept. of L. A. & D. 39 W (2d) 46, 158 NW (2d) 306.

66.017 History: 1959 c. 261; Stats. 1959 s. 66.017; 1963 c. 395; 1967 c. 211 s. 21 (1).

Interim Committee Note, 1959: This section details the procedure for seeking judicial review of the action taken by the circuit court and the director under ss. 66.013 to 66.019. This section follows the customary administrative review procedures set forth in ch. 227 of the statutes. [Bill 226-A]

The scope of the review by the supreme court is the same as that given the circuit court by 227.20. The question of whether the incorporation is in the public interest is a legislative question which the judiciary cannot determine. Scharping v. Johnson, 32 W (2d) 383, 145 NW (2d) 691.

66.018 History: 1959 c. 261; Stats. 1959 s. 66.018; 1963 c. 395; 1969 c. 276 s. 590 (1).

Interim Committee Note, 1959: This section consolidates and revises referendum requirements currently found in various sections under the village and city incorporation statutes. It also makes certain procedures for annexation referendums applicable to incorporations. Sub. (1) simplifies and changes referendum order requirements now contained in ss. 61.08 and 62.06 (3). Under present s. 62.06 (3) the number and boundaries of wards and the number of aldermen for each ward is established by the resolution providing a referendum. Sub. (1) changes this requirement by providing that 7 aldermen will be elected at large and that local officials will subsequently determine by charter ordinance the wards and boundaries. This is intended to simplify the procedure.

Sub. (2) restates existing s. 62.06 (4).

Sub. (3) makes the annexation referendum procedure under s. 66.021 (5) applicable to an incorporation referendum. This change is consistent with the determination that annexation and incorporation procedures should be uniform where appropriate.

The first sentence of sub. (4) repeats s. 66.021 (5) (f) of the annexation statutes. The remainder of this subsection spells out the financial obligations of the parties concerned if either the incorporation or annexation referendum is favorable.

Sub. (5) restates and combines the basic provisions under ss. 61.11 and 62.06 (6) relating to certification of incorporation.

Sub. (6) provides that the present annexation filing requirement specified in s. 66.021 (8) will apply if an annexation referendum conducted under this section is successful. [Note: This paragraph is not applicable since Sub. (6) was deleted from the bill by amendment.] [Bill 226-A]

Where it appeared that 91 votes had been cast at an election, and that upon the canvass 80 ballots were given by the qualified electors, 44 of which were in favor of incorporation, the 44 would constitute the majority required under ch. 40, Stats. 1898. State ex rel. Holland v. Lammers, 113 W 398, 86 NW 677, 89 NW 501.

66.019 History: 1959 c. 261; Stats. 1959 s. 66.019; 1965 c. 666 s. 22 (1).

Interim Committee Note, 1959: This section is a restatement and consolidation of various provisions under existing village and city incorporation statutes. Consistent with the general procedure created by this bill, the circuit court is given various duties currently divided among several local agencies.

Sub. (1) is taken from ss. 61.10 (3) and 62.06 (7).

Sub. (2) combines ss. 61.10 (4) and 62.06 (8).

Sub. (3) follows ss. 61.10 (5) and 62.06 (9).

Sub. (4) is a restatement of s. 62.06 (10). It provides the additional requirement that nomination papers "shall be signed by not less than 5 per cent nor more than 10 per cent of the total votes cast at the referendum election."

Sub. (5) restates s. 61.17.

Sub. (6) repeats the language of s. 62.06 (11). [Bill 226-A]

Ordinances of a town granted a franchise to furnish water for an unincorporated village. Afterwards the village became a city and by ordinance granted and confirmed to the corporation all rights conferred by said town ordinances, subject to certain modifications. The city ordinance provided that when accepted it should constitute a contract between the city and the corporation. Even if the town ordinances were enacted without authority they became valid as part of the city ordinance. Ashland v. Wheeler, 88 W 607, 60 NW 818.

Where a city of the fourth class is created from a village, the government and administration of the high school devolves upon the board of education provided for by the general city charter. State ex rel. South Milwaukee v. Fowle, 103 W 388, 79 NW 419.

The requirement that the election shall be held in 60 days from the date of the order is only directory, and an election held after the 60 days and within a reasonable time is valid. Application of Clark, 135 W 437, 115 NW 387.

A city, being only one of the agencies through which a county collected a tax assessed for highway purposes, had no such interest in the validity of the tax as to authorize it to maintain certiorari to set it aside. State ex rel. Sheboygan v. Sheboygan County, 194 W 456, 216 NW 144.

A city cannot maintain an action to restrain its treasurer from paying over moneys in his hands belonging to the county on the ground that the taxes levied by the county were illegal. Appleton v. Outagamie County, 197 W 4, 220 NW 393.

Where a village is incorporated from territory within a town, after the assessment, the taxes to be paid by a telephone company operating an exchange in such territory should be collected and divided under the provisions of sec. 925i, Stats. 1911. 1 Atty. Gen. 601.

A tax levied by the county and apportioned to the town for the construction of a bridge on the county system of prospective state highways prior to such incorporation is collectible from properties located in the newly incorporated village. 9 Atty. Gen. 540.

66.02 History: 1873 c. 234; 1874 c. 242 s. 6; Ann. Stats. 1889 s. 928; Stats. 1898 s. 928; 1921 c. 396 s. 3; Stats. 1921 s. 66.02; 1959 c. 261, 641; 1967 c. 211 s. 21 (1).

Interim Committee Note, 1959: Section 66.02 is amended to require that the circuit court and the director review all proposed consolidations to determine that they are in the public interest. For purposes of uniformity the incorporation standards also are applied to all consolidations. The intention is to guard against the use of an alternative means of changing territorial boundaries if incorporation appears too difficult. [Bill 226-A]

In an action to contest the validity of proceedings culminating in a consolidation or absorption of the town of Lake into the city of Milwaukee, the absorbed town of Lake was not a proper party defendant, so that the action was properly dismissed as against it. Toman v. Lake, 268 W 239, 67 NW (2d) 356.

Proceedings for the annexation of parts of a town to a city, pending when proceedings to consolidate the town and city are started, become ineffective when consolidation is accomplished. Milwaukee v. Sewerage Comm. 268 W 342, 67 NW (2d) 624.

66.02, Stats. 1953, together with applicable 6.23 (8) does not require submission to the voters of the full text of the consolidation ordinances in the referendum questions, but requires only the submission of a concise statement of the nature of the measure or question involved, and ballots bearing the words "for consolidation" and "against consolidation" met the requirements, where the full text of the ordinances had been published in newspapers of general circulation in the respective communities affected by the proposed consolidation. Milwaukee v. Sewerage Comm. 268 W 342, 67 NW (2d) 624.

Assuming the validity of the consolidation of the town of Granville into the city of Milwaukee, the territories in the town, which were subject to annexations to the village of Brown Deer, were not left without any government during the interval between the effective date of the consolidation and the effective dates of the annexations but went into the city with the rest of the town until the annexations became effective, at which times, respectively, they were transferred from the city to the village; the consolidation, if valid, operating on such territories subject to the defeasance occurring when the annexations, which had priority, took effect. Brown Deer v. Milwaukee, 274 W 50, 79 NW (2d) 340.

In determining priorities between an annexation and a consolidation, the first procedural step in a consolidation is the adoption of an ordinance. Brown Deer v. Milwaukee, 274 W 50, 79 NW (2d) 340.

Especially in view of a severability clause in the consolidation ordinance, the consolidation of the town of Granville into the city of Milwaukee was not wholly invalidated by the mere fact that the prior proceedings for the annexation of certain territories in the town of Granville to the village of Brown Deer prevented such consolidation from becoming fully or permanently effective in respect to portions of the Granville territory, but such consolidation, if otherwise valid, was effective to the full extent consistent with the outstanding priorities. Brown Deer v. Milwaukee, 274 W 50, 79 NW (2d) 340.

The legislative history of 66.02 does not manifest an intent to bar the ordinary sort of town, as distinguished from an "incorporated" town, from consolidating with a city. The word "town" is used in the commonly accepted sense as that portion of the original town which remains an operative and actively functioning unit of local government, excluding areas previously annexed or incorporated into cities and villages. Brown Deer v. Milwaukee, 2 W (2d) 441, 86 NW (2d) 487.

In the provision that any town may be consolidated with a contiguous city by ordinance "ratified by the electors at a referendum held in each municipality," the "municipality" thus referred to is the portion of the original town which was still operating as a town government under ch. 60 at the time of the referendum and which would be directly incorporated into the city by the consolidation. Brown Deer v. Milwaukee, 2 W (2d) 441, 86 NW (2d) 487.

The fact that consolidation ordinances adopted by a city and a town contain a severability clause eliminates any validity to the argument that such ordinances were void as dissolving the town, on the theory that only the county board can vacate and dissolve towns under 59.07 (22) and 60.05. Brown Deer v. Milwaukee, 2 W (2d) 441, 86 NW (2d) 487.

66.021 History: 1957 c. 676; Stats. 1957 s. 66.021; 1959 c. 261, 431, 571, 641; 1961 c. 78, 483; 1963 c. 353; 1965 c. 252, 444; 1965 c. 666 s. 22 (6), (10); 1967 c. 77 s. 4; 1967 c. 211 s. 21 (1); 1969 c. 21, 55; 1969 c. 276 s. 590 (1); 1969 c. 423; 1969 c. 500 s. 30 (2) (e).

Interim Committee Note, 1959: Section 66.021 (7) (a) is amended to conform to the provisions under newly created s. 66.021 (11).

This section [Sub. (11)] is new. It provides that the director shall review annexations within a metropolitan community and all annexations of one square mile or more. In both cases the director's findings are only advisory. [Bill 226-A]

Legislative Council Note, 1969: The repeal of this section [(11) (b)] removes a review procedure which was found unconstitutional in *In re City of Beloit* (1967) 37 Wis. 2d 637. Par. (b) provided that no annexation of one square mile or more was effective until the circuit court found the annexation to be in the public interest. The supreme court held that determination of "the public interest" is a legislative, not a judicial function. The repeal of par. (b) leaves 2 forms of review for annexation cases under 66.021: 1) Under sub. (11) (a), the annexing municipality in any county with a population of 50,000 or more must obtain an advisory opinion from the head of the planning function before an annexation proceeding can be valid. 2) Whether the legislature provides for judicial review or not, if someone contests the proceedings, courts can still review annexation proceedings according to the "rule of reason". This rule is described in *City of Beloit* (37 Wis. 2d 637, 648) as "a review of the action of the municipality to determine whether that action . . . was arbitrary or capricious". The court also pointed out that "since the rule of reason is a standard to determine whether the exercise of legislative power is valid and is founded upon a constitutional basis the legislature could not very well abrogate it". [Bill 37, A]

The term "elector", as used in sec. 926-2, Stats. 1898, applies to all electors within the territory proposed to be annexed, and a petition signed by a majority of the electors of the territory is sufficient to annex the entire tract, including part of a particular town therein, although only a minority of the electors of the town signed the petition. Zweifel v. Milwaukee, 188 W 358, 206 NW 215.

As between a proceeding for annexation to a city under 62.07 and for incorporation as a village under 61.01 to 61.14, Stats. 1929, the proceeding first instituted has preference; consequently, denial of an application for incorporation of a village because of a pending proceeding, not void on its face, for annexation of part of the land involved to an adjacent city was proper, notwithstanding a pending action attacking the validity of the annexation proceeding. In re Incorporation of St. Francis, 208 W 431, 243 NW 315.

In view of the provisions of 370.01 (19), Stats. 1937, the names signed to a petition for annexation of territory must be the actual signatures of electors. Their signatures signed by others in their presence are not valid. De Bauche v. Green Bay, 227 W 148, 227 NW 147.

Signatures to a petition for annexation under 62.07, Stats. 1947, need not be authenticated, and when a petition is signed by an elector it has a face value and there is a presumption in favor of its genuineness. Blooming Grove v. Madison, 253 W 215, 32 NW (2d) 312.

The annexation of the territory in question was made by the city of Milwaukee pursuant to sec. 926-2, Stats. 1898, and not 62.07, Stats. 1947. Lake v. Milwaukee, 255 W 419, 39 NW (2d) 376.

Having taken no steps to adopt the provisions of 62.07 (1), Stats. 1951, the city of Milwaukee necessarily proceeded in annexation proceedings under the provisions of sec. 926-2, Stats. 1898. The city was required by sec. 925-18 to submit the proposition to a vote of the electors of the area proposed to be annexed, so that the failure to submit such a referendum was fatal to the proceedings. Wauwatosa v. Milwaukee, 259 W 56, 47 NW (2d) 442.

The taking of the first public procedural step required by the applicable statute and not the assumption of jurisdiction by the annexing municipal body begins annexation proceedings and determines which of 2 conflicting proceedings has precedence. Greenfield v. Milwaukee, 259 W 77, 47 NW (2d) 292.

Where a petition for annexation of territory was filed with the city clerk without showing that the signers represented the number of electors and property owners required by 62.07 (1) (a), Stats. 1951, and the city's annexation commission made a report to the city council advising that it could not consider the annexation of this area on the basis of such petition because of the greater number of signatures on a subsequently filed counterpetition, the council by adopting such report determined in effect that the original petition for annexation bore insufficient signatures to comply with the annexation statute, which determination was binding on the city as against the rights of the petitioners for incorporation as a village who, after such determination, proceeded to take steps for incorporation by complying with all statutory requirements therefor, and had filed their petition for incorporation with the court prior to any steps being taken to revive the annexation proceedings. In re Town of Preble, 261 W 459, 53 NW (2d) 187.

In the absence of affirmative proof before

the common council of a city as to the validity of the entire annexation proceeding, the court must determine whether a valid annexation petition was pending before the council. A petition which was in fact signed by a majority of the electors and by the owners of more than one half of the real estate in area within the territory sought to be annexed was sufficient under 62.07 (1), Stats. 1951, and it was not invalid for lack of certainty in reciting in the alternative that the signers constituted a majority of the electors and "either" the owners of one half of the real estate in area "or" one half of the real estate in assessed value within the territory proposed to be annexed. Wauwatosa v. Milwaukee, 266 W 59, 62 NW (2d) 718.

Where notices relating to the proposed annexation of a certain area to a city were posted on December 30, 1952, and a petition for incorporation of a portion of the same area was filed with the circuit court on September 22, 1953, and, at the time of the incorporation hearing on November 3, 1953, it appeared that numerous matters in the annexation proceeding had not been completed and that another year would be required to complete the annexation proceeding, the city, although acting in good faith, did not act within reason in the prosecution of the annexation proceeding, and, therefore, the posting of the annexation notices on December 30, 1952, was no bar to the proceeding for incorporation. In re Village of Brown Deer, 267 W 481, 66 NW (2d) 333.

A posting of notices of the proposed annexation of part of a town to a city which disclosed that territory of another city was included within the boundaries of the posted territory, and that an area was included which had already been posted by another city, was void on its face in respect to such items. Milwaukee v. Sewerage Comm. 268 W 342, 67 NW (2d) 624.

Under 62.07 and 66.03, Stats. 1953, the instant annexation ordinance is not objectionable for including in the territory sought to be annexed by the city certain land owned by a town from which a portion of the proposed annexed area is to be detached. Town of Madison v. City of Madison, 269 W 609, 70 NW (2d) 249.

Where, in a proceeding attacking the validity of an annexation, there was in the record an affidavit of the printer that the notice of circulation of the petition for annexation was published in a newspaper on January 28, but there was also in evidence a copy of the same newspaper of January 27 containing the same notice with an inconsequential error in the description of the territory sought to be annexed, and the statute (62.07 (1) (a), Stats. 1953) required only that a copy of the notice be published at least 10 days before the petition was to be circulated, and did not require that its publication be proved by affidavit, the trial court could properly use the date of January 27 in determining the date of publication. Greenfield v. Milwaukee, 272 W 388, 75 NW (2d) 434.

The 1953 statute did not require the insertion of the description of the land owned by each of the signers opposite their names in the petition for annexation. Greenfield v. Milwaukee, 272 W 388, 75 NW (2d) 434.

The validity of an annexation ordinance is presumed until overcome by the town attacking the same and, with reference to an assessed valuation attributed to a person who signed the petition for annexation as "Mrs. John Smith" whereas the record title ownership of the property described was in the name of "Mary Smith," it is presumed that "Mrs. John Smith" and "Mary Smith" are one and the same, in the absence of a showing by the town that they are not. Greenfield v. Milwaukee, 272 W 388, 75 NW (2d) 434.

Where 2 electors resided in certain town territory when a petition for annexation thereof to a city was circulated and when it was filed with the city clerk, but the annexation petition contained no signatures of electors as required by the 1953 statute, the petition was invalid when filed, and the common council of the city acquired no jurisdiction although such 2 electors were not residing in such territory when the annexation ordinance was adopted by the council; hence such ordinance was null and void. (Blooming Grove v. Madison, 253 W 215, distinguished.) Greenfield v. Milwaukee, 272 W 610, 76 NW (2d) 320.

A second annexation attempt was not prevented by a first one which had been indefinitely postponed, even if it could be held that the first one is still pending. Greenfield v. Milwaukee, 273 W 484, 78 NW (2d) 909.

See note 66.02 citing Brown Deer v. Milwaukee, 274 W 50, 79 NW (2d) 340.

In reviewing annexation cases on the question of whether the tract proposed to be annexed is reasonably suitable or adaptable to city or village uses or needs, the court will consider the necessity for reasonable plans for orderly suburban development as an element. The city council in the first instance determines the suitability or adaptability of the area proposed to be annexed and the necessity of annexing the same for the proper growth and development of the city and, on a review, the courts cannot disturb the council's determination unless it appears that such determination is arbitrary and capricious or is an abuse of discretion. Town of Brookfield v. City of Brookfield, 274 W 638, 80 NW (2d) 800.

See note to 66.029, citing Blooming Grove v. Madison, 275 W 328, 81 NW (2d) 713.

The annexation of territory in a town to a city is not invalid for dividing the town into 4 noncontiguous areas. Blooming Grove v. Madison, 275 W 342, 81 NW (2d) 721.

A city council's recital in the ordinance that the signatures on the petition were sufficient is not conclusive. Blooming Grove v. Madison, 4 W (2d) 447, 90 NW (2d) 573.

Where the city has been providing certain municipal services to a disputed area covered by its annexation ordinance, but the declaratory judgment declared such ordinance invalid and judicially determined that such area belonged to the village, the trial court had no authority to order the city to continue to service such area pending the determination of an appeal from the declaratory judgment. Brown Deer v. Milwaukee, 8 W (2d) 631, 99 NW (2d) 860.

A publication of a notice containing the

legal description, but which omitted the customary heading of the description, was sufficient. Madison v. Monona, 10 W (2d) 32, 102 NW (2d) 206.

A map, contained in a notice of intent to annex and in a petition for annexation, and reasonably showing the boundaries of the territory proposed to be annexed, the relation of such territory to the annexing city, and that such territory was contiguous thereto, sufficiently met the requirements of 66.021 (3) (b) and (4) (a) relating to a "scale map." Madison v. Monona, 10 W (2d) 32, 102 NW (2d) 206.

66.021 places no restrictions or requirements as to the amount of territory to be included in an annexation, and does not require that the boundaries of such territory be according to any set pattern; and the gerrymandering of the boundaries of the territory proposed to be annexed was discretionary with the petitioners in the instant case. Madison v. Monona, 10 W (2d) 32, 102 NW (2d) 206.

An annexation ordinance, which at most is voidable and not void, continues in effect until declared invalid by proper court determination and, until such time as such ordinance is invalidated, it is effective to pre-empt the field and prevent any other annexation proceeding from being initiated to annex any part of the affected area to some other incorporated municipality. State ex rel. Madison v. Monona, 11 W (2d) 93, 104 NW (2d) 158.

The city's notice of intention to circulate an annexation petition, stating that the city of Madison would cause a petition to be circulated for the purpose of annexing certain lands located in nearby towns, and containing a description which plainly showed that the land bordered the city limits of Madison, and no other village or city, sufficiently satisfied the requirement of 66.021 (3) (a) 3, that such a notice must contain the name of the municipality to which the annexation is proposed. Town of Madison v. City of Madison, 12 W (2d) 100, 106 NW (2d) 264.

Under 66.021 (1) (a) a city, as owner of land within an area, may join in a petition for annexation. The city's adoption of an annexation ordinance constituted a nonrejection of the petition. In direct annexation proceedings the city is not required to give notice of nonrejection and then wait 30 days before adopting the ordinance. Town of Madison v. City of Madison, 12 W (2d) 100, 106 NW (2d) 264.

Where a city council did not enact an ordinance for the annexation of territory in a town within 60 days after the petition for annexation had been filed with the city clerk, as required by 66.021 (7), the annexation ordinance was void and of no effect. Madison v. Blooming Grove, 14 W (2d) 143, 109 NW (2d) 682.

Nonregistered persons who otherwise qualify as electors may sign a petition. Brown Deer v. Milwaukee, 16 W (2d) 206, 114 NW (2d) 493.

A signature by a president and majority stockholder of a corporation is not sufficient without a corporate meeting or formal authorization by the board of directors authorizing him to act for the corporation. Objection to the signature may be raised by a third party where the corporation purports to perform a political, as opposed to a business, act. Brown Deer v. Milwaukee, 16 W (2d) 206, 114 NW (2d) 493.

A city cannot dispute a referendum election under 66.021 (2) (b), Stats. 1957, on the ground that an ineligible person voted, where no appeal was taken under 6.66, Stats. 1957, to contest the election. The fact that the election inspectors did not attach the affidavit required by 66.021 (5) (e) did not prevent the bar of 6.66 from applying. Burke v. Madison, 17 W (2d) 623, 117 NW (2d) 580.

Although an annexation is effective upon adoption of the ordinance, the court is not precluded from entering interim orders as to its effectiveness or ineffectiveness, but the court cannot enjoin the city from putting it in effect and then modify the order only to allow the city to assess and collect taxes. Town of Fond du Lac v. City of Fond du Lac, 22 W (2d) 525, 126 NW (2d) 206.

A city cannot buy property outside its limits and by contract or coercion then induce residents to sign an annexation petition. An annexation which leaves a noncontiguous island of town terrtiory only to prevent residents therein from voting is invalid. A city can initiate a proceeding under this section despite 66.024. A city may sign a petition even though it became a property owner only for this purpose. Town of Fond du Lac v. City of Fond du Lac, 22 W (2d) 533, 126 NW (2d) 201.

