

## CHAPTER 40.

## SCHOOL DISTRICTS.

40.01	Definitions and interpretations.	40.42	High school board; election, terms, powers.
40.02	Classification.	40.43	City school superintendent.
40.03	Common school district meetings; notice, time, conduct.	40.44	Vocational training in high schools.
40.04	Powers of annual district meeting.	40.46	Junior high school; senior high school.
40.05	Special duties of district meeting.	40.47	High schools; admittance; tuition.
40.06	Powers of special district meeting.	40.475	Transportation of nonresident high school pupils.
40.07	District board; election, term, referendum.	40.48	High school taxes.
40.08	School ground fences.	40.49	Free lectures.
40.09	Duties of director.	40.50	City school plan.
40.10	Bond and duties of treasurer.	40.51	City is a school district.
40.11	Duties of clerk.	40.52	City school board.
40.12	Forfeitures enforced by voter.	40.53	City school board, powers and duties.
40.13	Census report of clerk.	40.535	Tuition in schools above eighth grade.
40.14	School officers, not to be book agents.	40.54	City school funds; construction work.
40.15	District board; meetings, duties.	40.55	City school budget and tax levy.
40.16	School board; powers and duties; school property and affairs; custody and management.	40.56	Taxation of attached territory.
40.17	School equipment.	40.57	Disbursements of city school funds.
40.171	Poor school children; temporary aid.	40.58	City superintendent of schools; powers, duties, eligibility.
40.18	Claim against district, enforcement.	40.59	City technical schools.
40.19	Conduct of school; school month; teacher's allowance.	40.60	City school board proceedings; publication.
40.20	Exchange of teachers.	40.605	Power of cities to provide salaries for board members.
40.21	Conduct of common schools.	40.61	County high schools.
40.22	Curriculum.	40.62	High school; how established in common school district.
40.226	Instruction in food and health value of dairy products.	40.63	Joint high school district; established by common districts.
40.23	School funds; depositories.	40.64	Union high school district; established.
40.24	Uniform textbooks for county.	40.65	Joint ownership of school building.
40.25	Uniform textbooks; selection and use.	40.66	Alteration of union high school districts.
40.26	Purchase of textbooks; bids.	40.68	Annexation to high school district.
40.27	Application of sections 40.24 to 40.26.	40.69	High school districts, dissolution.
40.28	Textbooks; home-study courses; conditions of sale; bond, penalties.	40.70	Compulsory school attendance.
40.29	Textbooks; lists, purchase, agents.	40.71	Indian reservation schools.
40.30	Common school districts; creation, alteration, dissolution.	40.72	School census and reports.
40.31	School district; validation; lost records.	40.73	Truancy.
40.33	Dissolution of district by neglect to keep school.	40.74	Frances Willard Day.
40.34	Transportation, board, lodging.	40.75	Columbus Day.
40.344	High school transportations; requirements.	40.76	Leif Erikson Day.
40.345	Compulsory insurance on school busses; penalty.	40.765	American Creed Day.
40.347	Color of school busses.	40.766	Indian Rights Day.
40.348	Term of transportation contracts.	40.77	Textbooks censored.
40.35	Consolidation of schools by referendum.	40.775	Race, religious, political discrimination as to teachers prohibited.
40.36	Rural schools named; mail facilities.	40.78	Superior school board election.
40.37	Graded schools; special state aid.	40.79	Curative act; pay for benefit received.
40.38	School property for public meetings, rents.	40.86	Towns made school districts in Milwaukee county.
40.39	State aid to graded, junior and senior high schools.	40.87	Common school equalization aid.
40.40	High school district meetings and elections; call, notice, conduct.	40.88	Aid to counties maintaining institutions having schools.
40.41	Powers of high school district meetings.	40.89	School safety patrols.
		40.895	Marking school zones.
		40.90	Senior students entering military service; diplomas and credits.
		40.99	Retirement; election.

40.01 Definitions and interpretations. As used in this chapter, unless a contrary meaning is manifest:

"Board" means school district board or other body having charge of the schools of any district.

"District" means school district.

"District schools" mean the kind of schools which the legislature is commanded, by section 3, article X, of the constitution, to establish and make as nearly uniform as practicable.

"Grade teacher" means a person who teaches in grades below the ninth.

"Joint school district" means a school district whose territory is not wholly in one municipality.

"Municipality" includes town, city and village.

"Public schools" means the common schools and the high schools supported by public taxation.

"Parents" include guardians and other persons who occupy the place of parents.

"Rural school" and "rural district" means a school or a district which is wholly outside of villages and cities.

The distance between a pupil's home and school, or between two schools, shall be measured from building to building, along the usually traveled route.

**Note:** No minimum number of pupils is necessary to constitute school. 27 Atty. Gen. 228.

40.015 [Renumbered section 40.32 by 1927 c. 425 s. 71]

40.02 **Classification.** (1) **SCHOOL GRADES.** The primary and secondary educational work of the public schools is divided into twelve grades (besides the kindergarten) which are numbered from one to twelve beginning with the lowest. The first eight are the common school grades. The other four are the high school grades. This classification is not a limitation of the character of work or the studies that may be carried on in either the common or the high schools.

(2) **SCHOOLS.** The common schools are classified as graded and ungraded. A common school which has only one teacher is ungraded. All other common schools are graded schools.

(3) **DISTRICTS.** The territorial unit for school work is the school district. School districts are classed as common school districts and high school districts and city school districts.

40.025 [Repealed by 1927 c. 425 s. 107]

40.03 **Common school district meetings; notice, time, conduct.** (1) The annual meeting in all common school districts shall be on the second Monday of July, at eight o'clock in the afternoon, but a different hour may be fixed by an annual meeting for the next annual meeting.

(2) The first school meeting in any district shall be considered an annual meeting.

(3) The clerk shall give at least six days' notice of the annual meeting by posting notices therefor in four or more public places in the district, one of which shall be affixed to the outer door of the schoolhouse, if there be one; and he shall give like notice for any adjourned meeting, if the adjournment be for more than one month, but no annual meeting shall be deemed illegal for want of notice.

(4) Special meetings shall be called by the clerk, or, in his absence, by the director or treasurer, on the written request of five electors, or may be called by the board on its own motion, and notice thereof, specifying particularly the business to be transacted, shall be given in the manner prescribed for noticing the annual meeting.

(5) If a newspaper is published in the school district, the notice of a school meeting shall be given by publication in such newspaper by printing the notice in two successive issues, the last of which shall be not more than eight days nor less than one day before the day of the meeting. The special meeting, if no hour is fixed in the notice, shall be held at eight o'clock in the afternoon. Proper newspaper publication of the notice of a school meeting shall be in lieu of the posting and of the personal service of the notice.

(6) If any person offering to vote at a school district meeting shall be challenged, the chairman shall state to the person challenged the qualifications of a voter, and if such person shall declare that he is a voter, and if such challenge shall not be withdrawn, the chairman shall tender to him the following oath or affirmation: You do solemnly swear (or affirm) that you are an actual resident of this school district and that you are qualified, according to law, to vote at this meeting. Every person taking such oath or affirmation shall be permitted to vote, but if he shall refuse to take such oath or affirmation his vote shall be rejected. [1931 c. 188]

**Note:** Request for special meeting to vote conduct of such meeting is discussed. 23 on question of improving school building and Atty. Gen. 786.

40.04 **Powers of annual district meeting.** The annual common school district meeting shall have power:

(1) **CHAIRMAN AND CLERK.** To appoint a chairman and, in the absence of the clerk, to appoint some person to act in his stead.

(2) **ADJOURNMENT.** To adjourn, from time to time.

(3) **ELECT SCHOOL BOARDS.** Except as provided in subsection (8) of section 40.07, to choose a director, treasurer and clerk, by ballot, and a majority of the votes shall be necessary for a choice.

(4) **BUILDING SITES.** To designate sites for district schoolhouses or teacherages.

(5) **TAX FOR SITES, BUILDINGS, MAINTENANCE.** To vote a tax to purchase or lease suitable sites for school buildings, to build, hire or purchase schoolhouses or teacherages or outbuildings, and to furnish, equip and maintain the same.

(5a) **TAX FOR TRANSPORTATION VEHICLES.** To vote a tax to purchase, operate and maintain transportation vehicles and finance contracts for the use and services of such transportation vehicles and to purchase liability insurance for the same.

(6) **TAX FOR OPERATION, LIMITATION.** To vote a tax for the operation of the school, but the total tax voted in any year shall not exceed two and one-half per cent of the last assessment of the taxable property in the district, unless the district maintains a high school, in which case the tax limit shall be three per cent of such assessment.

(7) **SALE OF PROPERTY, PROVISIO.** To authorize and direct the sale of any property belonging to the district, when the same shall be no longer needed for the use of the district. Provided, that if the school site or other lands are to be abandoned but were acquired or are held upon condition that they should revert to the prior owner when no longer used for school purposes, the board shall sell the buildings or move them to another site within eight months after the buildings shall cease to be used for school purposes or the site ceases to be maintained as a district playground or park.

(8) **PAY DEBTS.** To levy such a tax as may be necessary to discharge any debts or liabilities of the district.

(10) **FREE TEXTBOOKS.** To authorize the board to furnish free textbooks for use in the school.