Territory is not contiguous within the meaning of 66.021 (2) where it is connected only by a narrow strip of land 1700 feet long. Mt. Pleasant v. Racine, 24 W (2d) 41, 127 NW (2d) 757.

Where a corporation by resolution of its board of directors duly authorized its president to sign and its secretary to countersign the annexation petition on its behalf, but the secretary alone executed the same, the defect did not operate to vitiate the petition, since the signing was merely a ministerial act to be done pursuant to actual pre-existing authorization. [Brown Deer v. Milwaukee, 16 W (2d) 206, distinguished.] Mt. Pleasant v. Racine, 28 W (2d) 519, 137 NW (2d) 656.

While annexation procedures are purely statutory, there is a common-law presumption of validity which attaches to an annexation ordinance, assuming that the prescribed procedures have been followed in the adoption of the ordinance, which remains until overcome by proof produced by the party attacking it. Mt. Pleasant v. Racine, 28 W (2d) 519, 137 NW (2d) 656.

Where the state director of the planning function in the department of resource development does not send a report stating that the annexation is against the public interest, it may be assumed that he concluded that the annexation was not, and that in adopting an ordinance of annexation the municipality took the position of the director into account. Mt. Pleasant v. Racine, 28 W (2d) 519, 137 NW (2d) 656.

See note to sec. 1, art. IV, on delegation of power, citing In re City of Beloit, 37 W (2d) 637, 155 NW (2d) 633.

In determining whether a petition for an-

nexation pursuant to 66.021 (2) has been signed as required by the "owners of one-half of the land" in the proposed area of attachment, state highway easement acreage within the territory abutting on and owned by one of the signers of the annexation petition is part of the calculable area to be included with property owned by the signers. Town of Menasha v. City of Menasha, 42 W (2d) 719, 168 NW (2d) 161.

Under 66.021 (2), defining who may be an owner to sign a petition for annexation, and providing that an owner means the holder of record, and containing no exclusion of a state, county, or other public body, an owner thereunder may be one of those. Town of Menasha v. City of Menasha, 42 W (2d) 719, 168 NW (2d) 161.

When there is annexation of territory to a city operating under the city school plan, such territory automatically becomes a part of the city school district and is detached from the school district or districts of which it was formerly a part. 48 Atty. Gen. 87.

Legal aspects of annexation as it relates to the city of Milwaukee. Maruszewski, 1952 WLR 622.

Characteristics of land required for incorporation or expansion of a municipality. Cutler, 1958 WLR 6.

Changes in Wisconsin annexation proceedings and remedies. Rabin, 1961 WLR 123.

Municipal boundary changes. Johnson, 1965 WLR 462.

66.022 History: 1957 c. 676; Stats. 1957 s. 66.022; 1965 c. 92, 252; 1965 c. 666 s. 22 (6).

66.023 History: 1959 c. 130, 199; Stats. 1959 s. 66.023; 1961 c. 304; 1967 c. 92 s. 22; 1969 c. 331.

66.024 History: 1959 c. 418; Stats. 1959 s. 66.024; 1965 c. 252; 1967 c. 189; 1969 c. 55.

This section does not require a public interest determination by the director of planning but it is still subject to the rule of reason and the annexation of 35 square miles by a small village is not reasonable. Elmwood Park v. Racine, 29 W (2d) 400, 139 NW (2d) 66. See also 56 Atty. Gen. 145.

The rule of reason as applied to annexations. 50 MLR 149.

66.025 History: 1925 c. 314; Stats. 1925 s. 66.025; 1947 c. 113; 1955 c. 13, 615; 1969 c. 276 s. 590 (1).

No implication arises from the existence of this section which would prevent a city, owning property in the territory sought to be annexed, from participating as a property owner in an attempt to annex land to the city under the general annexation procedure provided for in other sections of the statutes. Town of Madison v. City of Madison, 12 W (2d) 100, 106 NW (2d) 264.

66.026 History: 1957 c. 525; Stats. 1957 s. 66.026; 1959 c. 19; 1961 c. 33; 1969 c. 276 s. 590 (1).

66.027 History: 1961 c. 59; Stats. 1961 s. 66.027; 1963 c. 395.

66.029 History: 1933 c. 97; Stats. 1933 s. 66.30; 1937 c. 432; Stats. 1933 s. 66.029; 1963 c. 343.

By providing that the town board may institute an action to test the validity of annexation proceedings detaching territory from the town, the legislature dispensed with any vote by the electors at a town meeting in such matter, so that 60.18 (2), authorizing the electors of the town to direct the institution of actions in which the town is interested, does not apply. Town of Madison v. City of Madison, 269 W 609, 70 NW (2d) 249.

A town has no right to determine the extent of territory that may be detached from it in valid annexation proceedings, but a town's governmental affairs are affected and require adjustment when territory is taken from it. 66.029 merely grants to towns, for the protection of their interests against invalid proceedings, the right to compel and enforce a strict compliance with the required procedure. Town of Madison v. City of Madison, 269 W 609, 70 NW (2d) 249.

A town, on the basis of its petition for intervention merely reciting that it had an interest in the subject matter of an action against a village by the owner of a subdivision in the town to test the validity of annexation proceedings, and suggesting that questions might arise concerning the apportionment of assets and taxes, may have been a proper party under 66.029, but it was not a necessary party within the purview of 260.19 (1), and the denial of its petition was not an abuse of discretion nor prejudicial to its rights. Fish Creek Park Co. v. Bayside, 273 W 89, 76 NW (2d) 557.

66.029 authorizes the town not only to commence the action but also to see it through to a conclusion, so that the entry of a judgment is not precluded by the mere fact that at such time the period specified by 62.07 (3) for the commencement of a similar action by interested parties generally may have expired. Blooming Grove v. Madison, 275 W 328, 81 NW (2d) 713.

A town may maintain an action to test an annexation without joining any residents of the area as parties. Blooming Grove v. Madison, 275 W 328, 81 NW (2d) 713.

An injunction is a proper remedy for a town to seek, since dismemberment of the town would cause irreparable injury. Blooming Grove v. Madison, 275 W 328, 81 NW (2d) 713.

66.03 History: 1852 c. 429 s. 2; R. S. 1858 c. 13 s. 28, 29, 33; R. S. 1858 c. 23 s. 66; 1859 c. 166; 1862 c. 270 s. 1; 1863 c. 155 s. 14, 16; 1866 c. 95; 1868 c. 92 s. 1; 1868 c. 138, 170; 1873 c. 56; 1874 c. 83; 1876 c. 128; R. S. 1878 s. 421, 423, 424; R. S. 1878 s. 670 sub. 1; R. S. 1878 s. 671, 673, 674, 944; 1879 c. 190 s. 1; 1881 c. 73; 1882 c. 11, 226; 1883 c. 54, 287; 1883 c. 338; 1885 c. 334; 1887 c. 106; 1889 c. 326 s. 20; 1889 c. 464; Ann. Stats. 1889 s. 421, 423, 424; Ann. Stats. 1889 s. 670 sub. 1; Ann. Stats. 1889 s. 671, 673, 674, 925b; Ann. Stats. 1889 s. 925f sub. 20; Ann. Stats. 1889 s. 944, 960g sub. 1, 2; 1893 c. 312 s. 1a, 10, 21a; 1897 c. 287 s. 94, 96; 1897 c. 354; Stats. 1898 s. 421, 423, 424, 671 to 673, 925c, 925e, 925—1a, 925—20, 925—21a, 944, 959—8; 1899 c. 253 s. 1; 1899 c. 351 s. 18; 1903 c. 149 s. 1; Supl. 1906 s. 671a, 925—21a; 1907 c. 281; 1909 s. 62, 74; Stats. 1911 s. 421, 423, 424, 671 to 673, 925c, 925e, 925—1a, 925—20, 925—21a, 944, 958—8,

959—70m; 1913 c. 425, 767; 1913 c. 773 s. 28; 1917 c. 578 s. 2; Stats. 1917 s. 40.05, 40.06, 671 to 673, 925c, 925e, 925—1a, 925—20, 925—21a, 944, 959—8, 959—70m; 1919 c. 103; 1919 c. 276 s. 2; 1919 c. 551 s. 4; 1919 c. 691 s. 12; 1919 c. 702 s. 43, 80; Stats. 1919 s. 40.05, 40.06, 60.05, 61.15, 61.16, 925—1a, 925—20, 925—21a, 944, 959—8, 959—70m; 1921 c. 396 s. 4, 5; Stats. 1921 s. 66.03; 1931 c. 394; 1937 c. 231; 1939 c. 476; 1941 c. 147; 1949 c. 262, 639; 1951 c. 285, 535; 1953 c. 310, 442; 1955 c. 142, 521, 652; 1957 c. 382, 538, 564; 1957 c. 676 s. 4; 1959 c. 19, 365, 446, 565; 1959 c. 659 s. 79; 1963 c. 141, 324; 1965 c. 19; 1967 c. 92 s. 22; 1967 s. 291 s. 14; 1969 c. 276 ss. 315, 588 (2), 590 (1), (9); 1969 c. 331; 1969 c. 392 ss. 32g, 87 (11); 1969 c. 500 s. 30 (2) (e).

A new town is absolutely liable to the towns of which it was formerly part for its proportion of their indebtedness; and equity will not relieve against a tax levied by the town board, without a vote of the electors, to pay such indebtedness, though at law the tax might be held void. Hixon v. Oneida County, 82 W 515, 52 NW 445.

A tax which was voted before the division of a school district and collected afterward from all the property of the old district and which went into its treasury is a credit. School Dist. v. School Dist. 118 W 233, 95 NW 148.

Sec. 944, R. S. 1898, does not furnish any remedy for the recovery of money but merely a mode of apportionment. The creditor must resort to the courts to enforce his claim after the apportionment is made. Conway v. Joint School Dist. 150 W 267, 136 NW 612.

Sec. 944, R. S. 1898, applied to the division of towns, each part of which remains or becomes a town, and also applies to the annexation of the part of one municipality to another, contemplating a division of property and an adjustment of credits and liabilities between the old and the new town in the one case and between the municipalities affected by the annexation in the other. Upon such division or annexation title to municipal property is vested in the new town or annexed territory in which the same is located, subject to the obligation of making compensation for its value in excess of a proper apportionment. State ex rel. School Dist. v. Schriner, 151 W 162, 138 NW 633.

Ch. 370, Laws 1915, which detached a town from a free high school district and provided that it should "be liable for its just share of all liabilities, likewise credited with its just share of all assets of said district," did not release the town from its direct obligation to the state for its share of a loan theretofore made from the state trust funds to the district. State ex rel. Owen v. Rogers, 166 W 628, 166 NW 19.

66.03 (5) and (6) do not require that the members of the board of a town affected must attend, and mandamus does not lie to compel them to do so. State ex rel. Madison v. Walsh, 247 W 317, 19 NW (2d) 299.

Municipalities, to which some of the territory within a school district was annexed after a city had obtained a judgment for tuition against the school district, had no concern with the indebtedness represented by such judgment in the absence of an apportionment of assets and liabilities as provided for on a division of territory by this section. The legislature having prescribed the method of ascertaining the liabilities of the respective municipalities on a division of territory, that remedy is exclusive. Wauwatosa v. Union F. H. S. Dist. 250 W 266, 26 NW (2d) 535.

The provision in 66.03 (8) that in case the apportionment board under 66.03 (5) is unable to agree, the circuit court, on the petition of either municipality affected by a transfer of territory from one to the other in any manner provided by law, may make the adjustment of assets and liabilities, properly confers jurisdiction of a judicial nature on the court to hear and determine the conflicting claims of 2 disputing parties, and does not attempt to confer legislative or administrative power on the court. The assets which are to be apportioned properly include delinquent taxes and federal, state, and county aids and grants. In respect to tax moneys apportioned, any suits for the recovery of taxes paid under protest should be jointly defended, and in case of any refund the new town should proportionately reimburse the town of which it was formerly a part. The old town had a legal right to defend against the creation of a new town out of part of its territory, and fees of attorneys employed by the old town in unsuccessfully opposing such proceedings became an obligation of the whole town and are properly deductible from the assets which are to be apportioned. The trial court's exclusion of proof of the value of roads and bridges was correct, since the assessed valuation of the surrounding area reflects the value of the roads and bridges, and they do not constitute assets to be apportioned. Cassian v. Nokomis, 254 W 94, 35 NW (2d) 408.

Funds set aside by a referendum vote of the electors of a town, from a surplus on hand, for the purpose of establishing a community-building fund, did not constitute a "trust fund" which could not be used except in the manner designated, but constituted ordinary assets of the town, to be included in making a division and apportionment of assets and liabilities under 66.03 (2), between the town and a village following the formation of the village out of a part of the town. Milton Junction v. Milton, 263 W 367, 57 NW (2d) 186.

Moneys in a special rubbish-removal fund of a rubbish-removal district created by a town pursuant to 60.29 (30), 66.049, and moneys in a special utility-district fund of a utility district created pursuant to 66.072, raised by special taxes levied on property in the respective districts, constituted trust funds, and hence did not constitute "assets" of the town to be included in making an apportionment of assets and liabilities when a village was incorporated out of a part of the town. (Milton Junction v. Milton, 263 W 367, distinguished.) Bayside v. Milwaukee, 267 W 448, 66 NW (2d) 129.

See note to 66.021, citing Town of Madison v. City of Madison, 269 W 609, 70 NW (2d) 249.

The public service commission, in determining the value of the water utility of a town pursuant to 66.03 (4), properly deducted federal grants in aid of construction and custom-

ers' contributions in aid of construction, there being no statutory formula or standard for determining value in such cases, and the method employed by the commission herein being deemed fair and equitable in view of the character of the property involved and of the rules of the commission consistently followed in rate-making cases. St. Francis v. Public Service Comm. 270 W 91, 70 NW (2d) 221.

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

Allegedly unreasonable delay on the part of the annexing village in bringing the instant apportionment proceeding was not prejudicial to the town on the ground that a property-tax levy, if necessary to pay the village, would not reach town taxpayers who had departed by annexation or municipal incorporation, since the town liability to the village established in such proceeding was a properly apportionable liability, and 66.03 (7) recognizes that the municipality to which a liability is assigned may, in appropriate cases, be required to levy a property tax for payment thereof. Greenfield v. West Milwaukee, 272 W 215, 75 NW (2d) 424.

Accrued assets of a town from state aids and state-distributed taxes as of the date of annexation of a portion of the territory of the town to a village, although not yet received by the town, constituted apportionable assets of the town, within 66.03 (7). State income taxes received by the town from the state treasurer subsequent to the date of annexation of a portion of the territory of the town to the village, until such time as the state recognized the transfer of the annexed territory for tax purposes, constituted apportionable assets of the town; but taxes properly remitted to the village after such date, and representing a portion of income taxes of residents and taxpayers of the annexed territory, had no bearing in determining the apportionable assets of the town as of the date of annexation of such territory. Greenfield v. West Milwaukee, 272 W 215, 75 NW (2d) 424.

66.03 does not apply so as to require an apportionment of the assets and liabilities of a school district in a town when a portion of the territory of the town is annexed to a village but the boundaries of the school district are not thereby changed, since in such case no territory of the school district, a distinct and separate municipal entity, is transferred. Greenfield v. West Milwaukee, 272 W 215, 75 NW (2d) 424.

66.03 (2) applies so as to require an apportionment of the assets and liabilities of a town when a portion of the territory of the town is annexed to an existing village. Greenfield v. West Milwaukee, 272 W 215, 75 NW (2d) 424.

Mandamus will lie to compel the proper officials of a dissolved school district to deliver the possession and control of the school buildings, sites, and records of such dissolved district to a joint school district to which such dissolved district has been attached, and it is not a defense to such action that no apportionment of assets and liabilities has yet been made. State ex rel. West Allis v. Zawerschnik, 275 W 204, 81 NW (2d) 542.

66.03, Stats. 1963, governing the apportionment of assets and liabilities when territory is transferred from one school district to another, has for its purpose the protection of the interests of both taxpayers and creditors. Joint School Dist. No. 1 v. United School Dist. No. 1, 41 W (2d) 165, 163 NW (2d) 132.

Where 2 school districts are consolidated, an agreement on part of one school district to pay the other district $700, in order to equalize the difference in value of respective school properties, is invalid. 14 Atty. Gen. 288.

Annexation of a portion of the town of Milwaukee and school district No. 6 therein to the city of Milwaukee was not delayed by failure to adjust assets and liabilities as required by 66.03, Stats. 1931. 20 Atty. Gen. 781.

Upon division of territory and adjustment of assets and liabilities under 66.03, a municipality which obtained a loan from trust funds is still responsible for repayment of the same. Although an annexing municipality assumes part of the indebtedness, the loan must be considered as a liability of the borrower and included in determining debt limitation. 22 Atty. Gen. 897.

Agreement to pay tuition in excess of the legal rate for admission to schools of a district from which a new district is formed, of pupils of the latter does not abrogate the right to division of assets pursuant to 66.03, Stats. 1937, for refusal to accept said pupils at the legal rate. 27 Atty. Gen. 283.

In the event a county school committee issues an order detaching an area from a union free high school district, which had previously issued bonds to build a high school, and placing said area in a new school district created by it, the new district will, in the event the apportionment board mentioned in 66.03 (5), Stats. 1947, assigns to it a proportionate share of the indebtedness existing by reason of said bonds, be required to levy a tax on all taxable property in the district in an amount necessary to pay the principal and interest on its share of said indebtedness when the same becomes due, as provided by the last sentence of 66.03 (7), in the absence of unusual circumstances which might or might not make a difference. 37 Atty. Gen. 393.

The 30-day period under 66.03 (2), Stats. 1951, is directory and does not defeat jurisdiction to make certification later, and the municipalities involved are not barred thereafter from proceeding with division of assets and liabilities as provided by law. 41 Atty. Gen. 169.

66.035 History: 1957 c. 560; Stats. 1957 s. 66.035; 1959 c. 565; 1965 c. 32.

66.04 History: 1897 c. 19; Stats. 1898 s. 940k; 2d Spl. S. 1918 c. 2 s. 1; 1919 c. 621; 1919 c. 702 s. 76; Stats. 1919 s. 943f—1; 1921 c. 396 s. 9, 11; 1921 c. 590 s. 75; Stats. 1921 s. 66.04 (4), (7); 1927 c. 297; 1933 c. 170, 175; 1933 c. 435 s. 2; 1933 c. 454 s. 6; 1935 c. 421 s. 3; 1937 c. 27; 1939 c. 51; 1949 c. 330; 1955 c. 205 s. 2, 3; 1955 c. 413; Stats. 1955 s. 66.04; 1957 c. 246; 1959 c. 589; 1961 c. 97, 507, 622.

Editor's Note: The foregoing history does

not include the histories of those subsections of this section which were repealed by ch. 205, Laws 1955. For the histories of the repealed subsections see Wis. Annotations, 1950 and ch. 245, Laws 1953.

66.04 (7), relating to investments, was not repealed by ch. 55, Laws 1935, relating to public deposits, and municipalities may continue to invest inactive funds in government bonds where this is done in good faith and not for the purpose of evading the provisions of chapter 55. 24 Atty. Gen. 381.

Earmarked funds of a county may be invested in insured farm loans under the Farmers Home Administration. 56 Atty. Gen. 257.

66.041 History: 1949 c. 119; Stats. 1949 s. 66.041.

66.042 History: 1937 c. 432; Stats. 1937 s. 66.04 (8); 1939 c. 107; 1941 c. 129; 1943 c. 71; 1947 c. 362; Stats. 1947 s. 66.042; 1949 c. 88; 1951 c. 407 s. 4, 5; 1951 c. 560; 1953 c. 341; 1967 c. 92 s. 22; 1969 c. 45 s. 6(2); 1969 c. 55; 1969 c. 276 s. 616.

There is no liability upon an order fraudulently put in circulation with a forged endorsement. Terry v. Allis, 18 W 478 and 20 W 32.

Lump-sum expense allowances, if otherwise proper, may be paid without the filing of itemized claims justifying the amount. Geyso v. Cudahy, 34 W (2d) 476, 149 NW (2d) 611.

A city may not issue city orders payable serially through a series of years to pay for a fire truck purchased by the city when funds were not in the city treasury for payment of the same. 14 Atty. Gen. 340.

Funds raised for erection of a high school building are under the direction and supervision of and shall be expended by the school board; the common council cannot use such funds for general city purposes. 17 Atty. Gen. 322.

Under 66.04 (8), Stats. 1937, all disbursements from the city or village treasury must be made upon written order of the city or village clerk after proper vouchers have been filed in the office of the clerk. This statute supersedes all prior legislation inconsistent therewith but leaves unchanged any statutory provisions not inconsistent therewith. 27 Atty. Gen. 76.

66.044 History: 1945 c. 68; Stats. 1945 s. 66.04 (10); 1947 c. 300 s. 9; 1947 c. 362; Stats. 1947 s. 66.044; 1965 c. 659 ss. 23 (2), 24 (9); 1969 c. 336 s. 176.

66.045 History: 1913 c. 382; Stats. 1913 s. 959—35w; 1915 c. 206; 1921 c. 396 s. 13; Stats. 1921 s. 66.05 (1); 1937 c. 365; 1947 c. 362; Stats. 1947 s. 66.045.

A city may maintain an action in equity to prevent threatened obstructions or serious unlawful injuries to streets. Waukesha H. M. S. Co. v. Waukesha, 83 W 475, 53 NW 675; Neshkoro v. Nest, 85 W 126, 55 NW 176.

A city may compel a lot owner to remove buildings which encroach upon or obstruct a street. Eau Claire v. Matzke, 86 W 291, 56 NW 874.

Any person whose duty it is, under an ordinance adopted pursuant to a city charter, to make the passageway required by it, is liable for an injury resulting from his neglect to do so to one injured while traveling on the sidewalk; and such liability cannot be avoided by pleading an independent contract under which another agreed to perform that duty. Smith v. Milwaukee B. & T. Exchange, 91 W 360, 64 NW 1041.

A clock on a pillar in front of jewelry store which projected a foot over the street was an obstruction which no mere length of maintenance could validate, although the city could, under 66.05, Stats. 1923, have caused its removal at any time; and an injury to the clock by one using the street that was neither wanton or negligent, gave no cause for action. Anger v. Al. G. Barnes A. Co. 183 W 272, 197 NW 707.

A municipality may grant a permit to erect a structure over an alley that will not unreasonably obstruct the public use, subject to its option to revoke the permit or abate the structure at any time, upon 10 days' notice as provided in 66.05 and 80.47, Stats. 1923. But a tenant of premises abutting on such alley, who had covenanted not to ask for such a permit without securing the lessor's signature to the application was bound by his covenant. Hotel Wisconsin R. Co. v. Phillip Gross R. Co. 184 W 388, 198 NW 761, 200 NW 304.

66.046 History: 1937 c. 419; Stats. 1937 s. 66.45; 1953 c. 631 s. 40; Stats. 1953 s. 66.046.

A barrier across a street which intersects a highway and is within the highway outer limits is still permissible if it does not obstruct the highway. 66.046, Stats. 1961, protects the city as well as members of the council. Bendorf v. Darlington, 31 W (2d) 570, 143 NW (2d) 449.

66.047 History: 1915 c. 439; Stats. 1915 s. 959—30o; 1921 c. 396 s. 15; Stats. 1921 s. 66.05 (3); 1947 c. 362; Stats. 1947 s. 66.047; 1961 c. 289.

An electric utility, before undertaking to raise or relocate its wires to permit the passage of a building along the route on which it was to be moved, could require of the house mover a contract to assume the reasonable cost of the operation, including workmen's compensation insurance for the utility's workmen and liability insurance to cover claims by third parties arising out of the work done by the utility's workmen, and to make an advance deposit of the amount of the utility's estimated cost of its operations in connection with the moving, subject to adjustment thereof on the completion of the work and the ascertainment of the actual cost. State ex rel. Hermann v. Madison G. & E. Co. 264 W 31, 58 NW (2d) 522.

The extent of changes in utilities to enable a contractor to work is to be determined by the public authority; the court will not make the determination where parties bypassed the authority. Wisconsin P. & L. Co. v. Gerke, 20 W (2d) 181, 121 NW (2d) 912.

66.048 History: 1929 c. 197; Stats. 1929 s. 66.05 (3a), (3b); 1947 c. 362, 491; Stats. 1947 s. 66.048; 1951 c. 247 s. 20; 1957 c. 610; 1961 c. 182; 1965 c. 252.

Revisor's Note, 1951: Corrects an obvious error. The stricken language is inappropriate here and was apparently copied from the

statute on vacation of a village street or alley. [Bill 198-S]

66.049 History: 1907 c. 187; 1907 c. 676 s. 10; Stats. 1911 s. 927p; 1915 c. 163; 1921 c. 396 s. 16; Stats. 1921 s. 66.05 (4); 1947 c. 362; Stats. 1947 s. 66.049.

See note to 66.03, citing Bayside v. Milwaukee, 267 W 448, 66 NW (2d) 129.

66.05 History: 1917 c. 291; Stats. 1917 s. 959—59; 1921 c. 396 s. 17; Stats. 1917 s. 66.05 (5); 1923 c. 141; 1923 c. 449 s. 6; 1933 c. 187 s. 4; 1933 c. 191; 1935 c. 99; 1945 c. 307; 1947 c. 238, 362; Stats. 1947 s. 66.05; 1951 c. 537, 562; 1955 c. 366; 1959 c. 215, 335; 1961 c. 230, 433, 621; 1965 c. 252.

A lien of $1,500 against property, resulting from imposition of a special charge or tax for the cost of razing buildings pursuant to this section, was reasonable. Oosterwyk v. Milwaukee, 7 W (2d) 160, 96 NW (2d) 372.

Where a town board, in ordering the razing of a dwelling, fully complied with the procedure prescribed, error, if any, by the board in finding in good faith that the dwelling was unfit for habitation and too dilapidated to be repaired, was an error within the jurisdiction of the board, and the exclusive remedy of the owners of the dwelling for relief from the order was the one provided by the statute of applying to the circuit court "within 30 days after service of such order" for an order restraining the inspector of buildings or other designated officer from razing the building. 66.05 does not require as a condition to razing unsafe and insanitary buildings that the town board shall have passed an ordinance on the regulation of homes or other buildings. Fairfield v. Wolter, 10 W (2d) 521, 103 NW (2d) 523.

If an owner so directed to raze or remove a building feels himself aggrieved, he must comply with 66.05 (3) which affords him the exclusive remedy by which he can obtain a judicial hearing. The term "apply to the circuit court for an order" in 66.05 (3), when construed with 269.27, restricts such application to moving the court by motion for an order, and neither service of a summons and complaint nor the filing thereof within the prescribed time constitutes compliance with the statute. Siskoy v. Walsh, 22 W (2d) 127, 125 NW (2d) 574.

Officers of a town, who condemned a building under 66.05, Stats. 1949, are not individually liable for damages arising from their official acts, even if such actions were malicious. Baker v. Mueller, 127 F Supp. 722; 222 F (2d) 180.

Persons who destroy buildings under 66.05 (5), Stats. 1941, are not subject to penalty under 74.44 (2). 30 Atty. Gen. 322.

66.051 History: 1905 c. 270 s. 1; Supl. 1906 s. 959—70; 1921 c. 396 s. 18; Stats. 1921 s. 66.05 (6); 1947 c. 362; Stats. 1947 s. 66.051; 1955 c. 696 s. 16; 1957 c. 97; 1959 c. 565.

The power of the city of Milwaukee, under a charter provision adopting 62.11 (5), Stats. 1937, to enact ordinances protecting the welfare of the youth of the city is not limited by 66.05 (6), but such ordinances may prohibit all forms of gambling and fraudulent devices and practices and cause the seizure of anything devised solely for gambling or found in actual use for gambling. The statute is a grant of power rather than a limitation. Dallman v. Kluchesky, 229 W 169, 282 NW 9.

An ordinance of the city of Milwaukee, regulating the owning and keeping of gambling devices, did not exceed in scope the power delegated by the legislature in 66.051, Stats. 1961. Milwaukee v. Milwaukee Amusement, Inc. 22 W (2d) 240, 125 NW (2d) 625.

66.052 History: 1889 c. 326 s. 52; Ann. Stats. 1889 s. 925i sub. 52; 1893 c. 312 s. 25; 1895 c. 294 s. 1, 9; 1895 c. 316 s. 2; 1897 c. 138 s. 2; Stats. 1898 s. 925—52; 1899 c. 61; 1901 c. 169; 1903 c. 55, 99; 1905 c. 209, 326; Supl. 1906 s. 925—52; 1907 c. 119, 190, 244, 302; 1909 c. 37; 1911 c. 365; 1913 c. 268, 314, 457, 743; 1915 c. 490; 1917 c. 404, 471; 1919 c. 488; 1919 c. 558 s. 30; 1921 c. 396 s. 19; Stats. 1921 s. 66.05 (7); 1933 c. 187 s. 4; 1939 c. 423; 1941 c. 103; 1947 c. 362; Stats. 1947 s. 66.052; 1961 c. 191 s. 109; 1965 c. 582; 1969 c. 392 s. 84.

The general rule that municipalities may not make regulations inconsistent with the state law is not applicable to city ordinances providing for the licensing of rendering plants. The statute authorizing the state board of health to inspect and supervise such plants does not exclude municipal action. La Crosse Rendering Works v. La Crosse, 231 W 438, 285 NW 393.

See note to 60.74, citing Hobart v. Collier, 3 W (2d) 182, 87 NW (2d) 868.

The fact that a nuisance is declared by statute to be a public nuisance does not make it exclusively so. There may be special damage so as to constitute a private nuisance. Boerschinger v. Elkay Enterprises, Inc. 26 W (2d) 102, 132 NW (2d) 258, 133 NW (2d) 333.

Cities and villages may prohibit rendering plants entirely within their limits; towns cannot do so. Towns may impose stricter regulation of such plants than 95.72 does. Boerschinger v. Elkay Enterprises, Inc. 26 W (2d) 102, 132 NW (2d) 258, 133 NW (2d) 333.

66.053 History: 1929 c. 192; Stats. 1929 s. 66.05 (9); 1933 c. 207 s. 2; 1935 c. 50; 1935 c. 117; Stats. 1935 s. 66.05 (9), (9m); 1947 c. 362; Stats. 1947 s. 66.053; 1949 c. 262; 1969 c. 392 s. 84.

For discussion of concessionaire licenses and town board's powers on state fair grounds see 28 Atty. Gen. 325.

66.054 History: 1933 c. 207 s. 1; Stats. 1933 s. 66.05 (10); Spl. S. 1933—34 c. 1, 3; 1935 c. 187, 238, 252, 266, 280, 352, 417; 1937 c. 346, 372; 1939 c. 69, 205, 426; 1941 c. 73, 121; 1943 c. 92, 177, 424, 447, 473; 1947 c. 290, 362, 402, 564, 572, 614; Stats. 1947 s. 66.054; 1949 c. 17 s. 23; 1949 c. 159, 636, 643; 1951 c. 65, 104, 215, 247; 1951 c. 261 s. 10; 1951 c. 308; 1951 c. 727 s. 11; 1951 c. 734; 1953 c. 61 s. 51, 52; 1953 c. 383; 1955 c. 88, 209, 350, 545, 564, 660; 1957 c. 96, 142, 267, 285, 304, 325, 641; 1957 c. 672 s. 45, 46; 1957 c. 677; 1959 c. 94, 140, 150, 363, 590, 694; 1961 c. 33, 288, 347, 523; 1963 c. 113, 141, 143, 246; 1965 c. 8, 334; 1965 c. 666 s. 22 (3), (10); 1967 c. 226; 1969 c. 275; 1969 c. 276 ss. 316, 585 (7), 590 (2), (5), (8); 1969 c. 392 s. 87 (9).

Editor's Note: 66.054, Stats. 1969, makes

provision for the issuing of two classes of licenses, designated as Class "A" and Class "B" licenses, to wholesalers and retailers, for the sale of fermented malt beverages. Class "A" licenses are issued for the sale of malt beverages in original packages to be consumed away from the premises where sold; and Class "B" licenses are issued for the retail sale of beer for consumption on or off the premises where sold. 176.05, relating to the issuing of liquor licenses, prescribes somewhat different designations.

On exercises of police power see notes to sec. 1, art. I; on delegation of power see notes to sec. 1, art. IV; on municipal home rule see notes to sec. 3, art. XI; and on intoxicating liquors see notes to various sections of ch. 176.

1. Definitions.
2. Restrictions on brewers, etc.
3. Licenses; general requirements.
4. Wholesalers' licenses.
5. Class "A" retailers' licenses.
6. Class "B" retailers' licenses.
7. Conditions of licenses.
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10. Local enforcement.
11. Municipal regulations.
12. Court review.
13. Presence in places of sale prohibited.
14. Procuring for or furnishing to persons under 18.
15. Restrictions on sale to unemancipated minors.

1. Definitions.

As to the meaning of "premises" see 27 Atty. Gen. 702.

The spectator area at a baseball park or similar premises is not a "barroom or other room." 38 Atty. Gen. 225.

2. Restrictions on Brewers, Etc.

A brewer may not lend money to a person holding a Class "B" license if the money is to be used for the purchase of tavern fixtures or equipment. A bona fide fixture corporation may furnish or lease fixtures or lend money to a Class "B" licensee, even though stockholders of a brewery also own stock in such fixture corporation, but such loan of money may not be accompanied by exclusive beer purchase agreement. A brewer may not guarantee payment for fixtures. 22 Atty. Gen. 814.

Sale of carbon dioxide gas in drums by a brewer to a tavern keeper is illegal. 23 Atty. Gen. 503.

Direct draw boxes, novelty boxes, coil boxes, beer storage boxes, which include a mechanical refrigeration unit as an integral part thereof, may be sold by a brewer or wholesaler to a Class "B" licensee, under 66.054 (4). Separate refrigerating systems may not be so sold. 40 Atty. Gen. 84.

What constitutes the "usual and customary commercial credits" and the "usual and ordinary commercial credits" in the meaning of 66.054 (4) (a) and 176.17 (2) is a question of fact. Under federal regulations promulgated pursuant to the Federal Alcohol Administration Act, 27 U.S.C. sec. 205, 30 days from the date of delivery is established as the maximum credit which may be extended to a retailer of intoxicating liquors and malt beverages. Responsibility for official determination in Wisconsin rests with the commissioner of taxation, under 176.43 (2). 41 Atty. Gen. 35.

Under 66.054 (4), a brewing company which owned real estate on May 24, 1941, which real estate is to be acquired by the city for street purposes, may not move the building from such parcel of land to another parcel and continue to own it while it is used for Class "B" retail fermented malt beverage license purposes. Where only a part of the land owned by the brewing company is taken for street purposes, the brewing company may not acquire contiguous land and erect a new building on the remaining portion of the original tract and upon the newly acquired contiguous tract, and use the same for a Class "B" retail fermented malt beverage license, without violating 66.054 (4). 42 Atty. Gen. 24.

Subject only to exceptions enumerated, the furnishing, giving, or lending of money or other thing of value by either a brewer, bottler, or wholesaler to a trade association comprised of holders of Class "B" licenses is prohibited by 66.054 (4) (a). The same rule applies to the purchase of advertising space in publications of such association. 44 Atty. Gen. 34, 91.

For discussion of 66.054 (4) relative to the difference between signs as advertising matter and utilitarian material see 48 Atty. Gen. 109.

3. Licenses; General Requirements.

Under provisions that the electors of any town may determine at the spring election whether or not retail licenses for the sale of beer shall be issued, and that the result shall remain in force for 2 years and thereafter until changed at another election, an affirmative vote by the electors is a mere authorization and leaves unimpaired the provision in 66.054 (5) (b) that a town board shall have the power, but shall not be required, to issue licenses, so that a town board, despite an affirmative vote by the electors on the question, may pursue a policy of refusing to issue any licenses. Johnson v. Town Board, 239 W 461, 1 NW (2d) 796.

An ordinance limiting the issuance of Class "A" fermented malt beverage licenses to one for every 2,500 inhabitants in the city is not inconsistent with 66.054, Stats. 1961, delegating to municipalities the power to regulate the issuance of such licenses, although the statute contains no provision limiting the number of licenses to be issued; and the ordinance is a reasonable exercise of the municipal police power. Odelberg v. Kenosha, 20 W (2d) 346, 122 NW (2d) 435.

A city, village and town may refuse to grant licenses to sell beer and light wines, and without licenses beer and light wines may not lawfully be sold. 22 Atty. Gen. 569.

An ordinance of a town board regulating the sale of malt beverages is not applicable to Camp Williams, a U. S. government reservation. 22 Atty. Gen. 758.

Electors may, on one petition, request refer-

enda on issuance of intoxicating liquor and fermented malt beverage licenses. Questions of issuing liquor and fermented malt beverage licenses cannot be on the same ballot. 24 Atty. Gen. 411.

Whether sale of beer on land of CCC camp owned by the U.S. government is subject to local control depends upon whether the state has relinquished jurisdiction over the land. 25 Atty. Gen. 605.

Licenses for sale of malt beverages cannot be issued for a period of less than one year under 66.05 (10), Stats. 1937, but may be granted at any time during a calendar year for a period of 6 months during the same calendar year under 66.05 (8) (b). If issued under the latter provision said licenses cannot be renewed during the calendar year, although the holder of a 6-months' license is not precluded from thereafter securing a regular annual license upon payment of a full year's fee. 27 Atty. Gen. 442.

Issuance of a second license for the same premises during the same license year is within the power of the proper licensing authorities. 28 Atty. Gen. 123.

Signatures of electors of a petition for local option are insufficient unless affixed in the handwriting of petitioners themselves or in the alternative manner provided for electors unable to write, under 370.01 (19), Stats. 1941. Where such petition for local option election is insufficient, results of election held thereon cannot be given effect, at least where such results leave any doubt as to the will of electors. 30 Atty. Gen. 229.

Failure to notify the beverage tax division within the time prescribed does not render an election void. 30 Atty. Gen. 351.

Elections under 66.05 (10), Stats. 1945, may be held on any second Tuesday in April even if town officials are not to be elected under 60.19. 35 Atty. Gen. 81.

4. Wholesalers' Licenses.

A brewer does not need a wholesaler's license unless operating depots or warehouses in the nature of a distributing point, separate from a brewing plant. 22 Atty. Gen. 967.

A corporation may transport fermented malt beverages across the state line and distribute them to retail dealers without violating the law. A foreign corporation may establish a warehouse in Wisconsin from which deliveries of fermented malt beverages previously sold out of state may be distributed without a wholesaler's license. 23 Atty. Gen. 364.

The importation and sale of fermented malt beverages containing in excess of 5% of alcohol by weight is governed by both the regulations affecting fermented malt beverages and the regulations affecting intoxicating liquors. An out-of-state brewery, which solicits orders and ships into Wisconsin fermented malt beverages containing in excess of 5% of alcohol by weight, must secure a permit. If such brewery operates a warehouse or depot in this state, it must secure a wholesaler's license pursuant to 66.054, Stats. 1949. A wholesaler operating in this state must secure a wholesaler's permit and a selling permit. 40 Atty. Gen. 114.

5. Class "A" Retailers' Licenses.

If a Class "A" retailer under 66.05 (10), Stats. 1939, sells beverages which he is not permitted to sell under his license, the offense is a misdemeanor and subjects the seller to the loss of his license. Frank v. Kluchesky, 237 W 510, 297 NW 399.

A grocery store in which fermented malt beverages are sold pursuant to a Class "A" retailer's license, which authorizes the sale of such beverages only for consumption away from the premises where sold and in the original packages, is not a "tavern." 35 Atty. Gen. 234.

6. Class "B" Retailers' Licenses.

It is a matter of common knowledge that purpose of the statutory provision, limiting the number of retail beer licenses to 2 for each person, was to prevent a brewer from establishing a chain of licensed places controlled by him and selling only his own beer (sec. 1, ch. 207, Laws 1933). State ex rel. Torres v. Krawczak, 217 W 593, 259 NW 607.

Wholesale and Class "B" retail licenses may not be issued to the same person. 22 Atty. Gen. 503.

A confectionery store operated in connection with a restaurant is a "mercantile establishment". 22 Atty. Gen. 517.

A city, town or village has jurisdiction over county-owned property within corporate limits as to issuance of licenses. A city, village or town may not arbitrarily discriminate between applicants. Where individuals operate taverns on rented county property for private benefit regular Class "B" license must be obtained. Agricultural and fair associations may be granted a license for not to exceed $10, authorizing sales during a fair, when sales are for the benefit of said association. 22 Atty. Gen. 621.

A town board may not issue a fermented malt beverage license without charge to a holder of a "Class B" liquor license. 23 Atty. Gen. 461.

When a tavern keeper leaves home with no intention of returning his wife may not operate a tavern under a license issued in his name. 24 Atty. Gen. 138.

A restaurant and grocery store operated in one establishment constitute "other business" within the meaning of this subsection. 24 Atty. Gen. 425.

A Class "B" license for the sale of fermented malt beverages may be issued to the manager of a particular hotel, restaurant, club, etc., that applies for a license, but may not be issued to the so-called "manager" of that part of the hotel devoted to the sale of fermented malt beverages only. 27 Atty. Gen. 735.

A Class "B" license issued to the house manager of a club may not be transferred from such house manager to his successor. Beer may not be sold under such license after the resignation of the house manager to whom it was issued, even though sales are made by the person holding an operator's license. 31 Atty. Gen. 171.

A town has authority to grant to the lessee of city-owned property within town boundaries a license for the sale of fermented malt beverages provided for by 66.054 (8) (a). 38 Atty. Gen. 485.

Single premises under 66.054 (8), may not have a Class "B" license for the sale of fermented malt beverages and also have a "Class A" license for the sale of intoxicating liquors. 38 Atty. Gen. 540.

A municipal governing body may determine not to issue more than a limited number of Class "B" retail fermented malt beverage licenses and may decline to issue additional licenses without reference to qualifications of an applicant. 40 Atty. Gen. 146.

If a Class "B" fermented malt beverage license is forfeited by reason of conviction of a second offense pursuant to 66.054 (15) (a), Stats. 1957, and the former licensee continues to operate the business, he may be prosecuted for sale without a license under 66.054 (5) (a) whether or not the paper representing the license has been taken up or surrendered. 47 Atty. Gen. 37.

7. Conditions of Licenses.

Sale of fermented malt beverage to a person under 18 years of age not accompanied by a parent or guardian is a misdemeanor. 32 Atty. Gen. 338.

8. Closing Hours.

See note to sec. 1, art. I, on equality, citing State v. Potokar, 245 W 460, 15 NW (2d) 158.

Where patrons of a retail liquor and beer licensee are permitted to remain on his premises and are served with liquor after closing time, the place is "open" even though the door is locked and additional customers are not admitted. 32 Atty. Gen. 461.

It is doubtful that 66.05 (10), Stats. 1945, prohibits an owner or a bartender from remaining in a tavern after hours to clean it, check the day's receipts and do other work. 35 Atty. Gen. 228.

See note to 176.06, citing 36 Atty. Gen. 155.

9. Operators' Licenses.

66.05 (10), Stats. 1939, requires that the applicant for an operator's license be a citizen at the time of filing his application and for not less than the year prior thereto, and not merely that at some time prior to the filing of his application the applicant shall have been a citizen for one year. Vieau v. Common Council, 235 W 122, 292 NW 297.

A brother who is a member of the household of a tavernkeeper is one of the licensee's "immediate family" within 66.05 (10), Stats. 1935. 24 Atty. Gen. 362.

A minor who is a member of the immediate family of the licensee is deemed to hold an operator's license under 66.054 (11), notwithstanding the amendment of that subsection by ch. 104, Laws 1951, which prohibits issuance of an operator's license to any person under the age of 21. 41 Atty. Gen. 179.

10. Local Enforcement.

Employes of the beverage tax division may not arrest for violation of 66.05 (10), Stats. 1933. 23 Atty. Gen. 191.

Cities, villages and towns may adopt reasonable rules or regulations for enforcement and bring violation of an ordinance under provisions of 66.05 (10), Stats. 1937. Any such rule or regulation must be reasonable. 26 Atty. Gen. 588.

11. Municipal Regulations.

A requirement of a city ordinance, as a condition of issuing a beer license, that the licensee also secure a liquor license, thus compelling him to pay more than the maximum statutory fee, imposed by ordinance, for a beer license and give bond, was invalid as in conflict with state law. State ex rel. Torres v. Krawczak, 217 W 593, 259 NW 607.

A municipality may require a bond from a seller of fermented malt beverages, conditioned upon faithful performance of law. 23 Atty. Gen. 719.