(11) **SCHOOL YEAR, NINE MONTHS MINIMUM.** To determine the length of time the school shall be taught during the current year (not less than nine months) but if it shall not be so determined the district board shall determine the same.

(12) **CONTROL OF LEGAL PROCEEDINGS.** To give direction and make provision for the prosecution or defense of any action or proceeding in which the district is interested.

(13) **SALARIES OF SCHOOL BOARD MEMBERS, LIMITATION.** To vote salaries to the members of the school board, but the salary to the treasurer and the director shall not exceed \$20 each and the salary to the clerk shall not exceed \$25, except that in districts with more than one common school the salary of each board member may be \$5 additional for each additional school, unless the district maintains a state graded or a high school. Limitations herein set forth shall not apply to school districts operating state graded schools, high schools with grades or high schools.

(14) **EMERGENCIES.** In case of destruction of school district buildings, the school board may, on its own order, provide for the educational needs of the district on a tuition basis.

(15) **SCHOOL LUNCHESES.** To direct the school board to furnish hot lunches to the pupils of the district and appropriate funds for that purpose.

(16) **NURSES AND DENTISTS.** To authorize the school district board of districts in counties containing less than 500,000 population to employ public health nurses and licensed dentists and to vote a tax for that purpose.

(17) **SCHOOL BUILDING SINKING FUND.** To vote a tax for the purpose of creating a sinking fund for the purpose of financing the construction of school buildings. All money raised through taxation pursuant to the provisions of this subsection shall be deposited by the district treasurer in a separate fund to be designated as a sinking fund to be used for the financing of the construction of school district buildings, and such money shall not be used for any other purpose or be transferred to any other fund except by authorization by a two-thirds majority vote, of the total number of residents of the district who are eligible to vote at a school district meeting. [1937 c. 42; 1939 c. 146; 1943 c. 80, 84, 108, 200; 43.08 (2); 1945 c. 51, 202, 451]

**Note:** Salary of clerk voted in excess of statutory maximum is illegal, and if paid, action for return thereof to district treasury may be maintained against all members of school board participating in such illegal payment. 19 Atty. Gen. 43.

School clerk elected irregularly at school district meeting is de facto officer and holds office until removed by judicial proceedings instituted by one showing paramount right to office. 24 Atty. Gen. 561.

School director may be elected at adjourned meeting of electors of school district. 20 Atty. Gen. 664; 26 Atty. Gen. 101.

Construction contract let by building committee appointed by school district meeting is void, since school district and school board may not delegate powers vested

in them by 40.04 (4) and (5) and 40.16 (1) 27 Atty. Gen. 349.

Common school district does not have legal authority to establish junior college. 29 Atty. Gen. 96.

Powers and duties of school district and board are limited to property under control of district. District may rent school building furnished by federal government on federal lands where additional facilities are required to accommodate children of district. Obligation of district to furnish school facilities for children of families residing in federal housing project on government-owned lands within district is same as its obligation to other children of district. 31 Atty. Gen. 266.

**40.05 Special duties of district meeting.** (1) **AUDITING COMMITTEE.** It shall be the duty of each annual common school meeting to appoint three competent electors of the district to examine all accounts, books, vouchers, money and property of the district after the last day of June following, and report their findings in writing to the next annual district meeting.

(2) **ADDITIONAL SCHOOL ROOM.** Whenever any school district, having a one-room schoolhouse shall have an average yearly attendance of more than fifty pupils, the next annual meeting shall make provision for an additional room and an additional teacher. Failure to comply with this subsection shall cause the district to forfeit the right to share in the apportionment in that part of the public money which said district would otherwise receive from the public school fund income as provided by law.

**40.06 Powers of special district meeting.** Special district meetings shall have the powers of the annual meeting, excepting the election of officers, but not more than two

special meetings shall be held in any year to consider or act upon the same subject, except that in counties having a population of five hundred thousand or more, not more than four special meetings shall be held in any year to consider or act upon the same subject. No tax shall be voted at a special meeting unless three-fourths of the electors shall have been notified in writing either personally or by written notice left at their places of residence, or by publication of the notice in a newspaper published in the district, stating the time, place and object of the meeting, and specifying the amount proposed to be voted, at least seven days before the time appointed therefor. The electors at a special meeting may vote a less amount than that stated in said notice but not a greater amount. [1935 c. 13]

**Note:** School district officers calling special meeting to vote on question of time extension for repayment of trust funds loan need not comply with notice provisions of this section. 22 Atty. Gen. 466.

**40.07 District board; election, term, referendum.** (1) The officers of the common school district shall be a director, treasurer and clerk, who shall be electors of the district, and shall hold their respective offices for three years and until their successors have been elected or appointed and qualified. At the first election of officers, the clerk shall be chosen for a term to expire on the second Monday of July following, and the treasurer for a term to expire one year later, and the director for a term to expire two years later than that of the clerk. The officers elected shall be notified thereof by the clerk of the meeting, within five days thereafter, and unless a person elected and notified shall, within ten days after his election, file with the clerk his refusal in writing to accept the office, he shall be deemed to have accepted the same.

(1a) Any school district with a population of 2,000 or more may, at any annual school district meeting or at any special school district meeting called for such specific purpose, by resolution adopted by a majority of the ballots cast in favor of such resolution, substitute for its district board consisting of 3 members a board consisting of 5 members to be elected at the next ensuing annual meeting or at the next ensuing annual referendum election as follows: The 2 members whose terms have not expired shall complete their respective terms and the respective offices for which they were elected. Three members who shall be electors of the district shall be elected, the one receiving the greatest number of votes for a term of 3 years, the second highest for a term of 2 years and the third highest for a term of one year. In case of a tie vote the election shall be determined by lot. Thereafter each member who shall be an elector of the district shall be elected for a term of 3 years and until his successor is elected and qualifies. Said board at its first regular meeting following the annual meeting shall elect officers of the board from its members as follows each for a term of one year: A director, a clerk and a treasurer, except as above stated. All provisions of this chapter relating to the powers and duties of the school district board and of the officers of the school district shall apply to the board and the director, clerk and treasurer provided for by this subsection. All members of such board shall be officers of the district, and the compensation of the director, clerk, treasurer and other members of the board shall be the amount fixed at each annual district meeting for the ensuing year.

(1b) (a) Any school district containing within its boundaries a city of the fourth class in which a high school is maintained and which has not adopted the city school plan provided for in sections 40.50 to 40.60 of the statutes, may, upon petition as hereinafter set forth, and upon determining to do so by the vote of the electors present at any annual school meeting, have a school district board consisting of five members, three of whom shall be respectively the director, treasurer and clerk, who shall discharge the duties and hold office for the term now provided by law, but all of whom shall be chosen from the district at large.

(b) Such change in the number of the members of the school board shall only be authorized to be made at the annual school meeting when a petition signed by thirty electors in such school district asking that the number of members of such school board be increased to five members, shall be filed with the district clerk at least fifteen days prior to the annual meeting of such school district; and such clerk shall then incorporate in his notice of the annual district school meeting a statement that at such annual district school meeting, the question of increasing the membership of the school board to five members will be voted upon at said meeting.

(c) Should said district school board be increased from three to five members by the action of said annual school meeting the new members shall hold office respectively for the following terms: The first member elected shall hold office for a term of three years; and the other member elected shall hold office for a term of two years; and until their successors have been chosen or appointed and qualified. After the first election, such members shall hold office for the term of three years.

(2) When a petition signed by 100 electors in any common school district asking that the district officers be chosen at an election shall be filed with the district clerk at least

30 days prior to the annual meeting date, the clerk shall incorporate, in his notice of the annual district meeting a statement that such election will be held and shall within 3 days after filing of such petition, publish notice of the filing of such petition in 4 public places in the school district or in a newspaper having general circulation in the district; and that the polls will be open therefor from 3 p. m. to 8 p. m. of the annual meeting day; except that in counties having a population of 500,000 or more, the polls shall be open from 1 p. m. to 8 p. m. and except that in any county the polls may be open from 1 p. m. to 8 p. m. on the day of the annual school meeting. Whenever such petition asking that the district officers shall be chosen at an election shall be filed as hereinbefore provided, such election shall be held annually thereafter, unless the electors shall by resolution adopted pursuant to a petition requesting a return to the former procedure of electing district officers or a change to another date provided by law, filed as hereinbefore provided, determine otherwise. If in such petition or in any separate petition a request is made for more than one polling place, the board shall provide polling places to the number requested, not exceeding the number of election precincts in the district.

(2a) When a petition signed by 100 electors in any common school district asking that a referendum be held on a special subject or item of business shall be filed with the district clerk at least 30 days prior to the day when the district officers are elected, the clerk shall incorporate such referendum subject or item of business in his notice of election or notice of the annual meeting as the case may be. He shall prepare the proper ballot to permit voting on such referendum subject.

(3) The election shall be in the place fixed for holding the annual school meeting.

(4) The election shall be by ballot, and suitable ballot boxes shall be provided. The provisions of sections 11.54 to 11.68 shall apply to the operation of this section so far as applicable. Except in counties having a population of 500,000 or more, the polls shall be open from 1 p. m. to 8 p. m., and except that in any county the polls may be open from 1 p. m. to 8 p. m. The time of opening and closing the polls and the place of holding the election shall be specified in the notice, but a failure to so specify the time and the place shall not invalidate the election.