12. Court Review.

The provisions of 66.05 (10), Stats. 1945, empowering courts to review the action of licensing authorities in "granting" or "revoking" fermented malt beverage licenses or in failing to revoke such licenses, do not authorize the maintenance of an action by the owner of premises, for which a tenant has a liquor license, to review the action of the common council in transferring the tenant's existing license to another location. Smith v. Whitewater, 251 W 306, 29 NW (2d) 33.

13. Presence in Places of Sale Prohibited.

The fact that there is no barrier between a bowling alley and a bar does not mean that minors can be allowed to loiter in the bar area. State v. Ludwig, 31 W (2d) 690, 143 NW (2d) 548.

It is permissible to allow minors in the restaurant portion of the building where beer only is sold if the principal business is the sale of food. 38 Atty. Gen. 540.

Exemption of "grocery stores" from 66.054 (19) and 176.32 (1), Stats. 1951, relating to the presence of minors on premises licensed for the sale of fermented malt beverages and intoxicating liquors, respectively, does not extend to a separate room containing a bar where fermented malt beverages and intoxicating liquors but no groceries are sold, even though that room and the part of the premises where the grocery business is conducted are both covered by the fermented malt beverage or liquor license and constitute a single "premises" in the meaning of the fermented malt beverage and intoxicating liquor laws. 41 Atty. Gen. 340.

Minors under the age of 18 may be present on premises licensed for the sale of beer only, under the conditions prescribed by this section, and if accompanied by parent or guardian may be served beer. 47 Atty. Gen. 203.

14. Procuring for or Furnishing to Persons under 18.

The evidence in this case warranted the jury's finding that a bartender "furnished" a can of beer to a 17-year-old minor who obtained it, when a few feet from the bar, from an adult companion who had bought and paid for 2 cans of beer. State v. Graves, 257 W 31, 42 NW (2d) 153.

See note to 59.07 (64), citing Maier v. Racine County, 1 W (2d) 384, 84 NW (2d) 76.

A seller of beer to a minor is not liable for damages to a third person alleged to have resulted from intoxication. Farmers Mut. Auto. Ins. Co. v. Gast, 17 W (2d) 344, 117 NW (2d) 347.

Minors who are members of the armed services stationed in Michigan may not be furnished with fermented malt beverages in Wisconsin by reason of 66.054 (22), Stats. 1963, regardless of where their permanent residence is located. 53 Atty. Gen. 40.

Liability of vendor of intoxicating liquors in a civil action. 1964 WLR 153.

15. Restrictions on Sale to Unemancipated Minors.

For discussion of interpretation of "guardian" in 66.054 (24), Stats. 1963, see 52 Atty. Gen. 303.

A drive-in restaurant which holds a Class "B" fermented malt beverage license cannot sell or furnish such beverage to unemancipated minors not accompanied by parent, guardian, or chaperon for consumption outside of a licensed building. 53 Atty. Gen. 161.

66.055 History: 1943 c. 332; Stats. 1943 s. 66.055.

66.057 History: 1947 c. 406; Stats. 1947 s. 66.057; 1949 c. 17 s. 23; 1953 c. 522; 1959 c. 90, 647; 1965 c. 263; 1969 c. 275; 1969 c. 276 s. 590 (2); 1969 c. 350 s. 1.

See note to 176.32, citing West Allis v. Megna, 26 W (2d) 545, 133 NW (2d) 252.

The register of deeds need not issue a certificate card to an out-of-state resident unless he comes within the exceptions provided for in 66.054 (22), Stats. 1967. 57 Atty. Gen. 145.

66.058 History: 1953 c. 563; Stats. 1953 s. 66.058; 1957 c. 154, 580; 1959 c. 467, 584; 1961 c. 587; 1963 c. 356, 565; 1965 c. 218; 1969 c. 366 s. 117 (2) (a); 1969 c. 495.

See note to sec. 13, art. I, on exercises of police power, citing Des Jardin v. Greenfield, 262 W 43, 53 NW (2d) 784.

Defendant operators of a trailer camp, charged in a forfeiture action with the violation of a provision of a town licensing ordinance limiting the number of trailers in any licensed trailer camp at any one time to 25, were not estopped from challenging the constitutionality of such provision by the fact that they were operating their trailer camp under a license granted to them pursuant to such ordinance, especially where the ordinance contained a severability clause. Yorkville v. Fonk, 274 W 153, 79 NW (2d) 666.

See note to sec. 1, art. VIII, on the rule of taxation (privilege taxes), citing Barnes v. West Allis, 275 W 31, 81 NW (2d) 75.

This section governs how a trailer camp is to be maintained and operated, while 60.74 governs where such camps are to be located in towns where there is no county zoning ordinance. The requirement in 60.74 of first petitioning the county board does not apply to an ordinance under this section. David A. Ulrich, Inc. v. Saukville, 7 W (2d) 173, 96 NW (2d) 612.

See note to sec. 1, art. I, on equality, citing Ramme v. Madison, 37 W (2d) 102, 154 NW (2d) 296.

66.058 (3), Stats. 1965, empowering municipalities to exact mobile home parking permit fees from each occupied mobile home utilizing space in a licensed mobile home park has for its purpose an attempt to have trailer occupants and owners pay their fair share of the costs of municipal and school services furnished in exchange for a property tax exemption. Ramme v. Madison, 37 W (2d) 102, 154 NW (2d) 296.

66.06 History: 1882 c. 325; 1883 c. 165; Ann Stats. 1889 s. 927b; 1895 c. 182; Stats. 1898 s. 927—1; 1911 c. 233; Stats. 1911 s. 925—95f, 927—1; 1913 c. 661, 704; 1915 c. 160; 1919 c. 571 s. 2; 1919 c. 595; Stats. 1919 s. 925—95f, 927—1, 927—16c; 1921 c. 396 s. 26, 27; Stats. 1921 s. 66.06 (1), (2); 1931 c. 79 s. 8; 1947 c. 362; Stats. 1947 s. 66.06.

The definition of "resolution or ordinance" here did not change the provisions of 66.07 permitting authorization by resolution or ordinance. Wisconsin G. & E. Co. v. Ft. Atkinson, 193 W 232, 213 NW 873.

66.061 (1) History: 1879 c. 125; Ann. Stats. 1889 s. 930a; 1893 c. 148; 1897 c. 361; Stats. 1898 s. 927—3, 940b, 959—49, 959—52; 1903 c. 387 s. 1 to 5; Supl. 1906 s. 926—139 to 926—143; 1909 c. 519; 1911 c. 663; 1915 c. 385 s. 17; 1915 c. 490; 1921 c. 396 s. 28 to 30; Stats. 1921 s. 66.06 (3); 1947 c. 362; Stats. 1947 s. 66.061 (1); 1953 c. 374.

A franchise to a water company is a special privilege. It is an executed contract on the part of the state, the consideration for which is the benefit which the public will derive from its use and exercise. The common council is authorized by the statute to grant such franchises, and they are as much the franchises of the corporation as if granted by an express statute. The acceptance of the condition of the grant constitutes a valid contract between the water company and the city. Ashland v. Wheeler, 88 W 607, 60 NW 818; State ex rel. Attorney General v. Portage City W. Co. 107 W 441, 83 NW 697.

The fact that an exclusive contract is ultra vires the municipality is no defense to an action by the company to recover back taxes alleged to have been collected in violation of the contract. A provision that the municipality should pay as rental the amount of the taxes is not invalid. A provision that it should pay taxes in addition to rentals on such parts of the plant as were on streets and public grounds is incapable of enforcement. Monroe W. W. Co. v. Monroe, 110 W 11, 85 NW 685.

The designating of certain streets along which a telephone company may run its lines is not the granting of a franchise. State ex rel. Wisconsin T. Co. v. Sheboygan, 111 W 23, 86 NW 657.

A waterworks franchise is not to be construed most strongly against the grantee, but by the rules of statutory interpretation. State ex rel. Vits v. Manitowoc W. W. Co. 114 W 487, 90 NW 442.

Where a franchise is granted by popular vote, its reasonableness can still be examined by the courts. Le Feber v. West Allis, 119 W 608, 97 NW 203.

An ordinance extending a street railway franchise is not subject to the provisions of ch. 387, Laws 1903, in respect to submission of ordinances to a direct vote of the electors. State ex rel. Leisk v. Wauwatosa, 124 W 451, 102 NW 894.

A water company under a franchise allowing the city to purchase the plant, and have an arbitration to fix the price, is not entitled

to a temporary injunction against its so providing, merely on the ground that the city is not in a financial condition to pay for the plant, but is entitled to an injunction against so proceeding until it gives a bond for the expenses plaintiff will be put to in such proceedings, fixed at $5,000. Eau Claire W. Co. v. Eau Claire, 127 W 154, 106 NW 679.

Where a waterworks contract was made by a town for the benefit of an unincorporated village, and the latter became incorporated as a city, the city succeeded to the obligation of the contract, and was liable for hydrant rentals prescribed thereby. Washburn W. W. Co. v. Washburn, 129 W 73, 108 NW 194.

See note to 196.54, citing Milwaukee v. Public Service Comm. 11 W (2d) 111, 104 NW (2d) 167.

66.061 (2) History: 1889 c. 326 s. 52; Ann. Stats. 1889 s. 925i sub. 52; 1893 c. 312 s. 25; 1895 c. 158; 1895 c. 294 s. 1, 9; 1895 c. 316 s. 2; 1897 c. 138 s. 2; 1897 c. 361; Stats. 1898 s. 925—52, 927—2, 959—48 to 959—50; 1899 c. 61; 1901 c. 169; 1903 c. 55, 99; 1905 c. 209, 326; Supl. 1906 s. 925—52; 1907 c. 119, 190, 244, 302; 1909 c. 37; 1911 c. 365; 1913 c. 268, 314, 457, 743; 1915 c. 490; 1917 c. 404, 471; 1919 c. 488; 1919 c. 558 s. 30; 1921 c. 396 s. 32 to 34; Stats. 1921 s. 66.06 (4); 1931 c. 183; 1939 c. 155; 1947 c. 362; Stats. 1947 s. 66.061 (2); 1959 c. 371; 1961 c. 89; 1967 c. 339; 1969 c. 276.

It is determined that, since a public utility does not obtain an indeterminate permit in a town by simply occupying the highways pursuant to permit authorized by 86.16, or by virtue of organization as a domestic corporation with powers conferred by 180.17, Stats. 1927, or by merely extending its services to persons and places within a town, neither a city nor a power company was operating as a public utility under an indeterminate permit in a village formed out of the town, and that no declaration of public convenience and necessity by the commission was required under 196.50 and 196.55, as a condition precedent to the grant by the village of a franchise to another company. South Shore U. Co. v. Railroad Comm. 207 W 95, 240 NW 784.

The effect of 66.06 (4) (a), Stats. 1935, extending the jurisdiction of the public service commission to lighting and heating rates and service furnished to a city or village under contract, is to place such contracts under the supervision of the commission, whether or not the contracting company is a public utility, and not to make a company furnishing light or heat under such a contract a public utility. Union Falls P. Co. v. Oconto Falls, 221 W 457, 265 NW 722.

66.062 History: 1907 c. 536; Stats. 1911 s. 940j—41 to 940j—44; 1921 c. 396 s. 35; Stats. 1921 s. 66.06 (5); 1947 c. 362; Stats. 1947 s. 66.062; 1959 c. 640.

66.063 History: 1907 c. 517; Stats. 1911 s. 959—30L to 959—30n; 1921 c. 396 s. 36; Stats. 1921 s. 66.06 (6); 1947 c. 362; Stats. 1947 s. 66.063.

66.064 History: 1919 c. 669; Stats. 1919 s. 927—26; 1921 c. 396 s. 37; Stats. 1921 s. 66.06 (7); 1947 c. 362; Stats. 1947 s. 66.064; 1967 c. 339.

66.065 History: 1882 c. 325; 1883 c. 165; Ann. Stats. 1889 s. 927b; 1895 c. 182; 1897 c. 361; Stats. 1898 s. 927—1, 959—51; 1899 c. 348 s. 1, 2; 1901 c. 95 s. 1, 2; 1901 c. 143 s. 1, 2; Supl. 1906 s. 926—126 to 926—129; 1907 c. 204, 665; 1909 c. 485; 1911 c. 663 s. 110; Stats. 1911 s. 926—126 to 926—129, 927—1, 927—11 to 927—15, 959—51; 1913 c. 225; 1915 c. 160; 1915 c. 385 s. 16, 18; 1915 c. 390, 591; 1915 c. 635 s. 1; Stats. 1915 s. 926—126 to 926—129, 927—1, 927—1a, 927—11 to 927—15, 959—51; 1919 c. 571 s. 2; 1921 c. 396 s. 38, 39; 1921 c. 590 s. 61; Stats. 1921 s. 66.06 (8); 1923 c. 307 s. 9; 1925 c. 207; 1943 c. 501; 1947 c. 362; Stats. 1947 s. 66.065; 1961 c. 138.

Sec. 4, ch. 361, Laws 1897, was intended to confer authority upon the city, in a particular case, not so much in acquiring an equity of redemption, as in obtaining it without becoming liable for the mortgage debt. A purchase from a corporation held to be under this power, and not the purchase of its capital stock. An agreement by the city to pay hydrant rentals to the bondholders does not make such rentals a municipal liability, under the rule of Stedman v. Berlin, 97 W 505, 73 NW 57. Nor does its purchase subject to the mortgage make it a city debt, under the rule of Perrigo v. Milwaukee, 92 W 236, 65 NW 1025. Connor v. Marshfield, 128 W 280, 107 NW 639.

In voting upon the question "Shall the city of Racine purchase its waterworks?" the electors were not misled, there being no other waterworks plant in the city. Janes v. Racine, 155 W 1, 143 NW 707.

The methods prescribed by 66.06 (8) and (9) and 197.01 to 197.05, Stats. 1935, for the municipal acquisition of public utilities are separate, distinct, and mutually exclusive. Wisconsin P. & L. Co. v. Public Service Comm. 222 W 25, 267 NW 386.

It was proper for the council in proceedings for a utility acquisition project and paying for the same by mortgage-revenue bonds, to adopt a resolution and submit the proposition to a referendum of the electors as prescribed and required therefor by this section and to ignore a proposed ordinance filed with the council by petition of the requisite number of electors under 10.43, Stats. 1939. Flottum v. Cumberland, 234 W 654, 291 NW 777.

A municipality has power to acquire by condemnation the property of a telephone company. 16 Atty. Gen. 542.

66.066 (1) History: 1882 c. 325; 1883 c. 165; Ann. Stats. 1889 s. 927b; 1895 c. 182; Stats. 1898 s. 927—1; 1915 c. 160; 1919 c. 571 s. 2; 1921 c. 396 s. 40; Stats. 1921 s. 66.06 (9) (a); 1933 c. 162 s. 1, 2; 1947 c. 362; Stats. 1947 s. 66.066 (1); 1953 c. 441; 1955 c. 428; 1965 c. 238; 1967 c. 339.

On limitation on indebtedness see notes to sec. 3, art. XI.

Bonds for the purchase of a public utility may be issued without a special vote therefor by the electors when they have first voted in favor of such purchase. Janes v. Racine, 155 W 1, 143 NW 707.

Where a city had owned and operated its own generating and distribution plant for many years and was presently operating its own distribution system, its proposal to in-

stall and operate its own Diesel generating plant, instead of continuing to purchase electrical energy from the supplier, did not involve an "acquisition" of a plant, but involved "extending, adding to, or improving" the existing system, and, under this section, the council could issue mortgage-revenue bonds for the purposes stated without submitting the matter to a referendum, as required by 66.065 in the case of an "acquisition." Flottum v. Cumberland, 234 W 654, 291 NW 777.

The sale of mortgage-revenue bonds issued by a city pursuant to 66.066 is governed by the special provisions in that section and not by provisions in ch. 67, it being the clear intent of the legislature to exempt all mortgage bonds issued pursuant to this section from the provisions of ch. 67, although the literal provision of 67.01 (8) (g) is that ch. 67 is not applicable to mortgage bonds issued for the purpose of "acquiring" public utilities. Flottum v. Cumberland, 234 W 654, 291 NW 777.

An exercise by a city council of its authority to construct a pipe line outside the city limits cannot be controlled by a referendum held under 10.43, Stats. 1955. Denning v. Green Bay, 271 W 230, 72 NW (2d) 730.

Under 66.066 and 197.01, Stats. 1935, a municipality owning public utility property may extend the facilities thereof beyond the city limits without referendum. Except for the question of construction or acquisition by the municipality of public utility property and the proposed method of financing, mortgage bonds authorized by 66.066 may be issued without a referendum vote. 25 Atty. Gen. 594.

66.066 (1a) History: 1953 c. 273; Stats. 1953 s. 66.066 (1a); 1963 c. 501.

See note to 60.18, citing Fond du Lac v. Empire, 273 W 333, 77 NW (2d) 699.

66.066 (2) History: 1919 c. 595; Stats. 1919 s. 927—16, 927—16a, 927—16b; 1921 c. 396 s. 41 to 54; 1921 c. 590 s. 62; Stats. 1921 s. 66.06 (9) (b); 1923 c. 407; 1933 c. 162 s. 1, 2; 1935 c. 230, 531; 1945 c. 252; 1947 c. 362; Stats. 1947 s. 66.066 (2); 1951 c. 560; 1953 c. 209; 1957 c. 363, 420; 1959 c. 139; 1965 c. 369; 1969 c. 75, 430.

Under 66.06 (9) (b), Stats. 1945, an ordinance and resolution adopted by a city council, the functions of a city clerk in respect to advertising the sale of, and affixing his signature to, mortgage revenue bonds of the city were purely ministerial and the performance thereof by him was not discretionary. State ex rel. Madison v. Bareis, 248 W 387, 21 NW (2d) 721.

66.066 (3) History: 1907 c. 665; Stats. 1911 s. 927—17 to 927—19; 1921 c. 396 s. 55 to 57; Stats. 1921 s. 66.06 (9) (c); 1933 c. 162 s. 1, 2; 1947 c. 362; Stats. 1947 s. 66.066 (3); 1957 c. 420.

66.066 (4) History: 1931 c. 198; Stats. 1931 s. 66.06 (9) (d); 1933 c. 162 s. 1, 2; 1947 c. 362; Stats. 1947 s. 66.066 (4); 1959 c. 209, 452; 1959 c. 660 s. 47.

66.067 History: 1933 c. 479; Stats. 1933 s. 66.06 (9m); 1939 c. 395; 1947 c. 362; Stats. 1947 s. 66.067; 1953 c. 540; 1955 c. 10; 1963 c. 271; 1965 c. 238.

The provision that a municipality "may finance" a hospital utility in the manner provided in 66.066 means that there is to be compliance with the latter section only with respect to the manner in which the funds for the construction are to be raised. A city may finance the construction of an addition to a municipally owned hospital by the issuance of hospital revenue bonds, although the hospital is operated by a hospital association under a lease, since the city, in operating a hospital, acts in a proprietary and not in a governmental capacity, and the city can contract to have another do that which the city can do in its proprietary capacity. Meier v. Madison, 257 W 174, 42 NW (2d) 914.

66.068 History: 1882 c. 325; 1883 c. 165; 1889 c. 326 s. 95, 96; Ann. Stats. 1889 s. 925n sub. 95, 96; Ann. Stats. 1889 s. 927b; 1895 c. 182; 1895 c. 294 s. 2, 3, 9; 1897 c. 139 s. 4, 5; Stats. 1898 s. 925—95, 926—96, 927—1; 1901 c. 135 s. 1, 2; Supl. 1906 s. 925—95, 925—95a; 1907 c. 268, 467; 1911 c. 233; 1911 c. 663 s. 98; Stats. 1911 s. 776m, 925—95, 925—95a, 925—95b, 925—95e, 925—95f, 925—96, 926—101j to 926—101n, 927—1; 1913 c. 490, 661, 704; 1915 c. 154, 160; 1915 c. 385 s. 46; 1915 c. 604 s. 51; Stats. 1915 s. 925—95, 925—95a, 925—95b, 925—95e, 925—95f, 925—96, 926—101j to 926—101n, 927—1, 927—5; 1919 c. 362 s. 35, 37; 1919 c. 492 s. 2; 1919 c. 571 s. 2; Stats. 1919 s. 925—95, 925—95a, 925—95b, 925—95e, 925—95f, 925—96, 926—101j to 926—101n, 927—1, 927—5, 927—20; 1921 c. 396 s. 59; 1921 c. 590 s. 63; Stats. 1921 s. 66.06 (10); 1923 c. 95; 1925 c. 195; 1933 c. 273; 1937 c. 319; 1941 c. 129; 1947 c. 362, 388; Stats. 1947 s. 66.068; 1953 c. 462; 1957 c. 699; 1959 c. 565.

1. Commissioners.
2. Finances.
3. Alternate managers.

1. Commissioners.

A village utility commission has implied power to remove the manager at pleasure, and the commission cannot surrender its power of removal by appointing or making a contract with a manager for a definite term. Richmond v. Lodi, 227 W 23, 277 NW 620.

A member of the water and light commission may not be employed as superintendent. 4 Atty. Gen. 792.

The position of superintendent of waterworks which had been made elective by the city under provisions of former general charter law may be superseded by the city council creating a board of commissioners. 12 Atty. Gen. 64.

There is no authority for salaries to be paid to members of the water and light commission. 12 Atty. Gen. 606.

A city of the third class operating on the commission plan may govern its utility by a nonpartisan commission. The offices of municipal utility commissioner and metropolitan sewerage district commissioner are compatible. A commission city of the third class may by charter ordinance provide for the method of selection of members of the utility commission. 26 Atty. Gen. 267.

A member of a municipal utility commis-

sion is not entitled to compensation. He may not hold the position of manager of the municipal utility and receive compensation therefor. 28 Atty. Gen. 44.

The board of water commissioners of a city may not contract with privately operated companies for insurance upon water department property after the common council of such city has voted to insure in the state insurance fund under 210.04, Stats. 1941, unless the common council votes to terminate insurance which it previously authorized. 31 Atty. Gen. 305.

2. Finances.

A lighting plant and waterworks commission has exclusive control of funds arising from the operation of lighting plants and waterworks as well as those appropriated by the common council for extensions. 4 Atty. Gen. 589.

Funds derived from the income of a municipally owned public utility cannot be diverted to the general fund unless they exceed all requirements of the plant for operation, maintenance, depreciation, interest, sinking fund, additions and improvements. 11 Atty. Gen. 935.

3. Alternate Managers.

The effect of 62.14 (1), Stats. 1933, 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.

66.069 (1) (a) History: 1889 c. 326 s. 98; Ann. Stats. 1889 s. 925n sub. 98; 1893 c. 312 s. 31; 1895 c. 294 s. 5, 6; Stats. 1898 s. 925—98; 1909 c. 367; 1911 c. 186; 1915 c. 300; 1921 c. 396 s. 60; Stats. 1921 s. 66.06 (11) (a); 1947 c. 362; Stats. 1947 s. 66.069 (1) (a); 1949 c. 325; 1955 c. 427.

A city may recover for water taken in a clandestine manner, although it has established rates, and may collect them as taxes are collected. Milwaukee v. Zoehrlaut Co. 114 W 276, 90 NW 187.

Where a city collects its water rates it is acting in a proprietary capacity, and not as a governmental agency of the state. Pabst Corp. v. Milwaukee, 193 W 522, 215 NW 670.

66.069 (1) (b) History: 1889 c. 326 s. 98, 99; Ann. Stats. 1889 s. 925n sub. 98, 99; 1893 c. 312 s. 31; 1895 c. 294 s. 5, 6; Stats. 1898 s. 925—98, 925—99; 1909 c. 367; 1911 c. 186; 1915 c. 300; 1921 c. 396 s. 61; Stats. 1921 s. 66.06 (11) (b); 1933 c. 102; 1937 c. 252; 1947 c. 362; Stats. 1947 s. 66.069 (1) (b); 1953 c. 500.

A municipally owned water utility may adopt and file with the commission rules which provide for discontinuance of water service in cases where service accounts are delinquent. The method of collecting delinquent accounts provided by this paragraph does not prevent municipally owned utility from adopting regulations governing furnishing of service. 18 Atty. Gen. 665.

A municipal utility may collect charges as taxes. A lien is imposed even though the property has been sold after delinquent charges were incurred. 21 Atty. Gen. 695.

66.069 (1) (c) History: 1882 c. 325; 1883 c. 165; 1889 c. 326 s. 98; Ann. Stats. 1889 s. 925n sub. 98; Ann. Stats. 1889 s. 927b; 1893 c. 312 s. 31; 1895 c. 182; 1895 c. 294 s. 5, 6; Stats. 1898 s. 925—98, 927—1; 1909 c. 367; 1911 c. 186; 1915 c. 160, 300; 1919 c. 571 s. 2; 1921 c. 396 s. 62; Stats. 1921 s. 66.06 (11) (c); 1935 c. 159; 1937 c. 100; 1947 c. 362; Stats. 1947 s. 66.069 (1) (c).

The commission's inclusion of a sum representing local and school-tax equivalents as an operating expense of the municipally owned water utility for rate-making purposes was proper. Fox Point v. Public Service Comm. 242 W 97, 7 NW (2d) 571.

A municipally owned public utility may not invest its depreciation fund except in the manner provided in 66.04, Stats. 1931. 20 Atty. Gen. 571.

Bonds purchased by a municipal utility should be deposited with the city treasurer for safekeeping. 25 Atty. Gen. 612.

66.069 (1) (d) History: 1913 c. 390; 1915 c. 604 s. 20; Stats. 1915 s. 959—52n; 1921 c. 369 s. 63; Stats. 1921 s. 66.06 (11) (d); 1939 c. 259, 275; 1947 c. 362; Stats. 1947 s. 66.069 (1) (d).

Municipal utility funds are separate and distinct from general funds of a municipality and are held by a municipality in separate capacity and right within the meaning of the FDIC act and are each entitled to be treated as separate insured funds. 29 Atty. Gen. 407.

66.069 (1) (e) History: 1937 c. 100; Stats. 1937 s. 66.06 (11) (e); 1947 c. 362; Stats. 1947 s. 66.069 (1) (e).

66.069 (2) History: 1897 c. 296; Stats. 1898 s. 959—47; 1901 c. 236 s. 1; Supl. 1906 s. 926—101; 1907 c. 327; 1915 c. 162; Stats. 1915 s. 926—101, 927—1m, 959—47; 1919 c. 434; 1919 c. 679 s. 44; 1921 c. 396 s. 64; Stats. 1921 s. 66.06 (12); 1929 c. 459; 1931 c. 388; 1947 c. 362; Stats. 1947 s. 66.069 (2); 1949 c. 367; 1951 c. 560; 1965 c. 346, 509.

Municipal corporations may exercise their private or business powers outside the municipal limits. Schneider v. Menasha, 118 W 298, 95 NW 94.

A municipal corporation operating an electric plant has power to build a transmission line and to furnish electricity to a municipality 24 miles distant. 13 Atty. Gen. 204.

66.07 History: 1917 c. 40; Stats. 1917 s. 927—21 to 927—25; 1921 c. 396 s. 65; Stats. 1921 s. 66.06 (13); 1945 c. 210; 1947 c. 362; Stats. 1947 s. 66.07; 1965 c. 252, 369.

Where the railroad commission found that the interests of the municipality and its residents would be best served by the sale in accordance with the preliminary agreement, but declined to express an opinion on the respective merits of public or private ownership of public utilities, it is fulfilling its statutory duty, and the reservation as to public or private ownership is surplusage not avoiding its finding. The commission is not limited to approving or disapproving the preliminary agreement as submitted, but may revise the

same to fix the price or other terms or conditions. The statute does not require distinct proceedings for the sale of more than one utility, and a single proceeding for the sale of a gas and electric utility is valid. Notice of an election on the question of the sale of the public utilities, setting out a complete and sufficient description of the property to enable an action of specific performance to be maintained thereon, and setting out the terms of sale, was a sufficient compliance with 66.06 (13), Stats. 1925. Although the term "resolution or ordinance," if construed literally under 66.06 (1), Stats. 1925, requires a preliminary agreement authorized by an "ordinance," by the enactment of 66.06 (1) no change was intended in the law then existing, and proceedings in a city for the sale of its gas and electric utilities may be initiated by resolution. Wisconsin G. & E. Co. v. Ft. Atkinson, 193 W 232, 213 NW 873.

66.071 (intro. par.) History: 1921 c. 396 s. 66; Stats. 1921 s. 66.06 (14) (intro. par.); 1947 c. 362; Stats. 1947 s. 66.071 (intro. par.); 1969 c. 392.

66.071 (1) History: 1915 c. 110; 1915 c. 604 s. 97; Stats. 1915 s. 927—6; 1919 c. 279; Stats. 1919 s. 927—6, 927—9; 1921 c. 396 s. 66 to 67f; Stats. 1921 s. 66.06 (14) (a); 1923 c. 307 s. 10; 1947 c. 362; Stats. 1947 s. 66.071 (1); 1949 c. 327; 1953 c. 450.

66.071 (2) History: 1919 c. 279, 595; Stats. 1919 s. 927—9, 927—16d; 1921 c. 396 s. 68; Stats. 1921 s. 66.06 (14) (b); 1947 c. 362; Stats. 1947 s. 66.071 (2); 1955 c. 661.

The 25% differential provision in 66.06 (14) (a), Stats. 1937, has no application to charges to be made for water furnished to other municipally owned water utilities by the city of Milwaukee. If the 25% differential, where applicable, results in a rate in excess of that necessary to produce a fair return for service in accordance with commission standards, such excess may be considered for purposes of arriving at fair return on value of used and useful property of utility when establishing rates to be charged to customers within the city. 27 Atty. Gen. 522.

66.072 History: 1915 c. 167; Stats. 1915 s. 959x—1 to 959x—5; 1917 c. 191; 1921 c. 396 s. 70 to 74; 1921 c. 590 s. 64; Stats. 1921 s. 66.06 (15); 1923 c. 77; 1947 c. 362; Stats. 1947 s. 66.072; 1957 c. 132 s. 7, 8; 1963 c. 483; 1965 c. 120, 140.

See note to 66.03, citing Bayside v. Milwaukee, 267 W 448, 66 NW (2d) 129.

66.074 (1) History: 1913 c. 289; 1915 c. 604 s. 23; Stats. 1915 s. 957—116; 1917 c. 197; 1921 c. 396 s. 77; Stats. 1921 s. 66.06 (18); 1947 c. 362; Stats. 1947 s. 66.074 (1).

66.074 (2) History: 1903 c. 375 s. 1, 2; 1917 c. 197; Stats. 1917 s. 959—116a; 1921 c. 396 s. 78; Stats. 1921 s. 66.06 (19); 1947 c. 362; Stats. 1947 s. 66.074 (2).

66.074 (3) History: 1921 c. 234; 1921 c. 590 s. 76; Stats. 1921 s. 66.06 (21); 1929 c. 348; 1929 c. 464; 1947 c. 362; Stats. 1947 s. 66.074 (3).

66.075 History: 1913 c. 582; Stats. 1913 s. 959—52x; 1921 c. 396 s. 79; Stats. 1921 s. 66.06 (20); 1935 c. 550 s. 405; 1943 c. 229 s. 1; 1947 c. 362; Stats. 1947 s. 66.075; 1969 c. 276 s. 583 (1).

66.076 History: 1929 c. 147; Stats. 1929 s. 66.06 (22); 1933 c. 133; 1935 c. 242; 1943 c. 375; 1945 c. 511; 1947 c. 335, 362; Stats. 1947 s. 66.076; 1949 c. 231; 1955 c. 427; 1969 c. 366 s. 117 (2) (a).

On exercises of police power and taxing power see notes to secs. 1 and 13, art. I.

The public service commission has jurisdiction to establish sewer rates between 2 municipalities under 66.076 (9), even if the service has been given under a contract for a limited number of years. Kaukauna v. Public Service Comm. 271 W 516, 74 NW (2d) 335.

A sewer service charge imposed before the new treatment plant goes into operation is not invalid prior to such time as not being based on benefits received, where the new plant had been authorized and the contract let. Wm. H. Heinemann Creameries v. Kewaskum, 275 W 636, 82 NW (2d) 902.

The validity of an ordinance fixing sewer charges is for the courts, although the question of whether the amount of the charge is proper is for the commission under 66.076 (9) in the first instance. Williams v. Madison, 15 W (2d) 430, 113 NW (2d) 395.

The public service commission has no jurisdiction under 66.06 (22), Stats. 1939, to hold a hearing for the purpose of determining reasonable rates to be charged one municipality by another for sewage service where the service was acquired by order of the state board of health under 144.07. 28 Atty. Gen. 503.

66.077 History: 1949 c. 642; Stats. 1949 s. 66.077.

66.078 History: 1945 c. 57; Stats. 1945 s. 66.06 (23); 1947 c. 362; Stats. 1947 s. 66.077; 1949 c. 642; Stats. 1949 s. 66.078.

66.079 History: 1945 c. 312; Stats. 1945 s. 66.06 (24); 1947 c. 336, 362; Stats. 1947 s. 66.078; 1949 c. 380, 642; Stats. 1949 s. 66.079; 1959 c. 517.

66.08 History: 1929 c. 488; Stats. 1929 s. 66.065; 1937 c. 211; 1943 c. 553 s. 10; 1947 c. 362; Stats. 1947 s. 66.079; 1949 c. 642; Stats. 1949 s. 66.08; 1957 c. 131, 132.

66.081 History: 1879 c. 209; Ann. Stats. 1889 s. 960f; Stats. 1898 s. 959—7; 1921 c. 396 s. 81; Stats. 1921 s. 66.08; 1949 c. 642; Stats. 1949 s. 66.081.

66.09 History: R. S. 1849 c. 10 s. 24; 1854 c. 80 s. 80 to 85; 1857 c. 30 s. 1, 2; R. S. 1858 c. 13 s. 24; R. S. 1858 c. 15 s. 77, 78; R. S. 1858 c. 23 s. 82 to 86; 1863 c. 155 s. 117 to 121; 1871 c. 143; 1872 c. 151; 1872 c. 188 s. 83; 1873 c. 46; R. S. 1878 s. 487, 488, 489, 661, 781, 923; Ann. Stats. 1889 s. 487, 488, 489, 661, 781, 923, 929; 1897 c. 287 s. 89; 1897 c. 354; Stats. 1898 s. 487, 488, 489, 661, 781, 923, 929; 1917 c. 578 s. 5; Stats. 1917 s. 661, 781, 923, 929, 2965m; 1919 c. 551 s. 47; 1919 c. 691 s. 73; 1919 c. 695 s. 9; Stats. 1919 s. 60.65, 61.62, 929, 2965m, 3038m; 1921 c. 396 s. 82; Stats. 1921 s. 66.09; 1935 c. 522.

Revisers' Note, 1878: Sec. 487: Section 82,

ch. 23, R. S. 1858, same as sec. 117, ch. 155, Laws 1863, adding a provision that an execution may issue in case the judgment shall not be collected by tax, as provided in the next section.

Sec. 489: This section is new and provides that if an appeal be taken after the certificate is filed with the town clerk the tax shall not be levied until the appeal is determined.

Sec. 661: Sec. 24, ch. 13, R. S. 1858, rewritten to define more specifically the practice and enable the judgment creditor to act.

Revisor's Note, 1921: The provision for execution only upon leave is not found in all the old sections but is by the new section made applicable to all, but the motion may be made after failure to collect in the first proper levy, eliminating the ambiguity of some of the old sections under which payment might be wilfully deferred and still protecting from inadvertence by requiring in all cases leave of court. [Bill 22-S, s. 82]

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

Judgments against towns are payable by the treasurer when collected, without order of the supervisors. State ex rel. Mills v. Kispert, 21 W 387.

Where judgment was rendered in an action upon a demand alleged to be due a town, against 3 persons designated by their names as supervisors of the plaintiff town, it was not a personal judgment against them, and it was enforceable under sec. 781, R. S. 1878. Prichard v. Bixby, 71 W 422, 37 NW 228.

A judgment against a county is not a lien upon land bought in by the county for taxes. Buell v. Arnold, 124 W 65, 102 NW 338.

As to liability of a dissolved school district, see Conway v. Joint Dist. 150 W 267, 136 NW 612.

A judgment against a school district cannot be collaterally attacked in a mandamus proceeding for certification thereof to the town clerk by the district clerk for the tax levy. Slama v. Young, 199 W 82, 225 NW 830.

The amount of a creditor's judgment against a municipality using creditor's money must be placed on the next tax roll, and is not within the statute limiting leviable county taxes of one per cent. Oconto County v. Townsend, 210 W 85, 246 NW 410.

A provision in the judgment that a tax be levied by the defendant district did not constitute a levy of the tax by the court, the judgment merely declaring the duty which the statute imposes. Wauwatosa v. Union Free H. S. Dist. 214 W 35, 252 NW 351.

This section does not require that the judgment creditor must at all events wait until the money to pay the judgment has actually been collected by the tax levy and then proceed by mandamus to compel payment if payment is refused, the only limitation provided in the statute as to issuing process for the collection of the judgment being that such process shall not issue "until after the time when the money, if collected * * * would be available for payment." State Bank of Florence v. School Dist. 233 W 307, 289 NW 612.

When a certified transcript of a judgment against a town is filed with the town clerk, it is the clerk's duty to add the amount thereof to the next tax levy, and if he does so, his duty is fully discharged and the judgment creditor cannot compel him to include in future levies unpaid balances remaining because the amount properly levied turned out by reason of tax delinquencies to be insufficient to meet the judgment, the creditor's sole remedy in such case being to enforce collection of his judgment by the use of process against the town as authorized by 66.09 (3). Nagle v. Clure, 241 W 312, 6 NW (2d) 228.

Mere notice of a judgment against a town does not change the duty of the county clerk to pay to the town income taxes of a railroad company belonging to the town. 20 Atty. Gen. 713.

66.091 History: 1863 c. 211 s. 1, 3, 5, 6, 7; R. S. 1878 s. 938 to 940; 1887 c. 400; Ann. Stats. 1889 s. 938 to 940; Stats. 1898 s. 938 to 940; 1921 c. 396 s. 80; Stats. 1921 s. 66.07; 1947 c. 362; Stats. 1947 s. 66.091.

An injury resulting from the explosion of a fire cracker, set off by someone among a crowd of people, assembled on Independence Day, is not within sec. 938, R. S. 1878. In order to constitute an unlawful assembly or riot under sec. 4511, three or more persons engaged therein must have a common purpose to do the act complained of. Aron v. Wausau, 98 W 592, 74 NW 354.

Where a delegation of farm strikers was negotiating with a creamery manager, and the assembly was orderly and no threats were made to the manager, a threat made by a man accompanying the delegation to a truck driver of the creamery company did not constitute notice of a threat to the company of interference with its business by a mob; and hence the failure of the company to notify the county sheriff of the threat, the company having no actual knowledge thereof, did not preclude recovery against the county for damages for cream subsequently dumped from a truck by a mob. Portage C. C. Asso. v. Sauk County, 216 W 501, 257 NW 614.

In an action against a county for damages done to the plaintiff's person and property by rioters, a complaint alleging that a mob of disorderly and riotous persons collected together on the plaintiff's farm and by force and violence prevented a lawful sale, and forcibly removed plaintiff from his farm and carried away certain property, states a cause of action within this section, making counties liable for injuries by "mob or riot." It is not necessary under the statute to show physical injury to or destruction of plaintiff's person or property. Febock v. Jefferson County, 219 W 154, 262 NW 588.

The liability of the city is absolute unless exempting conditions specified are present. A city must not only endeavor to prevent injury by a mob but must actually prevent it. The efforts of the company in this case to protect its property did not occasion the mob or riot so as to render the city free from liability. Northern Assur. Co. v. Milwaukee, 227 W 124, 277 NW 149.

An action against a city for injuries done to property by a mob during a strike was properly brought by an insurer which had indemnified the owner for its property loss and taken an assignment of its claim which it had under this section, since the action was assignable, being one which survived under 331.01.

A crime committed secretly away from public view is not a riot. International Wire Works v. Hanover Fire Ins. Co. 230 W 72, 283 NW 292.

66.10 History: 1921 c. 396 s. 83; Stats. 1921 s. 66.10.

66.11 History: 1909 c. 437; Stats. 1911 s. 976m; 1915 c. 158; Stats. 1915 ss. 959—39m, 976m; 1917 c. 408; Stats. 1917 ss. 17.19, 959—39m; 1919 c. 362 s. 42; Stats. 1919 ss. 959—39m, 960; 1921 c. 396 ss. 84, 85; Stats. 1921 s. 66.11; 1935 c. 421 s. 3; 1943 c. 193; 1949 c. 231, 515; 1955 c. 488; 1957 c. 442; 1959 c. 499; 1963 c. 438; 1967 c. 149.

A member of the county board cannot hold a position created by the board of which he is a member during his term as supervisor. 11 Atty. Gen. 408.

A member of the county board is ineligible to the office of highway commissioner until after the full term for which he was elected has expired. 12 Atty. Gen. 108.

A member of the county board is ineligible to appointment as patrolman on county highways. 12 Atty. Gen. 353.

A town chairman is not eligible to appointment as patrolman on the highway system; such ineligibility does not extend to other members of the town board. 13 Atty. Gen. 164.

See note to 83.01, citing 14 Atty. Gen. 203.

A member of the county board may be elected or appointed a member of the county highway committee. 17 Atty. Gen. 531.

Under 66.11 (2), Stats. 1931, a member of the county board is ineligible to the position of public dance supervisor; under 348.28 such contract is void and the board member is not entitled to receive compensation for services rendered as public dance supervisor in the county. 20 Atty. Gen. 1193.

A member of a county board may not be a quarry foreman. 24 Atty. Gen. 394.

A town supervisor is not entitled to compensation for promoting a project in absence of any duty to perform such service and may not act as "sponsor" or superintendent of such project where such position is created by the town board. 25 Atty. Gen. 700.

A county board member is not eligible after resignation to appointment as special traffic patrolman. 26 Atty. Gen. 349.

A county board may not hire one of its members to work on collection of delinquent taxes. 27 Atty. Gen. 9.

A member of a county board is ineligible, during the term for which he was elected, to the office of additional pension investigator for the county, when the position was created and an appropriation was made therefor during the term for which he was elected to the county board. Resignation during such period will not make him eligible. 28 Atty. Gen. 6.

One who has been elected to membership on a county board but who has refused to qualify is not within the provisions of 66.11 (2), Stats. 1937. 28 Atty. Gen. 265.

A member of a county board may not, upon resigning his office, be legally appointed to a position as radio operator which is created by such board during his term; nor may he legally be appointed deputy sheriff where the duties to be performed under such appointment will be those attached to a new position created by the board. 30 Atty. Gen. 433.

A member of a town board may not be employed by the town as a fireman. 45 Atty. Gen. 30.

The positions of county board supervisor and veterans' service officer are incompatible; but a supervisor would be eligible if he resigned his position before action by the county board. 55 Atty. Gen. 260.

66.111 History: R. S. 1849 c. 131 s. 54; R. S. 1858 c. 133 s. 75; R. S. 1878 s. 2959; Stats. 1898 s. 2959; 1925 c. 4; Stats. 1925 s. 271.45; 1959 c. 270; Stats. 1959 s. 66.111.

Sec. 2959, Stats. 1898, applies where either of 2 officers may legally perform a particular act and the fees specifically allowed to one and not to the other, the fee is incident to the service so it may be rightfully claimed by the officer performing the same. Musback v. Schaefer, 115 W 357, 91 NW 966.

No costs can be taxed for the service of a circuit court summons and complaint by a constable; but costs may be allowed for service of a circuit court subpoena by a constable, because such officer may not serve officially the former and may serve officially the latter. Zielica v. Worzalla, 162 W 603, 156 NW 623.

Conservation wardens are entitled to charge the same mileage as the sheriff or other officer, which fees must be turned in to the state treasury to credit of the conservation fund. 20 Atty. Gen. 568.

State patrol officers are entitled to charge the same fees for mileage, court appearances, service of papers and like services in state traffic patrol cases, as the sheriff would be entitled to for performing like service. Such fees should be deposited in the highway fund. 47 Atty. Gen. 168.

66.113 History: R. S. 1849 c. 131 s. 52; R. S. 1858 c. 133 s. 71; R. S. 1878 s. 2958; Stats. 1898 s. 2958; 1925 c. 4; Stats. 1925 s. 271.44; 1935 c. 541 s. 215; 1959 c. 270; Stats. 1959 s. 66.113.

66.114 History: 1951 c. 352; Stats. 1951 s. 66.114; 1967 c. 276 s. 39.

Bail forfeited and fines imposed for violations of municipal and county ordinances belong to the municipality or the county whose ordinance was allegedly violated. 41 Atty. Gen. 166.