(4a) The board may establish such additional polling places for the election of board members as it may deem necessary. Whenever practical, such polling places shall be established in the building where the annual school meeting is held. In such counties, the board shall also provide for an official ballot for the election of board members upon which shall be printed only the name of each person who files with the district clerk a written declaration of his candidacy at least 20 days prior to the date of such election. Such primary and regular election ballots shall be so arranged as to admit of any other person being voted for by the elector if he so desires, and if more than 2 candidates have filed for any school district office, the clerk shall have ballots printed and shall within 3 days after the last legal date for filing such candidacy cause notice to be published as specified in subsection (2) which notice shall state that a primary election will be held at the district polling place 10 days preceding the date of the annual meeting, except if such day should be a legal holiday, the notice of such primary election shall be for the day preceding the holiday. Two copies of the results of the canvass of the vote of such primary election shall be made by the inspectors and signed by them. One copy, together with one registry of voters, shall be sealed in a ballot box to be retained for 60 days by an inspector of the election who was not a candidate, and the other shall be forwarded to the district clerk. The district clerk shall cause ballots to be prepared for the regular election on which shall appear the names of the 2 persons receiving the highest and next to the highest number of votes respectively in the primary.

(5) The school board shall act as inspectors of such election, and shall appoint two clerks who shall make and keep duplicate lists of the electors voting at such election. A plurality shall elect. Provided that in counties having a population of five hundred thousand or more the board shall appoint five persons who shall act as inspectors, clerks and tellers of such election. Nothing in this subsection shall be construed to prevent the appointment of additional inspectors, clerks and tellers, and to provide additional voting facilities, should conditions warrant.

(6) Immediately after the polls are closed, the ballots shall be counted, the results shall be declared, all ballots, as soon as counted, shall be sealed in the ballot box and kept for sixty days by an inspector who was not a candidate at the election.

(7) The inspectors and clerk of this election shall be paid three dollars each; except that in counties having a population of five hundred thousand or over, they shall be paid five dollars each.

(8) In counties having a population of 500,000 or more, any school district, the boundaries of which are co-extensive with those of a village, may at any election called

and held as provided in the pertinent provisions of subsections (2), (3), (4), (4a), (5), (6) and (7) of this section by resolution, adopted by a majority of the votes cast in favor thereof, determine to elect its officers on any date, except Sundays, between the first Tuesday of April and the second Monday of July, both days inclusive. In the event of such determination such election shall be held annually thereafter on the date so fixed and until the electors shall determine otherwise. All of the pertinent provisions of subsections (2), (3), (4), (4a), (5), (6) and (7) of this section shall apply to such elections; but if the date of election is fixed for the first Tuesday of April, the hours of opening and closing of the polls, the polling places and the officers of election shall be the same as for the village election held on said day and the election officers shall serve without compensation additional to that provided by the village. The term of office of officers so elected prior to the second Monday of July shall begin on the second Monday of July following said election. However, elections held pursuant to the provisions of this subsection shall not be subject to the provisions of section 40.07 (4a) relating to a primary election. [1931 c. 245; 1933 c. 99, 195, 245, 247; 1937 c. 42, 275; 1943 c. 264, 470; 1943 c. 553 s. 3; 1945 c. 40, 466]

**Note:** Clerk of school district holds over ing, because of tie vote, fails to elect successor under (1) when annual school district meet- cessor under 40.04, (3). 25 Atty. Gen. 599.

**40.08 School ground fences.** In all cases where a schoolhouse site or playground is held in fee simple or by conditional lease, it shall be the duty of the district to erect and maintain all the fence necessary, or voted by the electors to inclose such district site or grounds without any financial burden on the holders of adjoining properties, other than the due proportion of the school tax levy needed to meet the cost.

**40.085** [Renumbered section 40.07 by 1927 c. 425 s. 48]

**40.09 Duties of director.** It shall be the duty of the district director:

(1) To countersign all orders legally drawn by the clerk upon the treasurer of the district.

(2) To appear on behalf of the district in all actions brought by and against it, when no other direction shall have been given by a district meeting.

(3) To prosecute an action for the recovery of any forfeiture incurred under the provisions of this chapter, and in which his school district is interested, except when by him incurred, in which case such action shall be prosecuted by the treasurer. One-half of the net sum recovered shall be paid into the district treasury and the other half to the county treasury for the benefit of the school fund.

**40.10 Bond and duties of treasurer.** (1) The treasurer shall, within fifteen days after his election or appointment, execute and file an official bond at least equal to the amount of all the moneys to come to his hands, with sufficient sureties approved by the director and the clerk. He may buy a surety company bond with district funds. He shall file an additional bond in such sum as the director and clerk shall demand, within fifteen days after demand.

(2) (a) He shall apply for, and receive, and if necessary sue for all money appropriated to or collected for the district, and disburse the same on the order of the clerk, countersigned by the director and not otherwise.

(b) He may receive all money raised from any source for extra curricular activities.

(3) He shall enter in the account books of his office all the money received and disbursed by him, specifying particularly the sources from which the same has been received, the persons to whom and the object for which the same has been paid.

(4) He shall present to the annual meeting a written statement of all the moneys received by him during the preceding year, and of each disbursement made by him and shall exhibit the voucher therefor.

(5) He shall deposit immediately upon receipt thereof the funds of the district in the name of the district in the public depository designated by the board. Failure to comply with the provisions hereof shall be prima facie grounds for removal from office. When the money is so deposited, the treasurer and his bondsmen shall not be liable for such losses as are defined by subsection (6) of section 34.01. The interest arising therefrom shall be paid into the school district treasury. [1931 c. 160; *Sp. S.* 1931 c. 1 s. 3; 1933 c. 435 s. 2]

**Note:** It is duty of school district treasurer to pay order in proper form, if he has in his hands funds of district of sufficient amount. Refusal to do so creates personal liability to holder of order and constitutes malfeasance. 21 Atty. Gen. 787.

School treasurer may refuse to turn over money to his successor, who was elected but

did not file bond sufficient to cover funds in treasury. 24 Atty. Gen. 640.

State superintendent may refuse to certify state aid to school district whose treasurer fails to furnish bond required by (1). 27 Atty. Gen. 82.

See note to 76.28, citing 27 Atty. Gen. 537.

**40.11 Duties of clerk.** (1) The district clerk shall report the name and post-office address of each officer of his district to the clerk and treasurer of each municipality in

which his district is situated, within ten days after the election or appointment of such officer.

(2) He shall act as clerk and record the proceedings of the district meetings.

(3) He shall enter in the record book provided by the board, the minutes of its meetings, orders, resolutions and other proceedings.

(4) He shall enter in said record book copies of all his reports to the municipal clerk, and the certificate of the proceedings of a meeting returned by a temporary clerk.

(5) He shall draw orders on the treasurer as directed by the district meeting and the board.

(6) He shall make a record in a suitable book of all orders drawn on the treasurer.

(7) He shall furnish, at the expense of the district, for the use of each teacher, a school register in the form prescribed by the state superintendent; procure the same to be returned to him at the expiration of the teacher's employment; and preserve the same with the records and papers of the district.

(8) He shall notify each person of his election or appointment to a district office within five days thereafter; and furnish each teacher a copy of the contract made with her by the board.

(9) He shall deliver to the town clerk, before September 1 in each year, a certified statement showing the amount of taxes voted and not before reported, and also the amount of tax to be collected in such year, if any, for the annual payment of any loan. In case of a joint district, he shall deliver to the clerk of each municipality in which any part of the district is situated, a certified statement showing the proportion of such taxes to be assessed in that part of the district within his municipality, which proportion shall be ascertained from the full valuations as last certified to him by the county superintendent from the certification made to the county superintendent by the state superintendent from the certification of the full valuations of each part of a joint district made to the state superintendent by the state department of taxation under section 40.87 (2). [1941 c. 239; 1945 c. 121]

**40.12 Forfeitures enforced by voter.** When any person or officer designated in this chapter to prosecute an action for a forfeiture or for neglect of duty shall fail to prosecute within ten days after being requested in writing by an elector of the school district, so to do, any elector therein may prosecute such action.

**40.13 Census report of clerk.** (1) The district clerk shall during each July, make and transmit to the county superintendent, a verified report as of the thirtieth day of June of such year, showing:

(a) The names and ages of children over the age of four and under the age of twenty years residing in the district, and the names of their parents or other persons with whom such children resided, respectively, on said date, but no children cared for at any charitable or penal institution of this state shall be included in such report.

(b) The whole number of children between said ages taught in the district school during the last year.

(c) The number attending school during that year under the age of four and the number over the age of twenty years.

(d) The number of days school was taught, including holidays, by teachers legally qualified.

(e) The names of all teachers employed during the year, the number of days taught by each, including holidays, and the monthly wages paid to each, and the time allowed any teacher for attendance on any institute for which no wages were deducted.

(f) The amount of money received during the year, designating separately the amount received from the school fund income, from taxes levied by the county board, from taxes voted by the district, and from all other sources, and the manner in which the same has been expended, showing separately the expenditure of school money received from the state.

(g) The amount and character of district debts.

(h) Names and addresses of native-born men and women attaining their majority in the twelve-month period ending the third Sunday of May and such other facts and statistics in relation to the schools, public or private, in such districts as the state superintendent may require.