66.115 History: 1947 c. 572; Stats. 1947 s. 66.115.

66.12 History: 1953 c. 448; Stats. 1953 s. 66.12; 1961 c. 519, 614, 643; Sup. Ct. Order, 14 W (2d) v, vi; 1963 c. 129; 1967 c. 26; 1967 c. 276 ss. 9, 39, 40; 1969 c. 87; 1969 c. 255 s. 65.

On jurisdiction of circuit courts see notes to sec. 8, art. VII, and notes to 252.03; on kinds of actions see notes to 260.05; and on recovery of municipal forfeitures see notes to 288.10.

See note to 56.18, citing City of Milwaukee v. Milwaukee County, 27 W (2d) 53, 133 NW (2d) 393.

The limitation on time to appeal in this section controls over 330.24. Bornemann v. New Berlin, 27 W (2d) 102, 133 NW (2d) 328.

The burden of proof in cases involving violations of municipal ordinances is that of "clear, satisfactory and convincing evidence".

Madison v. Geier, 27 W (2d) 687, 135 NW (2d) 761. See also Waukesha County v. Mueller, 34 W (2d) 628, 150 NW (2d) 364.

Under 66.12 (2) the city cannot object to an adequate cash appeal bond on the ground that there was no surety and that it was not for an indefinite amount. West Milwaukee v. Klix, 28 W (2d) 410, 137 NW (2d) 99.

In a forfeiture case under a municipal ordinance, where the offense is also a crime under the statutes, criminal procedures apply only to the extent specified in this section. The middle burden of proof is to be applied. The defendant may be called adversely. A five-sixths verdict is sufficient. Bayside v. Bruner, 33 W (2d) 533, 148 NW (2d) 5.

In a municipal forfeiture action the defendant's proper plea is "not guilty" and a demurrer is not proper. Defendant cannot appeal an order overruling a motion to dismiss. Under 299.30 the defendant can appeal only from a judgment or an order involving a judgment. The appeal is to the circuit court unless the action was tried to a 12-man jury. Milwaukee v. Trzesniewski, 35 W (2d) 487, 151 NW (2d) 109.

A municipal justice for Hales Corners, in Milwaukee county, may issue a civil warrant to be served by the sheriff of Waukesha county in Waukesha county for the arrest of a resident of Waukesha county, for the violation of a municipal ordinance of Hales Corners. 55 Atty. Gen. 200.

Is criminal or civil procedure proper for enforcement of traffic laws? Conway, 1959 WLR 418 and 1960 WLR 3.

66.122 History: 1967 c. 85; Stats. 1967 s. 963.10; 1969 c. 255 ss. 59m, 65; 1969 c. 276 s. 607; Stats. 1969 s. 66.122.

66.123 History: 1967 c. 85; Stats. 1967 s. 963.11; 1969 c. 255 ss. 59m, 65; Stats. 1969 s. 66.123.

66.125 History: 1881 c. 240; Ann. Stats. 1889 s. 929a; Stats. 1898 s. 929—1; 1921 c. 396 s. 87; Stats. 1921 s. 66.11 (4); 1953 c. 540 s. 26; Stats. 1953 s. 66.125.

Revisers' Note, 1898: Sec. 929-1: Same as in Ann. Stats. 1889, with language changed, except that the provision as to town and county orders is transferred to other sections, and village orders are added.

The effect of ch. 240, Laws 1881, is to delay the running of the statute of limitations for 30 days from date of order. Schriber v. Richmond, 73 W 5, 40 NW 644.

An indorsement on a county order, signed by the county treasurer, showing that presentment had been made and that payment was refused for want of funds, is sufficient evidence of a demand. Alexander v. Oneida County, 76 W 56, 45 NW 21.

66.13 History: 1923 c. 404; Stats. 1923 c. 66.13; 1933 c. 71; 1935 c. 421 s. 3.

This section refers to a contract which the municipality has power to enter into, and has no application in the case of a so-called contract which the municipality has no power to enter into. Kiel v. Frank Shoe Mfg. Co. 240 W 594, 4 NW (2d) 117.

This section does not prevent a city from refusing to continue to pay an unconstitutional tax rebate pursuant to contract. Ehrlich v. Racine, 26 W (2d) 352, 132 NW (2d) 489.

66.14 History: 1923 c. 261; Stats. 1923 s. 66.14; 1927 c. 283.

66.145 History: 1945 c. 135; Stats. 1945 s. 66.145.

66.18 History: 1925 c. 319; Stats. 1925 s. 66.18; 1951 c. 374; 1953 c. 267; 1955 c. 313; 1957 c. 260 s. 11.

Editor's Note: This section was cited in Pohland v. Sheboygan, 251 W 20, 27 NW (2d) 736, which was an action under an indemnity policy issued to the city of Sheboygan; but the decision was rendered obsolete by the decision in Holytz v. Milwaukee, 17 W (2d) 26, 115 NW (2d) 618, in which the doctrine of governmental immunity was abrogated.

66.185 History: 1951 c. 374 s. 3; Stats. 1951 s. 66.18 (2); 1955 c. 313; Stats. 1955 s. 66.185; 1957 c. 260 s. 12; 1959 c. 179, 533; 1959 c. 641 s. 21.

66.186 History: 1959 c. 536; Stats. 1959 s. 66.186; 1961 c. 70.

66.19 History: 1937 c. 258; Stats. 1937 s. 66.19; 1939 c. 179, 243; 1939 c. 517 s. 4; 1941 c. 137; 1943 c. 263, 276; 1949 c. 217; 1951 c. 423 s. 3, 4; 1951 c. 679; 1963 c. 5; 1965 c. 150; 1965 c. 666 s. 22 (26); 1969 c. 433.

66.19 (1) contains no implication that unacceptable conduct cannot be a cause for discharge unless it can be shown directly to impair the performance of duties. State ex rel. Gudlin v. Civil Service Comm. 27 W (2d) 77, 133 NW (2d) 799.

A city ordinance which prohibited the electrical inspector appointed in its classified civil service from engaging in the electrical wiring and construction business either directly or indirectly and from having any "financial interest" in a concern engaged in such business in the city had for its purpose requiring full devotion to public duty and to ensure freedom from situations which might give rise to a conflict of interest in a public official. Public officials cannot complain if they are held to a strict accounting of their stewardship of public business. State ex rel. Beierle v. Civil Service Comm. 41 W (2d) 213, 163 NW (2d) 606.

A city school board and local board of vocational and adult education are not compelled to discharge present employes residing outside the city where such city has adopted a civil service ordinance under this section, requiring city employes to reside within the city, but such ordinance should be followed in future selection and discharge of employes so far as possible. 27 Atty. Gen. 358.

Library employes are within the purview of this section. 28 Atty. Gen. 386.

66.191 History: 1947 c. 206; 1947 c. 362 s. 2; Stats. 1947 s. 102.455; 1951 c. 518 s. 2; 1951 c. 618; 1953 c. 397; 1955 c. 283 s. 7, 8; Stats. 1955 s. 66.191; 1963 c. 268, 285, 376, 534; 1965 c. 524, 536; 1967 c. 162; 1967 c. 291 s. 14; 1969 c. 158 s. 106; 1969 c. 276 ss. 318, 584 (1) (a), (b); 1969 c. 392 s. 31.

A compensation award fixes the rights of

the parties, and a statute (ch. 397, Laws 1953) which purports to enlarge a party's rights retroactively is invalid to that extent. Kleiner v. Milwaukee, 270 W 152, 70 NW (2d) 662.

Applying the principle that a municipality acting in its governmental capacity can possess no vested rights as against the state, and with reference to the validity of the retroactive repeal of the right to offset against workmen's compensation death benefits the amount of the benefits payable from the Wisconsin retirement fund, a county possessed no vested rights, as of the time when a fatal accident to its employe occurred, to pay only such workmen's compensation benefits as the statutes then in effect provided. (Kleiner v. Milwaukee, 270 W 152, distinguished.) Douglas County v. Industrial Comm. 275 W 309, 81 NW (2d) 807.

66.192 History: 1965 c. 174; Stats. 1965 s. 66.192; 1967 c. 226.

66.195 History: 1965 c. 580; Stats. 1965 s. 66.195; 1967 c. 54.

66.196 History: 1961 c. 573; Stats. 1961 s. 66.196.

An increase of a lump-sum expense allowance during a term is not prohibited if it bears a reasonable relationship to actual expenses. Geyso v. Cudahy, 34 W (2d) 476, 149 NW (2d) 611.

66.197 History: 1967 c. 25; Stats. 1967 s. 66.197.

66.199 History: 1945 c. 480; Stats. 1945 s. 66.199; 1959 c. 603; 1961 c. 550; 1967 c. 92 s. 22; 1969 c. 276 s. 616.

66.20 History: 1927 c. 442; Stats. 1927 s. 66.20 (1), (2); 1947 c. 362; Stats. 1947 s. 66.20; 1969 c. 132.

On exercises of police power see notes to secs. 1 and 13, art. I; on the remedy for wrongs see notes to sec. 9, art. I; on legislative power generally and on delegation of power see notes to sec. 1, art. IV; and on the rule of taxation (real property) see notes to sec. 1, art. VIII.

Territory to be detached from that originally proposed in organization of a metropolitan sewerage district is an issue of fact to be determined in each case as the question arises. Golden v. Green Bay Met. Sewerage Dist. 210 W 193, 246 NW 505.

A metropolitan sewerage district, which is a creature of the legislature under 66.20 to 66.209, Stats. 1949, is a quasi-public or quasi-municipal corporation and, in its relation to the state, is governed by the rules applicable to municipal corporations. Municipalities, such as metropolitan sewerage districts, which derive all their rights and privileges from legislative act, and which are therefore subject to legislative will and may have such rights or privileges abolished by the legislature, are not to be regarded as thereby being deprived of any vested rights. Madison Met. Sewerage Dist. v. Committee, 260 W 229, 50 NW (2d) 424.

66.201 History: 1927 c. 442; Stats. 1927 s. 66.20 (3) to (7); 1931 c. 294; 1947 c. 362; Stats. 1947 s. 66.201; 1965 c. 252; 1969 c. 276.

Signers of an original petition to establish a metropolitan sewerage district had a right to withdraw their signatures thereto at any time prior to the date and hour set for the hearing thereon. In re Racine Met. Sewerage Dist. 1 W (2d) 35, 83 NW (2d) 132.

66.202 History: 1927 c. 442; Stats. 1927 s. 66.20 (8); 1931 c. 294, 349; 1947 c. 362; Stats. 1947 s. 66.202; 1965 c. 252; 1965 c. 666 s. 22 (16); 1969 c. 276 s. 588 (9); 1969 c. 366 s. 117 (2) (a).

See notes to sec. 1, art. IV, on legislative power generally and on delegation of power, citing In re City of Fond du Lac, 42 W (2d) 323, 166 NW (2d) 225.

66.203 History: 1927 c. 442; Stats. 1927 s. 66.20 (9); 1947 c. 362; Stats. 1947 s. 66.203; 1969 c. 366 s. 117 (2) (a).

66.204 History: 1927 c. 442; Stats. 1927 s. 66.20 (10); 1947 c. 362; Stats. 1947 s. 66.204; 1957 c. 289.

66.205 History: 1927 c. 442; Stats. 1927 s. 66.20 (11); 1947 c. 362; Stats. 1947 s. 66.205; 1961 c. 486; 1969 c. 276 s. 588 (9); 1969 c. 366 s. 117 (2) (a).

66.206 History: 1927 c. 442; Stats. 1927 s. 66.20 (12); 1931 c. 294; 1943 c. 553 s. 11; 1947 c. 362; Stats. 1947 s. 66.206; 1957 c. 132; 1965 c. 252.

66.207 History: 1927 c. 442; Stats. 1927 s. 66.20 (13); 1931 c. 294; 1947 c. 362; Stats. 1947 s. 66.207; 1961 c. 571.

66.208 History: 1927 c. 442; Stats. 1927 s. 66.20 (14); 1931 c. 294; Stats. 1931 s. 66.20 (14), (15); 1947 c. 362; Stats. 1947 s. 66.208.

66.209 History: 1931 c. 294; Stats. 1931 s. 66.20 (16); 1945 c. 156; Stats. 1945 s. 66.20 (16), (17); 1947 c. 362, 445, 614; Stats. 1947 s. 66.209; 1949 c. 262 s. 4; 1957 c. 60.

66.27 History: 1957 c. 184, 570; Stats. 1957 s. 66.27; 1959 c. 226.

66.28 History: 1929 c. 192; 1929 c. 516 s. 7; Stats. 1929 s. 66.28; 1961 c. 163, 622.

An automobile taken into possession by city police, because of fictitious licensing, and stored in the sheriff's garage may be sold by the city under this section. 26 Atty. Gen. 456.

66.29 History: 1933 c. 395; Stats. 1933 s. 66.29; 1935 c. 139; 1939 c. 283; 1945 c. 207; 1949 c. 280; 1955 c. 406, 474, 664, 691; 1957 c. 27, 319, 346, 560, 699; 1959 c. 19, 337, 559; 1969 c. 241.

The instant bidder, showing the village board his final-estimate sheet, which showed on its face that his mistake of $6,000 in the bid submitted by him occurred because of erroneously setting down on the estimate sheet a "0" for a "6" in the thousand space of the total of a column of figures representing the cost of materials for the work, and explaining that the mistake in the entry on the estimate sheet occurred because the ribbon in his adding machine was worn and gave the figure "6" in the adding-machine slip the appearance of a "0", satisfied the requirement of 66.29 (5), that a bidder making a mistake in

his bid shall submit to the municipality clear and satisfactory evidence of such mistake and that it was not caused by his carelessness in examining the plans and specifications. Krasin v. Almond, 233 W 513, 290 NW 152.

The public policy which insists on competition between bidders for public work and dictates that contracts shall be let to the lowest responsible bidder is violated when prospective bidders enter into an arrangement to exact from each other a percentage of the amount of each contract secured during a given year, and the law casts out as illegal an arrangement to hamper competitive bidding when so limited and so described. Associated Wisconsin Contractors v. Lathers, 235 W 14, 291 NW 770.

See note to 59.08, citing Richardson v. Green County, 6 W (2d) 321, 94 NW (2d) 689.

A bid which listed several proposed subcontractors, in the alternative, did not comply with the bidding requirements prescribed pursuant to authority of 66.29 (7). Although 66.29 (7) permits enumerating certain classes of work, thus eliminating the necessity of naming subcontractors who would perform any class of work not enumerated, enumeration is not required, and a bidder may be required to list every subcontractor. Druml Co. v. Knapp, 6 W (2d) 418, 94 NW (2d) 615.

Under the definition in 66.29 (1) (d) one who sold materials delivered at the site of construction was not a "subcontractor" even though he might enter into an express contract with the contractor in advance of delivery; and work done by a steel fabricator constituted preparation of material rather than "a distinct part of the work" within the statutory definition, and did not shift the fabricator from the classification of supplier of materials to that of subcontractor. Druml Co. v. Knapp, 6 W (2d) 418, 94 NW (2d) 615.

66.29 (6) does not apply to the letting of a contract for a building by a school district, because such a district is not required to advertise for proposals for construction. Consolidated School Dist. v. Frey, 11 W (2d) 434, 105 NW (2d) 841.

Where a contractor fails to list another corporation as a subcontractor pursuant to 66.29 (7), this alone does not prove that the other corporation was an agent, not a subcontractor for purposes of claiming a lien under 289.53. Boehck Construction Equip. Corp. v. Voigt, 17 W (2d) 62, 115 NW (2d) 627, 117 NW (2d) 372.

Construction work by state agencies is not required by 66.29, Stats. 1945, to be advertised for bids in the absence of other statutory provision imposing such requirement. 35 Atty. Gen. 84.

66.293 History: 1933 c. 95; Stats. 1933 s. 348.50; 1945 c. 172; 1953 c. 540 s. 45; Stats. 1953 s. 66.293; 1965 c. 484; 1967 c. 26; 1969 c. 276 s. 584 (1) (b).

66.295 History: 1941 c. 272; Stats. 1941 s. 66.295; 1949 c. 612; 1953 c. 683; 1957 c. 34, 669; 1959 c. 6; 1961 c. 82; 1969 c. 403.

The provision in 66.295 (3), that where payment for any benefits or improvements mentioned in 66.295 (1), permitting the recognition of a moral obligation to pay arising out of a prior void contract, is authorized by the common council of any city and where special assessments have been levied for any portions of such benefits or improvements prior to the authorization of such payment, the city authorities shall proceed to make a new assessment of benefits and damages, etc., is an authorization supplementary to the instances in which special assessments are authorized to be made by 62.15 and 62.16, and such provision in 66.295 (3) is valid. State ex rel. Federal Paving Corp. v. Prudisch, 241 W 59, 4 NW (2d) 144.

The provision in 66.295 (1) authorizing any city to pay the fair and reasonable value of benefits or improvements received under any contract imposing no legal obligation, applies only to situations existing at the time the law became effective, and not to situations arising subsequent thereto. Leuch v. Egelhoff, 255 W 29, 38 NW (2d) 1.

A taxpayer's action to recover money paid by a city for tree trimming, done under a contract allegedly let without complying with statutory procedure, was for the enforcement of a public, and not a private, right. 66.295 (1) is not unconstitutional as retroactive legislation violating the due-process clause of the federal constitution because enacted after the commencement of this action and permitting the defendant city to adopt a curative resolution. Leuch v. Egelhoff, 260 W 356, 51 NW (2d) 7.

66.296 History: 1951 c. 662; Stats. 1951 s. 66.296; 1965 c. 252.

Two public ways, which were separated from each other by a distance of about 1,000 feet because of an intervening parcel of land, did not constitute the same street, although they both bore the same street name of "Cleora" drive; hence a petition for the vacation of a portion of north "Cleora" did not in any event require the signatures of any owners of lots abutting on separated south "Cleora." Poff v. Lockhart, 21 W (2d) 575, 124 NW (2d) 636.

66.297 History: 1965 c. 101; Stats. 1965 s. 66.297.

66.298 History: 1969 c. 373; Stats. 1969 s. 66.298.

66.299 History: 1945 c. 108; Stats. 1945 s. 66.299.

66.30 History: 1939 c. 210; Stats. 1945 s. 66.30; 1951 c. 241, 268, 293; 1951 c. 734 s. 22; 1959 c. 192; 1965 c. 238, 517; 1967 c. 92 s. 22; 1969 c. 128, 171; 1969 c. 276 s. 603 (2); 1969 c. 500 s. 30 (2) (e).

Comment of Interim Committee, 1959: This bill is a revision of existing s. 66.30. The purpose of the revision is to strengthen and clarify the local cooperation section of the statutes. It is intended to encourage municipalities to join together in the performance of functions of mutual concern.

The definition of "municipality" in sub. (1) includes all of the governmental units covered by present s. 66.30, and expands the definition to include regional planning commissions. The use of a single term to cover the various units eliminates the need for repeating the enumeration throughout the section.

Sub. (2) is a partial restatement of existing

law. The provision is added that municipalities may contract "for the receipt or furnishing of services." This additional language broadens existing law by specifically authorizing municipalities to contract for services.

Sub. (3) is entirely new, except for the provision covering prorating expenditures which is found in present s. 66.30. This subsection extends to municipalities entering into co-operative agreements the authority to establish a plan for administering the particular function contracted for. It is intended to eliminate conflicts among various provisions in existing statutes.

Sub. (4) is completely new. It is intended to stabilize the legal basis of the contracts entered into under this section. It provides that participating municipalities may not withdraw from the agreement for the duration of the contract. It is believed that the state has the authority to deny the right of withdrawal to participating municipalities, even though it can be argued that a municipal governing body may not bind itself with respect to the exercise of its legislative discretion. [Bill 228-A]

See note to 43.25, citing 41 Atty. Gen. 335.

See note to 81.38, citing 47 Atty. Gen. 50.

See note to 66.945, citing 47 Atty. Gen. 52.

The service must be one that the receiving municipality is authorized to receive and which at the same time the performing municipality is entitled to render. 48 Atty. Gen. 231; 51 Atty. Gen. 168; 56 Atty. Gen. 69.

A county may contract with school districts to provide nursing services to the districts. 56 Atty. Gen. 69.

66.305 History: 1967 c. 105; Stats. 1967 s. 66.305.

66.31 History: 1937 c. 432; Stats. 1937 s. 66.31.

66.315 History: 1947 c. 380; Stats. 1947 s. 66.315; 1951 c. 435; 1967 c. 105.

66.32 History: 1937 c. 432; Stats. 1937 s. 66.32; 1947 c. 362 s. 2; 1955 c. 570; 1963 c. 241.

Legislative Council Note, 1955: This amendment is an attempt to solve the problem of overlapping extra-territorial areas in a more workable way than that in the present law which provides that the overlapping shall be equally divided between the municipalities concerned at the respective mid-points. [Bill 20-S]

66.325 History: 1947 c. 248; Stats. 1947 s. 66.61; 1957 c. 131 s. 20; 1957 c. 260 s. 13; Stats. 1957 s. 66.325; 1969 c. 19.

See note to sec. 1, art. I, on exercises of police power, citing Ervin v. State, 41 W (2d) 194, 163 NW (2d) 207.

66.33 History: 1949 c. 470; Stats. 1949 s. 66.33; 1965 c. 614; 1969 c. 276 s. 588 (6).

66.34 History: 1949 c. 445; Stats. 1949 s. 66.34.

County highway personnel and equipment may be used for performing soil conservation work under this section. However, if the ruling in Heimerl v. Ozaukee County, 256 W 151, were to be applied in full, the same might be declared invalid. 48 Atty. Gen. 263.

66.345 History: 1965 c. 144; Stats. 1965 s. 66.345.

66.35 History: 1933 c. 219; Stats. 1933 s. 129.25; 1935 c. 550 s. 389; Stats. 1935 s. 66.35; 1943 c. 317; 1947 c. 483; 1961 c. 164.

A license must be obtained to conduct a "closing-out sale" where a person has lost his lease and is compelled to move into a new location across the street. 22 Atty. Gen. 673.

A municipality may pass an ordinance that supplements the statute, but may not pass an ordinance in conflict therewith. Where the terms of an ordinance are less severe in requirements than the terms of the statute, the statute controls. 27 Atty. Gen. 336.

A merchant selling out seasonable merchandise at the close of a season, is not required to obtain a license for a "closing-out sale". 28 Atty. Gen. 471.

66.36 History: 1961 c. 427; Stats. 1961 s. 66.36; 1965 c. 433; 1967 c. 211 s. 20; 1969 c. 154 s. 377; 1969 c. 353.

66.39 History: 1947 c. 362 s. 2; 1947 c. 412; 1947 c. 614 s. 19e to 19j; Stats. 1947 s. 66.39; 1949 c. 592, 627, 643; 1951 c. 261 s. 10; 1955 c. 10; 1969 c. 276 s. 591 (1).

A veteran who elects to purchase a single family home from a housing authority is entitled to the benefit of the 10% state grant. Each successive veteran renter could assert a right to a 5-year option to purchase a single family home, but would be entitled to no more credit for capital retirement than he himself had paid. The department of veterans affairs has the power to prevent speculative resale of homes by requiring the execution of an option to purchase on a first refusal basis running to a local housing authority. 39 Atty. Gen. 186.

66.395 History: 1961 c. 351; Stats. 1961 s. 66.395.

66.40 History: 1935 c. 525; Stats. 1935 s. 66.40; Spl. S. 1937 c. 10, 15; Stats. 1939 s. 66.40; 1941 c. 7; 1943 c. 188; 1945 c. 505; 1947 c. 309, 362, 532, 581; 1949 c. 392, 592; 1953 c. 356; 1955 c. 682; 1957 c. 642; 1959 c. 239; 1965 c. 252; 1965 c. 666 s. 22 (26); 1969 c. 46.

On exercises of police power see notes to secs. 1 and 13, art. I; on the rule of taxation (real property) see notes to sec. 1, art. VIII; and on authority to promote housing for veterans see notes to sec. 66.92.

This section does not grant unlimited authority to a housing authority to engage in the housing business regardless of the nature, character, or purpose of the venture; under 66.40 (2) and (9), it is only when the purpose of such law is to be effectuated that the housing authority may proceed. On general demurrer, where it appears from the allegations of a complaint seeking an injunction against the issuance of housing bonds that there is no need for the proposed housing project, the resolution of the housing authority that the need exists is contrary to the facts as the demurrer admits them and is not binding on the court although 66.40 (4) (c) provides that such a resolution is conclusive and not subject to judicial review. Jolly v. Greendale Housing Authority, 259 W 407, 49 NW (2d) 191.

See note to sec. 3, art. I, on freedom of

speech, citing Lawson v. Housing Authority, 270 W 269, 70 NW (2d) 605.

66.40 (25) (part of the housing authorities law) and 66.43 (17) (part of the blighted area law) are mutually incorporated by reference; hence under the plain language of the latter statute urban blight projects as well as housing projects when so held and operated under either law may be terminated by direct legislation. Prechel v. Monroe, 40 W (2d) 231, 161 NW (2d) 673.

While a housing authority established under 66.40, Stats. 1945, would have power to sell surplus or unneeded property, the legislature did not intend it to have general power to develop housing units for sale rather than for rental. 36 Atty. Gen. 191.

Turnkey public housing in Wisconsin. Greiveldinger, 1969 WLR 231.

66.401 History: Spl. S. 1937 c. 10, 15; Stats. 1939 s. 66.40 (26); 1941 c. 7; 1943 c. 188; 1947 c. 362; Stats. 1947 s. 66.401.

66.402 History: Spl. S. 1937 c. 10, 15; Stats. 1939 s. 66.40 (27); 1941 c. 7; 1947 c. 362; Stats. 1947 s. 66.402; 1949 c. 472.

66.403 History: Spl. S. 1937 c. 10, 15; Stats. 1939 s. 66.40 (28); 1941 c. 7; 1947 c. 362; Stats. 1947 s. 66.403.

66.404 History: Spl. S. 1937 c. 10, 15; Stats. 1939 s. 66.40 (29) to (34); 1941 c. 7; 1943 c. 388; 1947 c. 362; Stats. 1947 s. 66.404; 1951 c. 261 s. 10.

See note to 67.04 (2), citing Palfuss v. Milwaukee, 258 W 374, 46 NW (2d) 208.

Payment in lieu of taxes which may be made by a local housing authority to a city under 66.40 (22) and 66.404 (1), Stats. 1949, may not exceed the amount which would result from the application of the city tax rate to the valuation of the property of the local housing authority. A local housing authority may not make payments in lieu of taxes to either the state or the county. 39 Atty. Gen. 173.

66.405 History: 1943 c. 333; Stats. 1943 s. 66.405 (1) to (3); 1945 c. 475; 1947 c. 362; Stats. 1947 s. 66.405; 1949 c. 592; 1963 c. 516; 1969 c. 15.

Legislative Council Note, 1969: The Wisconsin Supreme Court, in Gottlieb v. Milwaukee, 33 Wis. (2d) 408, held that 66.409 (1), in authorizing a "tax freeze" of certain property under the urban redevelopment law, amounted to giving a partial exemption which is violative of the rule of uniformity in section 1, article VIII of the Wisconsin constitution.

This bill repeals 66.409 and repeals or amends other sections relating to the "tax freeze" provisions of the urban redevelopment law in conformity with the Gottlieb decision. [Bill 12-A]

66.406 History: 1943 c. 333; Stats. 1943 s. 66.405 (4); 1945 c. 475; 1947 c. 362; Stats. 1947 s. 66.406; 1963 c. 516.

66.407 History: 1943 c. 333; Stats. 1943 s. 66.405 (5); 1947 c. 362; Stats. 1947 s. 66.407.

66.408 History: 1943 c. 333; Stats. 1943 s. 66.405 (6) to (9); 1947 c. 362, 430; Stats. 1947 s. 66.408; 1969 c. 15.

66.41 History: 1943 c. 333; Stats. 1943 s. 66.405 (11); 1947 c. 362; Stats. 1947 s. 66.41; 1969 c. 15.

66.411 History: 1943 c. 333; Stats. 1943 s. 66.405 (12); 1947 c. 362; Stats. 1947 s. 66.411.

66.412 History: 1943 c. 333; Stats. 1943 s. 66.405 (13); 1947 c. 362; Stats. 1947 s. 66.412; 1969 c. 276 s. 592 (7).

66.413 History: 1943 c. 333; Stats. 1943 s. 66.405 (14); 1947 c. 362; Stats. 1947 s. 66.413.

66.414 History: 1943 c. 333; Stats. 1943 s. 66.405 (15); 1947 c. 362; Stats. 1947 s. 66.414.

66.415 History: 1943 c. 333; Stats. 1943 s. 66.405 (16); 1947 c. 362; Stats. 1947 s. 66.415.

66.416 History: 1943 c. 333; Stats. 1943 s. 66.405 (17); 1947 c. 362; Stats. 1947 s. 66.416; 1969 c. 276 s. 592 (7).

66.417 History: 1943 c. 333; Stats. 1943 s. 66.405 (18); 1947 c. 362; Stats. 1947 s. 66.417; 1965 c. 252.

66.418 History: 1943 c. 333; Stats. 1943 s. 66.405 (19); 1947 c. 362; Stats. 1947 s. 66.418.

66.419 History: 1943 c. 333; Stats. 1943 s. 66.405 (20); 1947 c. 362; Stats. 1947 s. 66.419.

66.42 History: 1943 c. 333; Stats. 1943 s. 66.405 (21); 1947 c. 362; Stats. 1947 s. 66.42.

66.421 History: 1943 c. 333; Stats. 1943 s. 66.405 (22); 1947 c. 362; Stats. 1947 s. 66.421.

66.422 History: 1943 c. 333; Stats. 1943 s. 66.405 (23); 1947 c. 362; Stats. 1947 s. 66.422.

66.424 History: 1943 c. 333; Stats. 1943 s. 66.405 (25); 1947 c. 362; Stats. 1947 s. 66.424.

66.425 History: 1943 c. 333; Stats. 1943 s. 66.405 (26); 1947 c. 362; Stats. 1947 s. 66.425.

66.43 History: 1945 c. 519; Stats. 1945 s. 66.406; 1947 c. 143, 362; Stats. 1947 s. 66.43; 1949 c. 379, 592; 1951 c. 261 s. 10; 1953 c. 504; 1955 c. 682; 1965 c. 252.

On taking private property for public use see notes to sec. 13, art. I; and on property taken by a municipality see notes to sec. 2, art. XI.

Under 66.43, Stats. 1953, a city may acquire and assemble areas to carry out the purposes of the statute, may contract with respect to property acquired under authority of the statute, and may lease or sell such property to private persons or redevelopment corporations in the manner provided by the statute. David Jeffrey Co. v. Milwaukee, 267 W 559, 66 NW (2d) 362.

See note to 66.40, citing Prechel v. Monroe, 40 W (2d) 231, 161 NW (2d) 673.

The old age and senility of the city. Simes, 50 MLR 415.

The uniformity clause, assessment freeze laws, and urban renewal. Kinnamon, 1965 WLR 885.

66.431 History: Spl. S. 1958 c. 3; 1959 c. 410, 515, 613; Stats. 1959 s. 66.431; 1961 c. 202, 526; 1963 c. 6, 331; 1965 c. 219, 220, 252; 1965 c. 433 s. 73.

Counties may establish programs of assist-

ance to local urban renewal projects under authority granted by 66.431 (13) and 66.435 (6), Stats. 1967. 56 Atty. Gen. 216.

66.432 History: 1967 c. 218; Stats. 1967 s. 66.432.

The mediation of civil rights disputes: open housing in Milwaukee. Bartell, Buss and Stege, 1968 WLR 1126.

66.4325 History: 1967 c. 273; Stats. 1967 s. 66.4325.

66.433 History: 1963 c. 543; Stats. 1963 s. 66.433; 1965 c. 615; 1967 c. 226; 1969 c. 276 s. 605.

66.435 History: 1955 c. 485, 652; Stats. 1955 s. 66.435; 1959 c. 474.

66.436 History: 1959 c. 565; Stats. 1959 s. 66.436.

66.44 History: 1943 c. 188; Stats. 1943 s. 66.41; 1947 c. 362; Stats. 1947 s. 66.44.

66.45 History: 1963 c. 311; Stats. 1963 s. 66.45.

66.47 History: 1949 c. 53, 434; Stats. 1949 s. 66.47; 1955 c. 28; 1957 c. 60, 610.

66.50 History: 1915 c. 130; Stats. 1915 s. 959—130; 1919 c. 328 s. 34; Stats. 1919 s. 46.22; 1937 c. 432; Stats. 1937 s. 66.50; 1941 c. 129; 1947 c. 362 s. 2.

A regulation adopted by the governing board of a municipally owned and operated hospital, suspending the right of a duly licensed physician residing in the municipality to practice in such hospital, is not reasonable unless provision is made for notice to him of the nature of the charges against him, and for a hearing. Johnson v. Ripon, 259 W 84, 47 NW (2d) 328.

66.50 (1) (e) does not apply to the construction of an entirely new hospital but only to additions, improvements, or alterations of an existing hospital, and does not authorize a governing board to enter into a valid contract with an architectural firm for the furnishing of architectural services in connection with the erection of a proposed new hospital building. Ellerbe & Co. v. Hudson, 1 W (2d) 148, 83 NW (2d) 700.

66.501 History: 1969 c. 197; Stats. 1969 s. 66.501.

66.505 History: 1953 c. 598; Stats. 1953 s. 66.505; 1955 c. 10; 1957 c. 60.

66.508 History: 1955 c. 686; Stats. 1955 s. 66.508; 1957 c. 60.

66.51 History: 1939 c. 395; Stats. 1939 s. 66.51; 1943 c. 262; 1945 c. 454; 1947 c. 362 s. 2; 1953 c. 439; 1955 c. 686 s. 2, 3; 1959 c. 15; 1963 c. 419, 517; 1969 c. 276 ss. 602 (1), 603 (2).

On limitation on indebtedness see notes to sec. 3, art. XI; and on armories see note to 21.61.

Municipalities may build armories and lease that portion not needed for municipal purposes. 28 Atty. Gen. 663.

A city and county have authority to issue general obligation bonds to finance their respective shares of the cost of a joint city-county building. 40 Atty. Gen. 9.

See note to 59.07 (1), citing 45 Atty. Gen. 204.

66.52 History: 1957 c. 98; Stats. 1957 s. 66.52; 1961 c. 75.

On the public-purpose doctrine see notes to sec. 1, art. IV; and on limitation on indebtedness see notes to sec. 3, art. XI.

66.521 History: 1969 c. 278; Stats. 1969 s. 66.521.

On the public-purpose doctrine see notes to sec. 1, art. IV.

66.526 History: 1943 c. 386; Stats. 1943 s. 66.526; 1945 c. 306.

66.526, Stats. 1943, applies to aldermen as city officials. No statutory or constitutional provision qualifies this section to preclude aldermen from changing their salaries according to its provisions. 33 Atty. Gen. 8.

66.527 History: 1943 c. 471; Stats. 1943 s. 66.527; 1947 c. 223, 601.

66.53 History: 1941 c. 272; Stats. 1941 s. 66.53.

66.54 History: 1943 c. 278, 574; Stats. 1943 s. 66.54; 1947 c. 538; 1955 c. 62; 1959 c. 448; 1965 c. 252; 1969 c. 108, 189.

Under a city charter (ch. 124, Laws 1891), special assessments covered by certificates do not become the property of the city or county at any stage of the proceedings, but at all times remain private property. State ex rel. Donnelly v. Hobe, 106 W 411, 82 NW 336.

The definition of "public improvement" in 66.54 (1) (d) applies only to this section. In re Bossell, Van Vechten & Chapman, 30 W (2d) 215, 140 NW (2d) 255.

66.60 History: 1945 c. 269, 506; Stats. 1945 s. 66.60; 1947 c. 388; 1949 c. 231; 1951 c. 261 s. 10; 1951 c. 534; 1953 c. 429; 1955 c. 560; 1957 c. 130; 1957 c. 610 s. 47; 1957 c. 663 s. 6, 7; 1959 c. 448; 1965 c. 252.

On exercises of police power and taxing power see notes to secs. 1 and 13, art. I; on legislative power generally see notes to sec. 1, art. IV; and on the rule of taxation (property taxes) see notes to sec. 1, art. VIII.

Where, under a city charter, special assessments are made to finance local improvements, such assessments should be made against the adjoining lots separately. Jenkins v. Rock County, 15 W 11. See also: Cramer v. Janesville, 20 W 305; State ex rel. Roe v. Williston, 20 W 228; Hamilton v. Fond du Lac, 25 W 490; Siegel v. Outagamie County, 26 W 70; and Whittaker v. Janesville, 33 W 77.

Where, under a city charter, the assessment made upon the lots subject thereto was unequal, a party who claims that he was charged too much is aggrieved and has a right to have that question tried on appeal. Teegarden v. Racine, 56 W 545, 14 NW 614.

Unless a lot owner shows that he was injured by the failure of a contractor to complete a street improvement according to the terms of his contract he cannot avoid a tax certificate based upon an assessment therefor. An assessment against the owner of a lot which abuts upon a street which has been

improved is not avoided by a conveyance of a strip of such lot one foot in width along such street, the conveyance being made without consideration in anticipation of the improvement, for the purpose of relieving the balance of the lot from liability, and with understanding that a reconveyance should be made on request. Fass v. Seehawer, 60 W 525, 19 NW 533.

The principal object of notice is to give the lot owner an opportunity to appeal. A failure to publish it is fatal to the proceedings. Fass v. Seehawer, 60 W 525, 19 NW 533; Ward v. Walters, 63 W 39, 22 NW 844.

Where repaving a street can be accomplished without interfering with the operation of a street railway, a contractor will be enjoined from such interference if the city has not delegated to him authority to stop the running of cars. Milwaukee S. R. Co. v. Adlam, 85 W 142, 55 NW 181.

Since the powers conferred by a city charter are necessarily somewhat arbitrary, the courts have applied strict rules to proceedings of this kind. It is not necessary to show special damages. Jurisdiction depends upon the authorities proceeding, step by step, substantially in the manner prescribed. The failure to take any step required takes away the power to proceed. Leibermann v. Milwaukee, 89 W 336, 346, 61 NW 1112. See also: Mitchell v. Milwaukee, 18 W 92 (injunction; work relet without notice); Kneeland v. Milwaukee, 18 W 411; Myrick v. La Crosse, 17 W 442; Wells v. Burnham, 20 W 112; Pound v. Supervisors of Chippewa County, 43 W 63; Hall v. Chippewa Falls, 47 W 267, 2 NW 279; Dean v. Borschenius, 30 W 237; Gilman v. Milwaukee, 61 W 588, 21 NW 640; State ex rel. Moore v. Ashland, 88 W 599, 60 NW 1001; Beaser v. Ashland, 89 W 28, 61 NW 77; Dieckmann v. Sheboygan County, 89 W 570, 62 NW 410; Hayes v. Douglas County, 92 W 429, 65 NW 482.

An assessment upon property fronting the improvement only, with nothing to show that the officers exercised their judgment in determining that no other property was benefited, is presumed to be unequal and unjust, and equitable relief may be obtained against it without paying any part of tax so assessed. When it is required that the assessment shall be according to benefits accruing to each parcel, an assessment by the frontage rule is not necessarily erroneous yet it is presumed to be so unless the return shows that the board has considered that matter and finds that the benefits are in the proportion of the frontage of each parcel. Hayes v. Douglas County, 92 W 429, 65 NW 482.

Where the charter expresses that the expense of maintaining and keeping in repair the streets and pavements shall be paid out of a particular fund, it is illegal to include in a contract for paving any charge for keeping in repair the pavement for a series of years, and such charge is fatal to the validity of an assessment. Boyd v. Milwaukee, 92 W 456, 66 NW 603.

Unless a literal compliance in regard to mere matters of form in imposing assessments is expressly required, failure in this regard will not warrant equitable relief, if there has been a substantial compliance in all things designed to safeguard the interests of property owners. Gleason v. Waukesha County, 103 W 225, 79 NW 249.

A city not liable for injury caused by defective plans. The power to adopt plans is quasi-judicial. The rule does not apply to construction not according to any plan adopted according to law. The city is liable for knowingly omitting to repair defects in a system. A lot owner constructing private drain from such public sewer and sustaining injury caused thereby may recover. Hart v. Neillsville, 125 W 546, 104 NW 699.

Where the excess of benefits over damages accruing to an abutting owner has been ascertained and all of the conditions precedent have been performed, but there are certain legal defects, payment by a property owner without protest constitutes a waiver as to any errors which might have defeated the assessment. Pabst B. Co. v. Milwaukee, 126 W 110, 105 NW 563.

Where a city council is proceeding to pave streets, the fact that the power conferred is irregularly exercised does not make the proceeding void. Lawton v. Racine, 137 W 593, 119 NW 331.

Where the actual cost of constructing a work is less than the estimate such actual cost must govern and the assessment must be reduced. Hardy v. Waukesha, 146 W 277, 131 NW 352.

On an appeal from the common council all grievances of the property owner arising out of the proceedings taken by the common council may be investigated. The court may determine whether or not there were fatal omissions in the proceedings taken by the municipality and may award such relief as is required. Newton v. Superior, 146 W 308, 130 NW 242, 131 NW 986.

The appeal provided by statute is exclusive remedy of the lot owner. Newton v. Superior, 146 W 308, 130 NW 242, 131 NW 986; Nelson v. Waukesha, 147 W 163, 132 NW 887.

Under ch. 539, Laws 1909, it is not necessary that a property owner in proceedings to grade a street should appear before the board of public works or the city council and make objections in order to entitle him to appeal. Dunn v. Superior, 148 W 636, 135 NW 145.

The assessment of benefits, when confirmed or corrected by the common council as provided by the city charter, fixes the maximum amount that may be charged against a parcel of land but the exact amount cannot be fixed until a bid has been accepted and the amount chargeable to the city determined. It is not necessary that a contract for street paving should be let immediately after the proceedings for the assessment of benefits are completed. Even after the lapse of a year or 2 the proceeding may be resumed. Warner v. Ashland, 154 W 54, 142 NW 513.

An appeal from an award of benefits and damages brings up for review the whole proceeding and the landowner is entitled to any appropriate relief. The matter of assessments is purely statutory and does not entitle parties to a jury trial as a legal right. Bekkedal v. Viroqua, 183 W 176, 196 NW 879, 197 NW 707.

Where the deputy city clerk made a written endorsement of service on the notice of

appeal from an assessment of benefits and damages of realty in proceedings by the city, and stated that he thought the appeal bond was all right and that he recognized the surety company as being qualified to act, there was a sufficient and valid approval of the bond, State ex rel. Sisson v. Kalk, 197 W 573, 223 NW 83.

The remedy of a landowner aggrieved by a sewer assessment in a village is by appeal therefrom in the manner and within the time prescribed for an appeal in the case of an assessment in a city, and not by an action to vacate the assessment. George Williams College v. Williams Bay, 242 W 311, 7 NW (2d) 891.

Where property owners were never given notice of a special assessment nor opportunity to be heard as to the amount thereof, nor given notice of the final determination of the amount, they could bring an action later to set aside the special assessment and to recover payments made. Boden v. Lake, 244 W 215, 12 NW (2d) 140.

The power to levy special assessments for public improvements is purely statutory, and the statutes must be strictly complied with. Marquette Homes, Inc. v. Greenfield, 244 W 588, 13 NW (2d) 61.

Constructive notice given by a city by publication of certain proposed special assessments against plaintiff's land did not meet the requirements of due process. Wisconsin E. P. Co. v. Milwaukee, 275 W 121, 81 NW (2d) 298.

In a proceeding in circuit court against a city to set aside a special assessment levied for street-widening improvements, wherein it was established that the city had proceeded exclusively under 66.60, in the exercise of the city's general taxing power, and had not filed a statement or schedule of benefits pursuant to 66.60 (3) (d), the city was estopped from asserting that the improvements were made under the police power and were valid as an exercise of such power. Thomas v. Waukesha, 19 W (2d) 243, 120 NW (2d) 58.

In an action to contest an assessment under 66.60 (12), the appeal must be dismissed where plaintiff did not pay an assessment when due; this applies even if fraud is alleged which would extend the time limited for taking the appeal. Singer Bros., Inc. v. Glendale, 33 W (2d) 579, 148 NW (2d) 100.

See note to 21.615, citing 39 Atty. Gen. 246.

See note to 37.02, citing 40 Atty. Gen. 281.

Procedures, validity and enforcement of special assessments. Antieau, 35 MLR 315.

66.604 History: 1959 c. 565; Stats. 1959 s. 66.604.

66.605 History: 1953 c. 407; Stats. 1953 s. 66.605; 1955 c. 426; 1959 c. 448.

66.615 (1) History: 1889 c. 326 s. 174; Ann. Stats. 1889 s. 925t sub. 174; Stats. 1898 s. 925—174; 1921 c. 242 s. 143; Stats. 1921 s. 62.17 (1); 1957 c. 131 s. 10; Stats. 1957 s. 66.615 (1); 1963 c. 43.