(3) Every district clerk who shall wilfully neglect to make such annual report shall be liable to his district for the whole amount of money lost by such district in consequence of his neglect.

(4) The school clerk in any school district may employ some competent person to take such census. [1939 c. 98; 1945 c. 367]

**Note:** Under (4) compensation of census taker employed by district clerk must be paid out of district funds. 21 Atty. Gen. 212.

**40.135** [Renumbered section 40.37 by 1927 c. 425 s. 76]

**40.14 School officers, not to be book agents.** Neither the state superintendent, nor any person in his office, nor any county superintendent, nor any officer or teacher connected with any public school, shall act as agent or solicitor for the sale of any schoolbooks, maps, charts, school library books, school furniture, apparatus or stationery, or furnish any assistance to or receive any reward therefor from any author, publisher, bookseller or dealer doing the same. Every person violating this section shall forfeit not less than fifty nor more than two hundred dollars for each offense and be liable to removal from office therefor.

**Note:** Acceptance of commission by music teacher or band director in employ of school on musical instruments sold to students under his direction violates this section. 27 Atty. Gen. 267.

**40.15 District board; meetings, duties.** (1) The director, treasurer and clerk shall constitute the board of the common school district, and shall meet on the day following each annual district meeting at seven o'clock in the afternoon at the place where the annual meeting was held, and at such other times and places as the board shall determine. A meeting of the board may be called by two members by serving on the other member a written notice of the time and place of such meeting at least twenty-four hours before such meeting. A meeting may be held, without notice, when all members are present and consent.

(2) The board shall meet on the Saturday preceding the annual district meeting to carefully examine the accounts of the treasurer and make a full and itemized written report of all receipts and expenditures since the last annual meeting, and of the amount in the hands of the district treasurer, the amount of the deficit or bills payable, if any, for which the district is liable; the amount necessary to be raised by taxation for the support of the school for the ensuing year; and of the amount required to pay the interest or principal of any debt due during the year. The report shall be presented and read at the annual district meeting. The district clerk shall copy such report, with the action taken thereon, and all other proceedings of the meeting in full, in the district record book.

(3) The proceedings of all school boards, except in cities of the first class and except school boards included in section 40.60, including a statement of all receipts and expenditures, shall be printed and published within thirty days after the annual school meeting in a newspaper having a general circulation in the school district or in such manner as the board shall direct. [1937 c. 289]

**Note:** Membership upon town board is incompatible with membership upon school board of common school district located within such town. 19 Atty. Gen. 353.

Contract of hire of teacher is invalid where made at school district meeting held without giving notice required by (1). 24 Atty. Gen. 433.

Offices of village trustee and treasurer of joint school district which embraces village are incompatible. 24 Atty. Gen. 567.

Proceedings of all meetings of school board in city not operating under city school plan are required to be published in full annually. 27 Atty. Gen. 383.

Offices of town clerk and school district clerk are compatible. Offices of village clerk and school district clerk are compatible. 5 Atty. Gen. 852, 23 Atty. Gen. 605 are followed. 22 Atty. Gen. 43 is overruled. 27 Atty. Gen. 549, 29 Atty. Gen. 384.

**40.16 School board; powers and duties; school property and affairs; custody and management.** (1) Subject to the authority vested in the district meeting and to the authority and possession specifically given to other officers, the common school board shall have the possession, care, control and management of the property and affairs of the district.

(2) The board shall keep the buildings and grounds in good repair, suitably equipped and in safe and sanitary condition at all times. It shall also be the duty of the board to keep the buildings and equipment amply insured. If there are no funds in the school treasury sufficient to pay the premium the board may execute a note for that purpose.

(3) The board shall provide and maintain enough suitable and separate privies or water-closets for both sexes, at each school.

(4) The board shall file an inventory of the district property annually.

(5) The board may grant the request of any responsible inhabitant of the district to occupy the schoolhouse for such public meetings as will, in the judgment of the board, aid in disseminating intelligence and promoting good morals. The applicant shall be primarily, and the members of the board secondarily, liable to the district for any injury done to any property and for any expense incurred in consequence of any such use of the schoolhouse.

(6) The board may grant the use of the schoolhouse for lectures, entertainments and school exercises held under the auspices of and for the benefit of the school, and permit an admission fee to be charged.

(7) Upon the written application of one-half of the voters of the district, the board shall allow the use of the school buildings or grounds for the open presentation and free discussion of public questions, so far as such use shall not, in the opinion of the board, interfere with the prime purpose of the buildings or grounds.

(8) Where the citizens of any community are organized into a nonpartisan, nonsectarian, nonexclusive association for the discussion of public questions, or for the promotion of public health, by instruction in physical culture and hygiene or by physical exercises, the



board shall grant to such association the use of the schoolhouse or other public property which is capable of being used in the work of such association (when not being used for their prime purpose), shall provide (free of charge) light, heat and janitor service, when necessary, and shall make such other provisions as may be necessary for the free and convenient use of such buildings or grounds by such organization, at such times as the organization shall designate. All such gatherings shall be free to the public.

(9) The board may provide for the free use of such property for such other civic, social and recreational activities that do not interfere with the prime use thereof; provided, that the use of school buildings shall not be granted for public dancing, over the written protest of a majority of the electors of the district, or if a resolution against public dancing in the schoolhouses shall have been adopted at the annual meeting. If the persons applying for the use of the schoolhouse or property for public meetings shall fail to respond in damages for any injuries to the property, the board may refuse all future applications for such use of the property until such injury is repaired without public expense.

(10) If any district shall not have voted a tax sufficient to maintain its school for the term of eight months during the ensuing year, the board shall, on the third Monday of November, determine the sum necessary to be raised to maintain such school, and the clerk shall forthwith certify to the municipal clerk the amount so fixed, and he shall assess the same and enter it in the tax roll as other district taxes are assessed and entered.

(11) The school board may provide for, establish and maintain nursery schools for children under 4 years of age under such rules and regulations as it may prescribe. The school board shall be authorized to accept and receive federal funds for such purpose and to expend such funds in conformity with the purposes and requirements thereof. The school board may require and charge a reasonable fee for attendance in such schools in order to sustain the project but may waive such charge or fee or any portion thereof to any person who is unable to make such payment. The school district shall not be entitled to additional state aid for the operation and maintenance of a nursery school.

(12) The boards of common school districts, high school districts and city school districts are authorized to apply for, receive and expend moneys made available to them by any act of congress for agricultural, vocational or military training or for enlargement of educational facilities including teaching staff due to activities of the federal government in connection with the present emergency; provided that the acceptance of such money shall not be conditioned upon or result in the expenditure of funds by such districts.

(13) The school district board may furnish lunches to the pupils of the district and pay for same out of district funds.

(14) The school district board of districts in counties containing less than 500,000 population may employ public health nurses and licensed dentists. The work of such public health nurses and licensed dentists shall be under the supervision of the local and state boards of health. [1943 c. 138, 200, 528, 43.08 (2); 1945 c. 451]

**Note:** Subsection (2), providing that the school board, charged with the possession, care, control and management of the property of the district, shall keep the buildings and grounds in good repair, suitably equipped and in safe and sanitary condition, merely defines the powers and duties of the school board, is not an amplification of the safe-place statute as applied to school districts, does not make the school district liable to third persons for the failure of the board to perform the enumerated duties, and does not abrogate the common-law rule of nonliability of a municipality for negligence in the performance of a governmental function. *Lawver v. Joint District*, 232 W 608, 288 NW 192.

School district board has not power to remodel school building unless appropriation therefor is made at annual meeting. Members of board who fail to file inventory of district property annually are guilty of malfeasance in office. 20 Atty. Gen. 850.

School board has power, under (10) to raise sufficient funds for operation of school regardless of referendum limiting amount to be raised by taxes. 25 Atty. Gen. 411.

Neither school board nor city is liable for injuries to pupils or others arising out of negligence in operation of schools or conduct of athletic activities in connection therewith, except that neither may maintain public nuisance. 26 Atty. Gen. 59.

Common school district board may not employ attorney at stipulated fee per month to handle actions or proceedings in which district is not at time interested. 27 Atty. Gen. 747.

Board of common school district may employ attorney at stipulated fee per month to handle legal work of district other than actions or proceedings. 27 Atty. Gen. 826.

Under 40.16 (2) school districts may obtain insurance against liability for accidental injuries to members of public caused by defective construction or maintenance of school buildings under 101.06. But school districts have no authority to obtain insurance against injuries for which they are not liable, such as injuries caused by negligence of employes or by any other cause not covered by safe-place statute. 18 Atty. Gen. 559 reviewed and modified. 31 Atty. Gen. 176.

See note to 40.04, citing 31 Atty. Gen. 266.

A school district has the power and right to appeal to the circuit court from an order of the state superintendent entirely abolishing such district, attaching all of the land therein to another district, and turning over all of the assets and records of the abolished district to the other district to have as the property of the latter. (40.16 (1), 40.30 (1), (6), Stats. 1943) [State ex rel. Geneva School District v. Mitchell, 210 W 381, distinguished.] State ex rel. Callahan v. Murphy, 246 W 310, 16 NW (2d) 834.