On exercises of police power see notes to secs. 1 and 13, art. I; and on legislative power generally see notes to sec. 1, art. IV.

62.17, Stats. 1925, is not applicable to cities of the first class. Smith v. Clayton C. Co. 189 W 91, 206 NW 67.

62.17, Stats. 1937, does not limit liability under 81.15 for sidewalk defects to persons on foot. LeMay v. Oconto, 229 W 65, 281 NW 688.

Whether a particular use of a public sidewalk, other than for persons on foot, such as for the temporary deposit of goods, is reasonable and necessary is for the jury in an action for injuries sustained as the alleged result of such particular use, since all of the facts and circumstances which affect the situation are to be considered. Paulson v. Madison Newspapers, 274 W 355, 80 NW (2d) 421.

66.615 (2) History: 1889 c. 326 s. 201; Ann. Stats. 1889 s. 925u sub. 201; Stats. 1898 s. 925—201; 1921 c. 242 s. 143; Stats. 1921 s. 62.17 (2); 1957 c. 131 s. 10; Stats. 1957 s. 66.615 (2).

66.615 (3) History: 1889 c. 326 s. 202, 205; Ann. Stats. 1889 s. 925u sub. 202, 205; 1897 c. 138 s. 6; Stats. 1898 s. 925—202, 925—205; 1899 c. 173 s. 2; 1905 c. 159 s. 1; Supl. 1906 s. 925—205; 1907 c. 674; 1909 c. 425; 1911 c. 129; 1913 c. 375; 1921 c. 242 s. 144, 145, 147; Stats. 1921 s. 62.17 (3); 1925 c. 241; 1943 c. 193; 1953 c. 233; 1957 c. 131 s. 10; Stats. 1957 s. 66.615 (3); 1959 c. 448; 1963 c. 43.

Though a charter does not provide that contracts for building sidewalks at the expense of the lots in front of which they are made shall be let to the lowest bidder, if such contracts are made by private agreement with the city officers and are not made at reasonable prices, with proper regard for the property owner's interests, equity will grant relief against them. Cook v. Racine, 49 W 243, 5 NW 352.

If a charter provides that lot owners are to be notified to do work on streets adjoining their lots before contracts for doing it shall be let, an assessment upon the lot to pay for work done under a contract, no notice having been given, is invalid. Johnston v. Oshkosh, 21 W 184; Rork v. Smith, 55 W 67, 12 NW 408.

The option given the lot owner to improve an adjacent street is a favor, and the provision in the charter of Milwaukee concerning notice to him by publication is valid. Fass v. Seehawer, 60 W 525, 19 NW 533.

The lot owner is a party interested in proceedings, and may insist that the course of action prescribed be followed in making sidewalk improvements. The city is limited to the course prescribed, and is liable for injuries resulting from illegal proceedings. Waukesha v. Randles, 120 W 470, 98 NW 237.

A city charter provision making it the duty of the owners or occupants of premises in front of which sidewalks are located to keep such walks in repair or pay the expenses incurred by the municipality in doing so does not impliedly make such owners or occupants liable to travelers for injuries occasioned by the walks being out of repair. Hay v. Baraboo, 127 W 1, 105 NW 654.

Under a city charter empowering the board of public works to keep sidewalks in repair or to take up and relay them, there can be no special assessment as for a new sidewalk when an old sidewalk is repaired or rebuilt. Ricketson v. Milwaukee, 155 W 327, 144 NW 1101.

Sec. 925—205, Stats. 1919, made it the duty of the abutting lot owner to repair a culvert under the sidewalk in front of his premises so that it would not obstruct the flow therefrom of surface water, even in a case where it was also the duty of the city to keep the culvert clear and also notwithstanding the fact that the premises were occupied by a tenant. Adlington v. Viroqua, 155 W 472, 144 NW 1130.

The responsibility of care and maintenance of a public sidewalk in a city rests on the municipality. Miller v. Welworth Theatres, 272 W 355, 75 NW (2d) 386.

66.615 (5) History: 1889 c. 326 s. 206; Ann. Stats. 1889 s. 925u sub. 206; Stats. 1898 s. 925—206; 1921 c. 242 s. 151; Stats. 1921 s. 62.17 (5); 1957 c. 131 s. 10; Stats. 1957 s. 66.615 (5).

Neither 66.615 (5) nor an ordinance requiring property owners to keep their walks clear of snow and ice creates any liability on the owner or occupant to a person who falls on a rough or slippery walk made so by natural causes. Walley v. Patake, 271 W 530, 74 NW (2d) 130.

66.615 (6) History: 1899 c. 20 s. 1; Supl. 1906 s. 925—205a; 1921 c. 242 s. 153; Stats. 1921 s. 62.17 (6); 1947 c. 199; 1957 c. 131 s. 10; Stats. 1957 s. 66.615 (6).

66.615 (7) History: 1889 c. 326 s. 207; Ann. Stats. 1889 s. 925u sub. 207; Stats. 1898 s. 925—207; 1921 c. 242 s. 154; Stats. 1921 s. 62.17 (7); 1957 c. 131 s. 10; Stats. 1957 s. 66.615 (7).

66.615 (10) History: 1957 c. 131 s. 21; Stats. 1957 s. 66.615 (10).

66.62 History: 1929 c. 375; Stats. 1929 s. 62.195; 1931 c. 287; 1933 c. 213; 1957 c. 131 s. 13, 22; Stats. 1957 s. 66.62; 1959 c. 448.

An objecting owner is entitled to examine members of board of public works and city officials who participated in making an assessment, but the fact that assessments as to benefits were uniform along a given street does not necessarily indicate the adoption of an arbitrary front-foot rule. Peterson v. Phillips, 189 W 246, 207 NW 268.

66.625 History: 1957 c. 131 s. 23; Stats. 1957 s. 66.625.

66.63 History: R. S. 1878 s. 903; 1897 c. 287 s. 58; 1897 c. 365 s. 5; Stats. 1898 s. 903, 959—64; 1907 c. 354; 1917 c. 181; 1919 c. 571 s. 2; 1919 c. 691 s. 36; Stats. 1919 s. 61.37, 959—64; 1921 c. 242 s. 216, 269; Stats. 1921 s. 61.37, 62.22 (5) (b); 1927 c. 74; 1931 c. 325; 1931 c. 476 s. 5; 1933 c. 187 s. 1, 2; 1943 c. 205; 1957 c. 131 s. 1, 15, 24; Stats. 1957 s. 66.63; 1959 c. 640; 1965 c. 252.

The ultimate liability for the value of property taken rests upon the municipality, and all the taxable property therein is liable for the payment of any sum which may not be realized from the special assessment made. State ex rel. Burbank v. Superior, 81 W 649, 51 NW 1014.

Where damages and special benefits have been assessed for the actual taking of land and the latter deducted from the former, such benefits cannot again be assessed against other lands owned by the same proprietor. Stoughton S. Bank v. Stoughton, 159 W 330, 150 NW 418.

66.635 History: 1957 c. 131 s. 25; Stats. 1957 s. 66.635.

Editor's Note: For cases construing earlier forms of this section see notes to 75.53, 75.56 and 75.57, Wis. Annotations, 1950.

Where a court declared a special assessment invalid, the city could reassess the benefits against the property even though there was a total failure to comply with procedural requirements before making the improvement. If the owner is protected against an excessive assessment, his rights are not impaired by the statutory waiver of procedural steps. Extrom v. Tomahawk, 257 W 348, 43 NW (2d) 357.

66.64 History: 1903 c. 425 s. 1; Supl. 1906 s. 1210k; 1911 c. 360; 1911 c. 664 s. 55; 1921 c. 18 s. 69; 1921 s. 75.65; 1941 c. 140; 1957 c. 131 s. 28; Stats. 1957 s. 66.64; 1961 c. 472, 670; 1967 c. 291 s. 14; 1969 c. 276 s. 588 (2); 1969 c. 392 s. 87 (11).

The portion of a railway company's right-of-way abutting on a street is liable for special assessments for improvements of such street. (The statement in Chicago, M. & St. P. R. Co. v. Milwaukee, 89 W 506, 62 NW 417, that a railway company's right of way is not benefited by the improvement of the street on which it abuts is overruled.) Chicago, M. & St. P. R. Co. v. Milwaukee, 148 W 39, 133 NW 1120.

In estimating the benefits to railroad property by local improvements its adaptability for other and general uses in the future should be considered. Superior v. Lake Superior T. & T. R. Co. 152 W 389, 140 NW 26.

The amendment of this section in 1903 to refer to "every other corporation or company whatever" did not repeal an exemption from special assessment contained in a special cemetery association charter. Union Cemetery v. Milwaukee, 13 W (2d) 64, 108 NW (2d) 180.

Cemetery lands are subject to special assessment. 20 Atty. Gen. 182.

A municipality may not make special assessments on state-owned property until the highway commission declares the land unnecessary for a right-of-way. 54 Atty. Gen. 36.

66.645 History: 1903 c. 425 s. 2; Supl. 1906 s. 1210L; 1911 c. 360; 1921 c. 18 s. 70; Stats. 1921 s. 75.66; 1931 c. 169; 1933 c. 280; 1955 c. 488 s. 7; 1957 c. 131 s. 28; 1957 c. 560 s. 13; Stats. 1957 s. 66.645; 1965 c. 249.

An action under 1210L, Stats. 1913, by the owner of special assessment certificates to recover the amount of special assessments is an action on the certificates within the meaning of sec. 1183 (from which 75.21 was derived), and must be brought within 6 years. United States Nat. Bank v. Lake Superior T. & T. R. Co. 160 W 669, 152 NW 459.

66.65 History: 1961 c. 357; Stats. 1961 s. 66.65.

66.694 History: 1911 c. 444; Stats. 1911 s. 1299h—3; 1923 c. 108 s. 109; Stats. 1923 s. 81.21; 1927 c. 473 s. 28a; Stats. 1927 s. 66.21; 1957 c. 131 s. 19; Stats. 1957 s. 66.694.

66.695 History: 1911 c. 444; Stats. 1911 s. 1299h—4; 1923 c. 108 s. 110; Stats. 1923 s. 81.22; 1927 c. 473 s. 28a; Stats. 1927 s. 66.22; 1957 c. 131 s. 19; Stats. 1957 s. 66.695.

66.696 History: 1911 c. 444; Stats. 1911 s. 1299h—5; 1923 c. 108 s. 111; Stats. 1923 s. 81.23; 1927 c. 473 s. 28a; Stats. 1927 s. 66.23; 1955 c. 280; 1957 c. 131 s. 19; Stats. 1957 s. 66.696.

66.697 History: 1911 c. 444; Stats. 1911 s. 1299h—6; 1923 c. 108 s. 112; Stats. 1923 s. 81.24; 1927 c. 473 s. 28a; Stats. 1927 s. 66.24; 1957 c. 131 s. 19; Stats. 1957 s. 66.697.

66.698 History: 1911 c. 444; Stats. 1911 s. 1299h—7; 1923 c. 108 s. 113; Stats. 1923 s. 81.25; 1927 c. 473 s. 28a; Stats. 1927 s. 66.25; 1955 c. 280; 1957 c. 131 s. 19; Stats. 1957 s. 66.698.

66.699 History: 1911 c. 444; 1911 c. 664 s. 74; Stats. 1911 s. 1299h—8; 1923 c. 108 s. 114; Stats. 1923 s. 81.26; 1927 c. 473 s. 28a; Stats. 1927 s. 66.26; 1957 c. 131 s. 19; Stats. 1957 s. 66.699.

66.70 History: 1947 c. 18; Stats. 1947 s. 66.70.

66.75 History: 1967 c. 209; Stats. 1967 s. 66.75.

66.77 History: 1959 c. 289; Stats. 1959 s. 14.90; 1965 c. 209; 1969 c. 276 s. 62; Stats. 1969 s. 66.77.

A zoning appeals board, after a hearing, may hold a private meeting to deliberate and vote. It may have its attorney present, but may not allow other people to attend unless other interested parties are notified and allowed to attend. State ex rel. Cities S. O. Co. v. Board of Appeals, 21 W (2d) 516, 124 NW (2d) 809.

Synopsis of opinions involving anti-secrecy law. 49 Atty. Gen. Introduction p. v.; 54 Atty. Gen. Introduction p. i.

A rule of the WERB that mediator's functions under 111.70 be confidential and that mediation meetings be non-public would not violate the anti-secrecy law contained in 14.90. 52 Atty. Gen. 363.

Faculty meetings at Wisconsin state universities are subject to the provisions of 14.90, Stats. 1967, and must be publicly held. 57 Atty. Gen. 213.

66.80 History: 1937 c. 134; Stats. 1937 s. 62.29; 1953 c. 356; 1957 c. 610; Stats. 1957 s. 66.80.

66.805 History: 1961 c. 270; Stats. 1961 s. 66.805.

66.81 History: 1953 c. 356 s. 2; Stats. 1953 s. 62.30; 1957 c. 610 s. 25; Stats. 1957 s. 66.81; 1963 c. 267.

66.82 History: 1959 c. 110; Stats. 1959 s. 66.82; 1961 c. 189; 1969 c. 276 s. 598 (1), (3).

66.92 History: Spl. S. 1946 c. 1; 1947 c. 362; Stats. 1947 s. 66.92; 1953 c. 61; 1959 c. 228 s. 70; 1959 c. 641; 1969 c. 276.

66.92 (3) does not authorize the department of veterans' affairs to furnish and pay for assistance to a local housing authority in the form of drafting of blueprints and preparation of specifications and material requirements for specific buildings to be erected in the locality in connection with veterans' housing program. The board of veterans' affairs may assist municipalities of this state or their agencies in planning and executing building programs by furnishing information of a general educational nature, relative to such programs. 35 Atty. Gen. 394.

66.92 (1) gives a county board the power to enact a resolution providing that the county make certain buildings owned by it available for housing veterans attending certain educational institutions located in the county. The power to provide housing includes the power to furnish kitchen facilities. A county board has no power to enact a resolution providing that the county enter on a project whereby the county would supply meals or food to those veterans to whom it furnishes housing as provided in 66.92 (1). 35 Atty. Gen. 432.

66.93 History: 1947 c. 195; Stats. 1947 s. 66.93; 1949 c. 634.

66.94 History: 1949 c. 620; Stats. 1949 s. 66.94; 1951 c. 261 s. 10; 1951 c. 568; 1953 c. 197; 1955 c. 661; 1963 c. 158; 1965 c. 252; 1967 c. 26, 339.

66.941 History: 1963 c. 156; Stats. 1963 s. 66.941; 1969 c. 276; 1969 c. 500 s. 30 (2) (b), (e).

The duties and authority of the state highway commission under ch. 156, Laws 1963, are discussed in 52 Atty. Gen. 374.

The function of the transit right-of-way authority is to acquire and hold abandoned rights-of-way for possible use in the future and not to engage in the financing or constructing of a mass transportation system. 53 Atty. Gen. 141.

66.943 History: 1969 c. 457; Stats. 1969 s. 66.943.

66.945 History: 1955 c. 466; Stats. 1955 s. 66.945; 1959 c. 596, 641; 1961 c. 104, 256; 1965 c. 167, 221, 252; 1967 c. 211 s. 21 (1).

Cooperative regional planning can be carried out by several municipalities by agreement under 66.30 subject to statutory limitations; but the provisions of 66.945 would not apply to such arrangement except as specifically incorporated into a contract by the municipalities, within the scope of their authorized function. 47 Atty. Gen. 52.

Functions of a regional planning commission and local govermental units under 66.945 are discussed in 47 Atty. Gen. 105.

Highway traffic surveys can be conducted by regional planning commissions. 52 Atty. Gen. 139.

Control of land use to protect and promote growth of recreational value of northern areas. Waite, 42 MLR 271.

66.95 History: 1953 c. 529; Stats. 1953 s. 66.95; 1965 c. 249.

This section was passed as a crime deterrent, not to protect third persons from the conduct of thieves. Causal negligence cannot be attributed to the owner who violates the or-

dinance. Meihost v. Meihost, 29 W (2d) 537, 139 NW (2d) 116.

Liability for harm caused by stolen automobiles. Peck, 1969 WLR 909.

CHAPTER 67.

Municipal Borrowing and Municipal Bonds.

The Revisor's Notes in Wis. Annotations, 1930, pp. 428 to 436, give the source of each section of this chapter created by ch. 576, Laws 1921.

67.01 History: 1921 c. 576 s. 3; Stats. 1921 s. 67.01; 1923 c. 108 s. 148; 1923 c. 274 s. 9, 10; 1925 c. 385 s. 1, 6; 1939 c. 237, 474; 1943 c. 278; 1947 c. 362; 1959 c. 446; 1963 c. 157, 572; 1965 c. 218, 369; 1967 c. 26, 47; 1969 c. 55, 241.

"The value of taxable property," spoken of in 67.01 (4) and also in sec. 3, art. XI, means the value as determined by the local board of review, in the last assessment, and not the equalized valuation made by the county board. School Dist. v. First W. Co. 187 W 150, 203 NW 939.

A "county nursing home" for the care and treatment of the aged infirm and chronic invalids would be a "county building" under 67.01 (1) (a), Stats. 1957, which the county could provide by the issuance of its general obligation bonds. 48 Atty. Gen. 26.

67.015 History: 1947 c. 362 s. 2; 1947 c. 417; Stats. 1947 s. 67.015.

67.02 History: 1921 c. 576 s. 3; Stats. 1921 s. 67.02; 1925 c. 385 s. 1, 6; 1969 c. 276 s. 608.

On legislative power generally see notes to sec. 1, art. IV.

The subject of submission of proceedings and bonds to the attorney general for approval and certification is discussed in 12 Atty. Gen. 12 and 14 Atty. Gen. 236.

If the certified copy of bond proceedings submitted to the attorney general's office under 67.02 (3), Stats. 1947, were in proper form, said office probably would approve the bond proceedings notwithstanding the fact that a referendum would be held in the near future upon the adoption of a charter ordinance purporting to restrict the issuance of bonds. 37 Atty. Gen. 425.

67.03 History: 1921 c. 576 s. 3; Stats. 1921 s. 67.03; 1925 c. 385 s. 1, 6; 1943 c. 20; 1951 c. 339; 1955 c. 220 s. 3, 4; 1959 c. 19 s. 23; 1961 c. 114, 222, 355, 602; 1963 c. 157; 1965 c. 218; 1967 c. 92 s. 22; 1969 c. 276 s. 590 (1); 1969 c. 392.

Revisor's Note, 1921: The second subsection limits the limitation in accordance with the decision in State ex rel. Marinette T. W. R. Co. v. Tomahawk Council, 96 W 73. [Bill 23-S, s. 3]

On limitation on indebtedness and on direct annual tax see notes to sec. 3, art. XI.

A city has no authority to pledge individual school property as security for the issuance of bonds. 12 Atty. Gen. 511.

The Madison school district and the city of Madison are not separate municipalities, and the board of education of the city has no power to levy taxes for school purposes. Such power is vested solely in the common council, subject to the limitation provided by 62.12 (4), Stats. 1923. 13 Atty. Gen. 440.

Municipal borrowing by means of general obligation bonds. Quarles, 12 MLR 18.

67.035 History: 1933 c. 101, 177; Stats. 1933 s. 67.035.

67.04 (Intro. par.) History: 1921 c. 576 s. 3; Stats. 1921 s. 67.04 (intro. par.); 1925 c. 385 s. 6.

On legislative power generally and on the public-purpose doctrine see notes to sec. 1, art. IV.

The power to become indebted and its limits. Kiernan, 1964 WLR 173, 549.

67.04 (1) History: 1921 c. 576 s. 3; Stats. 1921 s. 67.04 (1); 1923 c. 228; 1923 c. 274 s. 8; 1925 c. 385 s. 6; 1929 c. 348; 1931 c. 475 s. 14; Spl. S. 1931—32 c. 9; 1933 c. 57; 1935 c. 321, 450; 1935 c. 550 s. 406; 1937 c. 55; 1939 c. 24, 395; 1943 c. 179; 1943 c. 334 s. 9; 1945 c. 301; 1947 c. 50, 219, 606; 1949 c. 12, 53, 334, 390; 1951 c. 302, 330, 441; 1953 c. 570, 673; 1955 c. 146 s. 16; 1955 c. 471, 574; 1957 c. 17, 328, 380; 1959 c. 227; 1959 c. 441 s. 12; 1961 c. 62, 355, 371; 1963 c. 157, 414; 1963 c. 419 s. 3; 1965 c. 54; 1967 c. 92 s. 22; 1969 c. 76, 92; 1969 c. 276 ss. 590 (1), 602 (1), 603 (2), 616.

A resolution for issuance of county highway improvement bonds under the provision of 67.04 (1) (c) is not a resolution for issuance of highway bonds under 67.13 and 67.14; it must contain statements and other information and comply with the requirements of 67.05 (1) and be submitted to and approved by electors in accordance with 67.05 (4). 14 Atty. Gen. 70.

For discussion of financing and leasing of county armories, see 28 Atty. Gen. 663.

A county may not issue general obligation bonds under ch. 67 to finance the cost of fireproofing an existing, previously completed asylum. 37 Atty. Gen. 439.

Bonds may be issued to build a grandstand on county-owned fairgrounds as provided in 59.69 (2), Stats. 1949, where electors have authorized the county board to conduct a county fair pursuant to 59.865. No referendum vote on such bond issue is required. 39 Atty. Gen. 367.

A city and county may construct a joint city-county building which will be known as a "Safety Building" and which will be used for courthouse and city hall purposes. 40 Atty. Gen. 9.

A county does not have the power to issue bonds for the purpose of acquiring a site to be used for a county building under 67.04 (1) (a), unless the building falls within one of the categories for which the issuance of bonds for site acquisition is specifically authorized in ch. 67. 40 Atty. Gen. 176.

Construction of a county courthouse under 67.04 (1) (a) is a different municipal purpose than the construction of a joint county-city building under 67.04 (1) (q). The proceeds of bonds issued and sold by a municipality for one purpose may not be validly diverted to other purposes or uses. 40 Atty. Gen. 287.

Where a city is operating under the city school plan, 40.50-40.60, Stats. 1951, the issuance of bonds by the city to construct schools is under 67.04 (2) (b). 41 Atty. Gen. 324.

A county which proposes to issue bonds under 67.04 (1) (q) to finance its share of the