**40.17 School equipment.** (1) The board may purchase necessary books and stationery for keeping the records and for doing the business of the district in an orderly manner, and such equipment, books, school apparatus and heating and ventilating apparatus, as may be approved by the state superintendent or by the county superintendent for

the use of schools, not exceeding three hundred dollars in value in any one year, from any funds not otherwise appropriated, and such schoolbooks as in their judgment may be needed by pupils whose parents are not able to furnish the same. Said limitation of three hundred dollars in any one year shall not apply to school boards in districts maintaining a high school and at least one graded school.

(2) Every school board and the governing body of every private or parochial school shall cause the United States flag to be displayed in the schoolroom or from a flagstaff on each school ground, during the school hours of each day's session of school.

(3) Every school board and the governing body of every private or parochial school shall provide a standard first aid kit for use in cases of emergency in every school in this state. [1933 c. 333]

**40.171 Poor school children; temporary aid.** It shall be the duty of any principal or teacher in charge of any common or district school of this state to report to the authority administering poor relief for the municipal unit wherein such school is situated, the name and address of any child in such school whose parent, guardian or other person having control, charge or custody of any such child, is without sufficient means to furnish any such child with books, school supplies or clothing necessary for such child to attend school as required by law. Such authority administering relief shall thereupon investigate such report, and upon verification thereof, furnish such child with said books, school supplies and clothing, and the cost thereof shall be paid out of the poor relief fund of said municipal unit. In case relief is administered by a system other than the county system and the children given such relief are necessarily attending school in a municipal unit other than that of their legal residence as defined in chapter 49, the actual cost of the relief so furnished such children shall be a charge against the municipality of their legal settlement for relief purposes. School books furnished under this section shall become and remain the property of the municipality wherein such children shall have a legal settlement but subject to disposal as ordered by the governing body thereof. [1935 c. 315]

**40.18 Claim against district, enforcement.** No action shall be maintained against a school district upon any claim until it shall have been presented to the board and disallowed, in whole or in part. Failure of the board to allow the claim within sixty days after it is filed with the clerk is a disallowance. The clerk shall serve on the claimant notice of disallowance by registered mail, and receipt therefor, signed by the claimant, shall be proof of service. The claimant may accept a portion of his claim without waiving his right to recover the balance. No interest shall be recovered on an allowed claim after an order of the board is available to the claimant. If the claimant recovers a greater sum than was allowed, he shall recover costs, otherwise the board shall recover costs. Disallowance by the board shall bar an action on the claim six months after service of notice of disallowance.

**40.19 Conduct of school; school month; teacher's allowance.** (1) The common school board shall contract in writing with qualified teachers, which contract, with a copy of the teacher's authority attached thereto, shall be filed with the clerk. No teaching contract with any person not legally authorized to teach the named school or subject shall be valid; and all teaching contracts shall terminate if, and when, the authority to teach terminates.

(1a) School district boards may provide in the contracts of teachers of agricultural and homemaking courses for payment for services performed outside of the district and connected with the performance of their regular teaching duties, and for the payment of the traveling expenses connected with such services out of school district funds.

(2) No order shall be drawn, for the payment of which money has not been appropriated according to law, and no order shall be drawn for money received from the school fund income for any other purpose than the payment of teacher's wages.

(3) Twenty school days shall constitute a school month and all legal holidays occurring on the usual school days shall be counted whether school be taught or not. Not to exceed five Saturdays may be counted in any school year when school is taught thereon with the consent of the board.

(4) On the twelfth and twenty-second days of February school shall be taught regularly in the forenoon, but in the afternoon of these days appropriate exercises shall be held in commemoration of the life and services of Abraham Lincoln and George Washington, respectively.

(4a) On the 11th day of November, school shall be taught regularly for one-half of said day, but at least two hours of the other half of said day shall be devoted to the holding of appropriate exercises within the school or to the participation in appropriate public exercises in the vicinity of said school, to commemorate the historical event associated with Armistice Day.

(4m) The pupils of every public, private, parochial and denominational school shall, by appropriate instruction and ceremonial to be formulated by the state superintendent

of public instruction, be taught the proper reverence and respect for and the history and meaning of the American flag, the Declaration of Independence, the United States Constitution, as well as the duties and responsibilities of citizenship, so that government of the people, by the people and for the people may function and endure in the United States of America.

(5) The board may give to any teacher, without deduction from her wages, the whole or part of any time spent by her in attending a teacher's institute held in the county, or a school board convention or the meeting of any teachers' association, upon such teacher's filing with the school clerk a certificate of regular attendance at such institute, convention or association, signed by the person conducting the institute or convention, or by the secretary of the association.

(6) The board shall visit the school, examine into its condition, advise with the teacher in regard to the instruction, government, progress of the pupils, and exercise general supervision over the school. [1941 c. 116; 1943 c. 96]

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

Armistice day should be observed by schools on November 11 in manner provided in (4a). 20 Atty. Gen. 1030.

Referendum election abolishing particular teaching position does not invalidate contract previously entered into between school board and teacher under this section. 25 Atty. Gen. 411.

Under (1), power of school board to contract with teacher is limited to present and next ensuing school years, and board may not make contract for term of years so as to deprive future boards of discretion in hiring teachers. Contract must be in writing and might be so drawn as to be automatically renewable from year to year until rescinded, although this is not advisable. 30 Atty. Gen. 279.

**40.20 Exchange of teachers.** The school board may exchange any teacher employed by it for a teacher of any school district of any other state. No such exchange shall be for a longer period than one year, and any teacher of this state, so exchanged, shall be deemed to have taught during said period in the school district by which she was employed; and shall be assessed, for the benefit of the Wisconsin teachers' insurance and retirement fund, the full amount which would have been assessed against her had she actually taught in such district.

**40.21 Conduct of common schools.** (1) **REGISTRATION OF PUPILS; TEACHER'S REPORT.** The teacher in each common school shall enter in the school register, the names, ages and studies of all pupils and their daily attendance, and such other facts as the county superintendent or state superintendent may require, which register the teacher shall deliver to the clerk at the close of each term, and whenever it may be required for the use of the board. The teacher shall make a written report to the board or to the county superintendent concerning any matters relating to the school in such form or manner as the board or superintendent may prescribe; and any teacher who shall wilfully neglect or refuse to so keep the register shall forfeit her wages during the time of such neglect or refusal.

(2) [Omitted because probably obsolete]

(2a) **CHILDREN'S HOMES.** All children in children's homes, regardless of whether they were sent there by parents or guardians or by any county, shall be subject to the payment of the legal tuition whenever they attend the public schools of the locality in which the home is located. At the close of each year the school clerk of any district attended by any of such pupils shall certify under oath to the state superintendent the names of all such children who have attended the school in his district during such year, the number of months each attended, and the amount of tuition due the district. The state superintendent shall check such report, and if he finds it correct shall certify the amount due such district to the secretary of state who shall draw his warrant on the state treasurer for the amount so certified. The state treasurer shall forward said amount to the treasurer of the school district and charge the same to the appropriation made by subsection (3) of section 20.25.

(2m) **COUNTY TO PAY TUITION.** The elementary and high school tuition of every person of school age, excepting county charges, as provided in subsection (2) of this section, residing at a county institution shall be paid by the county. The county board may charge such tuition to the account of the county asylum or the county home.

(3) **RULES, EXPULSION.** The board may make rules for the organization, gradation and government of the schools, such rules to take effect when signed by a majority of the board and filed with the clerk; may suspend any pupil not to exceed three days for non-compliance with such rules or those of the teacher made with its consent; may expel any pupil whenever it shall find him guilty of persistent refusal or neglect to obey the rules and become satisfied that the interests of the school demand his expulsion. Upon ordering the expulsion of a pupil by the board the school district clerk shall file a notice of such order with the parent or guardian of the pupil. Parents or guardians of expelled pupils may appeal to the state superintendent. An appeal may be taken within thirty days from

the decision of the state superintendent to the circuit court of the county in which the school is located.

(4) ADULT PUPILS. Residents above twenty years of age may be admitted to the district schools when in the judgment of the board they will not interfere with the pupils of school age.

(5) NONRESIDENT PUPILS, TUITION. (a) When there is sufficient room the school board shall admit nonresident children to the school and shall fix the tuition for children in grades below the ninth as follows: From the total sum of money expended by the school district in operating and maintaining the school including the salary of the principal, supervising teachers, and superintendent for that portion of time devoted to the teaching of or supervision of grades below the ninth grade and excluding that portion of costs for the operation and maintenance of grades above the eighth grade, there shall be subtracted an amount equal to the sum of the state and county aid and the difference so determined shall be divided by the average daily attendance for the given year.

(b) The board shall enter into a written agreement with the parents prior to the admission of such nonresidents to the school for the payment of tuition at the rate legally fixed, except when the tuition is a public charge.

(6) PUPILS REMOTE FROM SCHOOL. In case children of school age reside more than two and one-half miles from the schoolhouse in the home district, and one-half mile nearer another public school, and transportation is not provided by the home district, such children may attend the nearer school if the facilities for seating and instruction will permit. The clerk of the school which such children attend shall file with the clerk of the home district, a statement before the first day of July of each year, showing the name, age, residence, date of admission, and the attendance of each child admitted from said district, the rate of tuition per week, month or year, and the amount of tuition due for each, provided the tuition below the ninth grade shall not exceed the per capita cost of instruction, determined as provided in this section. Upon the filing of such statement, the school board of the home district shall allow and pay to the treasurer of the other district, the tuition due. If the school attended is more than two and one-half miles from the pupil's home the pupil's home district shall be liable for transportation as provided for under subsection (1) of section 40.34.

(7) EQUAL RIGHTS OF PUPILS, COMPUTATION OF TIME. Tuition pupils shall have all the rights and privileges enjoyed by resident pupils. In computing tuition, 5 school days, including the legal holidays, shall constitute a school week; 20 school days, including legal holidays, shall constitute a school month. No deduction of tuition shall be made on account of absence on the part of any pupil, unless such pupil shall have been absent 10 consecutive school days. In case of a longer absence at one time, deduction shall be made only for the absence in excess of 10 days, provided that when a school is closed pursuant to an order of the health officer during the term regularly established by the school board, and the expenses of instruction and maintenance are incurred by the district the same as if the school were operating, tuition shall be charged the same as if the school had been in session. This amendment (1945) shall be applicable to the 1944-1945 school year. [1933 c. 457; 1935 c. 410, 430; 1937 c. 111; 1939 c. 146, 333; 1941 c. 122, 123, 264; 1945 c. 236]

**Note:** Where a father applied for relief for himself and his family, and the public assistance granted was based on the needs of and for the use and support of the children and their parents, the fact that the relief was charged to the father did not make the children any the less "maintained as public charges" within 40.21 (2), Stats. 1933, 1935, 1937. *Madison v. Dane County*, 236 W 145, 294 NW 544.

Pro rata share contemplated by (2), Stats. 1931, is pro rata share of net cost of maintaining such school. 20 Atty. Gen. 742.

Minor who has been put on probation and placed in home in rural district, not primarily for purpose of attending school in that district, has residence for school purposes in such district and tuition not chargeable. 22 Atty. Gen. 149.

For opinions on liability for tuition under 40.21 (2), Stats. 1933, see 22 Atty. Gen. 151 and 191.

Term "children's home" in (2a) means institution, agency, person, association or corporation engaged in business of caring for children, and includes licensed welfare agency but not foster home. 25 Atty. Gen. 46.

For opinions on liability for tuition under 40.21 (2), Stats. 1935, see 24 Atty. Gen. 602 and 25 Atty. Gen. 50, 290, 413 and 454.

Payment of tuition to school district in which Norris Foundation is located, under

provisions of (2a) should be made, subject to statutory limitations as to amount payable per child and amount of state and county aid. 25 Atty. Gen. 726.

Under 40.21 (2), Stats. 1937, expense of maintaining school includes all items of expense necessary to such maintenance. Additions to buildings or improvement by way of added expenditures for permanent equipment should be amortized. State or county aid should be deducted in computing net cost to local municipality. 27 Atty. Gen. 290.

Child placed in home by state department of public welfare after having been committed to state public school has residence for school purposes in district in which such home is located and is entitled to attend school of such district tuition free. 29 Atty. Gen. 87.

Provisions of 40.47 (6) providing for state paying unpaid nonresident tuition claims and recovering against municipality are not applicable to resident indigent tuition under 40.21 (2), Stats. 1939. 30 Atty. Gen. 22.

County is liable under provisions of 40.21 (2), Stats. 1939, to school district for tuition for children attending school in such district who are maintained as public charges. Children placed in foster homes under 48.07 are maintained as public charges within meaning of 40.21 (2), Stats. 1939. 30 Atty. Gen. 119.

Children placed in home by department of public welfare after having been committed to state public school have residence for school purposes in municipality in which such home is located, notwithstanding fact that more than four children, not all of whom are related as brother and sister, have been placed in single home contrary to 48.38 (1) (b). State is not liable for tuition of such children under 40.21 (2a). 30 Atty. Gen. 155.

Ch. 123, Laws 1941 (40.21 (2), Stats. 1941) is constitutional. It imposes upon county clerk mandatory duty to file certificates for recovery of amounts paid by county to school districts on account of tuition for indigent pupils. County clerk may not be relieved of such duty by county board. 30 Atty. Gen. 460.

School district in which pupil maintained as public charge resided and attended school

in years 1939 to 1941 may recover tuition from county or municipality of pupil's legal settlement. County or municipality paying tuition may then be reimbursed as provided in 40.21 (2), Stats. 1941. 31 Atty. Gen. 262.

40.21 (2), Stats. 1941, as enacted by ch. 123 and amended by ch. 264, laws of 1941, is constitutional. It does not authorize the state superintendent to deduct from the amount of school aids accruing to a school district or other municipality any amounts representing interest or court costs. A certificate filed pursuant to said subsection is not rendered invalid in its entirety by reason of the fact that it includes a claim for interest or court costs, if it is in such form that the state superintendent can separate the proper from the improper items. The inclusion of improper items in the certificate can properly be considered mere surplusage and can be ignored. 33 Atty. Gen. 74.

**40.22 Curriculum.** (1) **FUNDAMENTAL COURSE.** Reading, writing, spelling, English grammar and composition, geography, arithmetic, elements of agriculture and conservation of natural resources, history and civil government of the United States and of Wisconsin, citizenship and such other branches as the board may determine shall be taught in every common school. All instruction shall be in the English language, except that the board may cause any foreign language to be taught to such pupils as desire it, not to exceed one hour each day.

(2) **PHYSIOLOGY AND HYGIENE.** Physiology and hygiene, sanitation, the effects of stimulants and narcotics upon the human system, symptoms of disease and the proper care of the body, shall be taught daily for one-half of the school year in either the sixth, seventh or eighth grade, but no pupil shall be required to take such instruction if the parents shall file with the teacher a written objection thereto. A semester of work of physiology and hygiene shall be offered in each high school curriculum.

(3) **PHYSICAL EDUCATION.** (a) Physical instruction and training shall be provided for all pupils in conformity with the course of instruction in physical education prescribed by the state superintendent. In one and two-room schools such instruction and training shall take the form of supervised playground work. The time devoted to such course by each pupil above the kindergarten shall aggregate at least two and one-half hours each school week, exclusive of recess periods.

(b) Every county normal school and every high school course for the training of teachers shall require all students to take a course in physical education and playground games and management.

(c) Physical education as used herein is instruction in the theory and practice of physical exercise and instruction in hygiene, but does not include medical supervision.

(4) **PREVENTION OF ACCIDENTS.** Each public school teacher shall devote not less than thirty minutes in each month to teaching her pupils how to prevent accidents and promote safety on the public highways.

(5) **MORALS.** Every public school teacher shall teach her pupils morality and how to conduct themselves as social beings.

(6) **ANIMAL LIFE.** Each public school teacher shall devote not less than thirty minutes each month to teaching the pupils kindness to and the habits, usefulness and importance of animals and birds, and the best methods of protecting, preserving and caring for all animal and bird life.

(7) **FIRE DRILL.** The person having direct charge of any public, private or parochial school or college room (except in one story buildings), shall, at least once each month without previous warning, drill all pupils in the proper method of departure from the building as if in case of fire.

(8) **FIRE PREVENTION.** Each public school teacher shall devote not less than one-half hour each month to teaching the pupils fire prevention.

(9) **KINDERGARTEN.** Any board which has control of primary grades may, and upon petition of the parents of twenty-five children, more than four and not more than six years of age, shall establish and maintain a kindergarten, provided such parents reside not more than one mile from the school building. Such kindergarten shall constitute a part of the public schools of the district, and shall not be discontinued unless the kindergarten enrollment for the preceding year shall have been less than fifteen.

(11) **CO-OPERATION AND CONSERVATION.** (a) Every high school and vocational school shall prescribe adequate and essential instruction in co-operative marketing and consumers' co-operatives.

(b) Every high school and vocational school shall offer adequate instruction in conservation of natural resources.

(12) **TEACHER TRAINING.** (a) The governing boards of the university, state teachers' colleges and county normal schools shall provide in their respective institutions adequate and essential instruction in co-operative marketing and consumers' co-operatives.

(b) The governing boards of the university, state teachers' colleges and county normal schools shall provide in their respective institutions adequate instruction in conservation of natural resources.

(13) **TEXT MATERIAL.** (a) The state superintendent of public instruction and the dean of the college of agriculture at the state university shall co-operate in the preparation of outlines to be used by teachers in the courses offered under subsections (11) (a) and (12) (a) and they shall have power to request the assistance of any teacher or professor in any of the schools of the state in the preparation of such outlines. They may also make a recommended list of material now in pamphlets or books for guidance to teachers of these courses.

(b) The state superintendent of public instruction and the conservation commission shall co-operate in the preparation of material to be used in the courses offered under subsections (11) (b) and (12) (b) and they shall have power to request the assistance of any teacher or professor in any of the schools of the state in the preparation of such material. They may also make a recommended list of material now in pamphlets or books for guidance of teachers of these courses.

(14) **TEACHERS' CERTIFICATES.** (a) In granting certificates for the teaching of the courses in economics, the social studies and agriculture, adequate instruction in co-operative marketing and consumers' co-operatives shall be required.

(b) In granting certificates for the teaching of the courses in science and social studies adequate instruction in the conservation of natural resources shall be required. [1935 c. 397, 445; 43.08 (2); 1937 c. 118]

**Note:** The words "the parents" in (9) are construed to mean that both parents, if two are living, and have control of their children, must sign the petition for a kindergarten. When the duty to establish and maintain a kindergarten becomes fixed the board is entitled to a reasonable time to arrange for equipment and a teacher. State ex rel. Mueller v. School District Board, 208 W 257, 242 NW 574.

Free high school district board is authorized to bring action without authority of electors only where management, control and conservation of property and affairs of district require speedy application for process.

State ex. rel. Hawkins Free High School Dist. v. Nelson, 212 W 116, 249 NW 172.

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

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

#### 40.225 [Repealed by 1939 c. 272]

**40.226 Instruction in food and health value of dairy products.** In all rural and urban, public and private, ungraded, graded and high schools in Wisconsin at least fifteen minutes in each school week shall be devoted to instruction in and study of the true and comparative vitamin content and food and health values of dairy products and their importance for human diet. The course of such instruction and the educational material therefor shall be prescribed by the superintendent of public instruction and shall be included in the instruction manuals for such schools. Such educational program shall be directed by the superintendent of public instruction through county and city superintendents of schools and such other educational officials whose co-operation may be deemed necessary to insure its success. The state department of agriculture, the state board of health and the college of agriculture of the University of Wisconsin and the extension division thereof shall co-operate with and assist the superintendent of public instruction in the development and execution of such educational program. [1935 c. 361; 1943 c. 229]

**40.23 School funds; depositories.** Every district board or board of education shall designate the bank or banks where the money belonging to the school district shall be deposited. When the money is so deposited in such depository in the name of the school district, the treasurer and his bondsmen shall not be liable for such losses as are defined by subsection (6) of section 34.01. The interest arising therefrom shall be paid into the school district treasury. [Spl. S. 1931 c. 1 s. 3; 1933 c. 435 s. 2]

**40.24 Uniform textbooks for county.** (1) **COUNTY BOARD OF EDUCATION.** When a majority of all the districts shall vote, at any annual county school board convention in favor of adopting county uniform school textbooks, each school district being entitled to one vote, the convention shall immediately elect a county board of education of not less than three nor more than five persons. And said school board convention shall, at a regular meeting every five years thereafter, elect not less than three nor more than five persons who shall constitute said county board of education; provided that said convention may at any time by a majority vote discontinue such board. School districts which maintain high

schools shall not be entitled to vote on the question of uniformity of textbooks, nor in the election of the county board of education.

(2) **TERM OF BOARD MEMBERS.** The members of the county board of education shall hold office for five years and until their successors are elected and qualified.

(3) **ELIGIBILITY, VACANCY.** No person shall be eligible to said county board of education who is not a legally qualified teacher and has not had five years of experience in teaching or in the supervision of public schools, or who is a dealer in textbooks, or is an agent of, or interested in, any person, firm or corporation engaged in publishing or furnishing school textbooks, or who shall be interested in any book or series of books as the author, associate author, or in any manner whatsoever; and if any member shall be so interested, his office shall ipso facto become vacant.

(4) **OATH OF OFFICE.** Each member of said county board of education shall, before entering upon the duties of his office, take the constitutional oath of office; and shall in addition thereto swear that he is not directly or indirectly interested in or related to any publishing house, person, firm or corporation, engaged in publishing or furnishing school textbooks, or any of their agents, and that he is not interested directly or indirectly in any book or series of books as the author, associate author, or otherwise; which oath shall be filed with the county clerk.

(5) **ORGANIZATION OF BOARD.** The members of said board of education shall, within ten days after their election, meet at the county seat and organize by electing one of their number president, and one secretary, and said board shall adopt such rules and regulations as may be necessary to the transaction of its business.

(6) **ADOPTION OF TEXTBOOKS.** A majority vote of all the members of the board shall be necessary to adopt or change any textbook.

(7) **CONTRACTS WITH BOARD.** The president and secretary shall sign all contracts on behalf of said board, and the secretary shall keep a full record of all proceedings of said board in a book kept for that purpose, which book shall be a public record and be kept in the office of the county superintendent of schools.

(8) **MEETINGS OF BOARD.** Said board of education shall meet at the county seat on the first Saturday in May, and at such other times as the board shall deem necessary, and the president shall call a meeting upon the written request of a majority.

(9) **EXPENSES PAID.** The members of the county board of education shall be reimbursed their actual and necessary expenses in the performance of their duties; the same to be paid out of county funds.

**40.25 Uniform textbooks; selection and use.** (1) Every county board of education shall, as soon as may be, and every fifth year after the first adoption of textbooks, meet at the county seat and select and adopt a series of textbooks, covering all branches of study required to be taught below the ninth grade.

(2) The books so selected shall be used in all school districts of the county, except those maintaining high schools and graded schools of the first class.

(3) The books so selected shall be introduced in the schools the following September, and shall remain in use until displayed or replaced by said county board of education; but no books so adopted and introduced into said schools shall be changed within five years from the date of adoption.

(4) In districts furnishing free textbooks, it shall be optional with the school board whether or not a change of the textbooks shall be made; but, whenever a change is made, only such textbooks shall be selected as have been adopted under the provisions of this section.

(5) A graded school may, by a unanimous vote of the school board, adopt in lieu of the textbooks selected by the county board of education, the books used in the grades of the nearest city schools.

(6) The textbooks adopted by said board of education shall be selected after a careful examination of all sets of books presented, and taking into consideration the material used, illustrations, binding, price, and all other things that go to make up a desirable textbook; merit, however, shall be the main point to be considered in their selection.

(7) School districts or the county board of education, may, nevertheless, select, introduce and use additional and supplementary books at any time when they deem it necessary in order to establish and maintain the highest standard of excellence in their schools.

(8) Such supplementary books shall not be used to the exclusion of the series books adopted by the county board of education.

**40.255** [Renumbered section 40.18 by 1927 c. 425 s. 58]

**40.26 Purchase of textbooks; bids.** (1) The county board of education shall at least thirty days before meeting to adopt textbooks, send notice to textbook publishers and advertise in a newspaper of general circulation in the county that said board will on a day named, meet at the county seat and select and adopt textbooks for use in the district

schools of said county, and shall invite bids to furnish such books, giving a list of textbooks to be selected. Said notice shall also state the time when bids and samples of books must be submitted to them, and such further facts as the board may deem necessary.

(2) Any person desiring to furnish such books shall, at or before the time for filing his bid, deposit in the office of the county superintendent of schools samples of all textbooks included in his bid, together with lists giving the lowest exchange price, wholesale price and retail price to pupils or school districts for the same.

(3) Said samples and lists shall remain in the said superintendent's office and shall be open at all times to public inspection.

(4) Said board shall require any person who contracts for furnishing the books to give a good and sufficient bond to the board in such sums as the board may require, with sureties and conditioned for the faithful performance of such contract.

(5) Said board shall arrange for such depositories as it may deem necessary for furnishing the adopted books to school boards or local dealers. Such depositories shall furnish a sufficient bond to protect publishers. Depositories shall receive books displaced by the uniform adoption and return them to publishers at agreed allowances. Depositories shall accept books on the uniform list at reasonable prices from people who are moving out of the county; such books to be resold to pupils in the county at a slight advance on cost.

**40.27 Application of sections 40.24 to 40.26.** In the administration of sections 40.24 to 40.26, a district situated in more than one county shall be deemed to be fully within the county in which the schoolhouse is located.

**40.275** [Renumbered section 40.36 by 1927 c. 425 s. 75]

**40.28 Textbooks; home-study courses; conditions of sale; bond, penalties.** (1) No person shall offer for sale, or sell, any school textbooks or any encyclopedias or other reference books or any home-study courses either in sets or in series for adoption, sale or exchange in Wisconsin, until he shall have complied with the conditions of this section.

(1m) The term "home-study course" is any course, text or matter for study offered by any school, preparatory school, college, academy, university or other institution not created or maintained, in whole or in part, by public funds, that operates in this state by teaching or undertaking or proposing to teach or preparing students to study any subject in this state through the use of the mail, express or other common carrier or by contract or private carriers or by any other means of communication, other than resident instruction, except an employer who offers instruction for training of his employees in the work of his establishment.

(1n) Every such school, college, academy, university or other institution not created or maintained, in whole or part, by public funds, that operates in this state by teaching, or undertaking or proposing to teach, or preparing students to study, any subject in this state through the use of the mail, shall comply with the provisions of this section.

(2) He shall file copies of such textbooks, encyclopedias, reference books and home-study courses proposed to be sold in Wisconsin in the office of the state superintendent, with a sworn statement of the list price, the lowest wholesale price, and the lowest exchange price, at which said books or home-study courses are sold or exchanged for old books or home-study courses on the same subject and of like grade and kind but of a different series in the United States. He shall likewise file, in connection with the sale or proposed sale of home-study courses, forms of proposed contracts to be used in making or attempting to make such sales.

(3) He shall file with the state superintendent a bond to the state with a licensed surety company as surety in a penal sum to be determined by the state superintendent, not less than two thousand dollars nor more than ten thousand dollars, conditioned that he will furnish any of the books or home-study courses listed in said statement and in any statement subsequently filed by him within five years and in accordance with such statement, to any school district, corporation or person in the state at the lowest price shown in said statement, and that he will maintain said price uniformly throughout the state, provided, however, that in sales of home-study courses discounts may be made in respect to sales to educational institutions and school districts and in respect to second course enrollments; that he will reduce such prices in Wisconsin whenever reductions are made elsewhere in the United States, so that at no time shall any book or home-study course so filed and listed by him be sold in Wisconsin at a higher net price than the lowest price received for such book or home-study course in the United States; that all textbooks, encyclopedias, reference books and home-study courses offered for sale, adoption or exchanged in this state shall be equal in quality to those deposited in the office of the state superintendent; that in case he shall prepare an abridged or special edition of any of the books or home-study courses so listed by him, and shall sell such special edition at a lower wholesale price than the wholesale price of the earlier or unabridged edition scheduled with the state superintendent, he will file a copy of such special edition together with the price therefor, as above stated,



with the state superintendent; that he will not enter into any understanding, agreement or combination to control the prices or to restrict competition in the sale of school textbooks, encyclopedias, reference books or home-study courses.

(4) Such bond shall be approved by the attorney-general and shall continue in force for the period of five years after its filing, at or before the expiration of which period a new bond shall be given, or the right to continue such business within the state shall terminate.

(5) All teachers shall notify their superintendent of schools of any violation of any of the conditions of said bond that shall come to their knowledge, and it shall thereupon be the duty of such superintendent to investigate the alleged violation, and if he shall find that there is good ground for believing that said conditions have been violated, he shall forthwith report the matter to the state superintendent, who shall notify the obligor to comply with the conditions of his bond, and to make good any loss or injury that may have been occasioned by such violation, within a reasonable time to be inserted in said notice. If the person so notified shall fail to comply with the requirements of the notice, the state superintendent may suspend his right to sell school textbooks, encyclopedias, reference books and home-study courses within the state until he shall comply. In case he shall refuse to comply with the provisions of his bond, or shall violate the same a second time, the state superintendent shall declare his bond forfeited, and the attorney-general shall bring suit thereon. In case judgment shall be rendered in favor of the state on such bond, it shall be for the penal amount thereof, and the proceeds shall be placed to the credit of the common school fund, and shall bar the principal from further continuance of such business within the state for five years.

(6) No person shall secure or attempt to secure the sale of any school textbooks, encyclopedias, reference books or home-study courses to any school district by rewarding or promising to aid or reward any teacher. No person shall offer or give any money or other valuable thing, promise of work or any other inducement to any teacher or school officer for any vote or promise of vote or for the use of his influence for any school textbooks, any encyclopedias, reference books or home-study courses; provided, that nothing in this section shall be construed to prevent any person from giving, or any school officer or teacher from receiving, a reasonable number of sample copies of school textbooks for examination with a view of obtaining information as to the book or series of books for which such officer may give his vote.

(7) Any person violating any of the provisions of this section shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding three months, or by both such fine and imprisonment.

(8) No person shall represent, as an inducement to the sale of any home-study course, whether orally or in writing, that he or the school offering such course will, upon the purchaser's completion of such course, place such purchaser in employment, unless in fact at the time of such representation, there is a written contract between such school and an employer whereby the latter is bound to furnish such employment as represented. Such purchaser shall be entitled, in the event that such representation is made and no such contract then exists, to have the purchase price, tuition or fee or other consideration paid for such course refunded and may recover the same in an action of debt.

(9) This act [1937 c. 384] shall not apply to any college or university organized and operating in the state of Wisconsin whose credits are accepted by the North Central Association of Colleges and Secondary Schools, or to any correspondence course or courses they may offer. [1937 c. 384; 43.08 (2)]

**Note:** Chapter 384, Laws 1937, relating to courses is invalid as applied to interstate home study and correspondence school commerce. 26 Atty. Gen. 541.

**40.29 Textbooks; lists, purchase, agents.** (1) **LISTS.** In June of each year the state superintendent shall send copies of the list of the schoolbooks filed in his office, giving the publisher's prices, to the school superintendents, sufficient to supply a copy to each common school clerk.

(2) **ADOPTED, FURNISHED.** Subject to the power of the county board of education to adopt and supply books, the common school board shall adopt from the list of school textbooks on file with the state superintendent, all the textbooks necessary for use in the schools under its charge, and file a list of the adopted books with the school clerk and keep a copy of it posted in the school, and such textbooks shall not be changed for five years; and it may purchase textbooks direct from the publishers at the prices listed with the state superintendent and sell them to the pupils at cost.

(3) **AGENTS' COMMISSION.** The school board may designate agents of the district to sell the textbooks to the pupils. The agents shall, at stated times, make settlement with the district for such books as have been sold. Such agents may add a selling commission which shall not exceed ten per cent of the net prices as listed with the state superintendent.

(4) **AGENTS' PRICE LIMIT.** No dealer in textbooks shall sell any books listed with the state superintendent, as provided by law, at a price to exceed fifteen per cent advance on

the net list prices, transportation added thereto. Any agent or dealer, violating the provisions of this section, shall be fined not less than twenty-five dollars and not more than one hundred dollars.

**40.30 Common school districts; creation, alteration, dissolution.** (1) **NAME, CONTIGUOUS TERRITORY.** (a) Upon the filing of a petition by an elector with the municipal clerk, any town or village board or council of a city of the second, third or fourth class may, by order, create, alter, consolidate or dissolve school districts. Such districts shall be known by the names of the municipalities in which they lie, and if there is more than one district in a municipality, those districts shall be further designated by numbers. Such districts must be of contiguous territory, and no territory shall be detached from a district unless it be by the same order attached to another district or districts, and no district shall be created having less than \$150,000 of taxable property as shown by the last assessment roll. No change in districts may be made that will result in additional claims for state aid under the provisions of section 40.87, notwithstanding the provisions of section 40.31, without the approval of the state superintendent of public instruction. The state superintendent shall, when an order changing school districts has been filed with him as herein provided, forthwith proceed to determine whether additional claims for state aids will result. He shall base his determination of whether or not additional claims for state aid will result from a change in districts from the annual reports for previous years filed with him by the school districts affected and upon such other facts as he may deem material. If he finds that such additional claims for state aid will result, he may enter an order disapproving such change in which event any order making such change shall become void and of no effect. An appeal may be taken from such order of the state superintendent as provided in paragraph (b).

(b) Any person aggrieved by any order of a municipal board or council issued and recorded pursuant to the provisions of this section or aggrieved by the refusal of a municipal board or council to file orders of alteration, dissolution, consolidation or creation when petitioned to do so may appeal therefrom to the state superintendent within 30 days following the issuing and recording of any such order, or where a board or boards, or council or councils, refuses or neglects to issue and record an order of alteration, dissolution, consolidation or creation then within 90 days following the filing of the petition. After determining the appeal the state superintendent shall enter an order affirming, modifying or reversing the order appealed from, or where the appeal is from the refusal of a municipal board or council to file orders of alteration, dissolution, creation or consolidation when petitioned to do so, the state superintendent may in the event that he finds the municipal board or council erred in refusing to file such an order, make such order as he deems proper under the circumstances. An appeal from any order of the state superintendent made under this paragraph may be taken to the circuit court of any county affected thereby within 30 days from the date of said order. Such appeal shall be taken by serving upon the state superintendent within 30 days after the date of the order appealed from, a written notice of appeal which shall state the ground or grounds upon which said appeal is based.

(1k) **CONSOLIDATION BY SUPERINTENDENT.** (a) After approval by a majority vote of a special committee appointed to consider and approve or disapprove the same, the state superintendent may by order, reciting such approval, create, alter, consolidate or dissolve any school district or districts. The state superintendent is authorized on his own motion to initiate consolidation proceedings in the manner provided in this subsection. Such special committee shall consist of the county superintendent of schools, 2 residents of the county to be appointed by the county judge of the county and 2 supervisors of the county board of the county, to be appointed by the chairman of the board, at least one of whom shall be a town chairman except in counties containing a city of the first class, but no person shall be appointed who resides in any territory that would be affected by the proposed change. Persons appointed shall have a recognized interest in and understanding of, and sympathy for the problems of common schools. Whenever the state superintendent may decide that any such school district be so created, altered, consolidated or dissolved, he shall notify the judge and chairman of the county board of the county or counties within which the territory to be affected is situated, of his intention, and enclose a copy of the proposed order. Within 10 days thereafter the county judge and chairman of the county board shall by order appoint the committee provided for in this section and file a copy of the orders with the county superintendent of such county or counties and the state superintendent. When any territory to be affected by an order lies in 2 or more counties there shall be appointed a special committee in each county which committees shall act as a joint committee. If the membership of a joint committee is an even number then the circuit court judge of the circuit in which the greatest valuation of property to be affected lies, shall appoint an additional member

to the joint committee from one of the counties affected who does not reside in the territory affected. The order of appointment shall direct the committee to meet and consider the order of the state superintendent affecting the district or districts and report their approval or disapproval thereof in writing to the state superintendent within 15 days of the order. Upon filing of the report the committee shall be discharged from its duties. Each member of the committee except the county superintendent of schools shall receive a per diem at the rate of \$4 for each day he attends a meeting of said committee. Each member of said committee shall also receive for each day he attends a meeting of the committee, mileage for each mile traveled in going to and returning from the place of meeting by the most usual traveled route at the rate established by the county board pursuant to section 59.15 as the standard mileage allowance for all county employes and officers. When a special committee is appointed the per diem and mileage herein provided for shall be paid by the county in which the members thereof reside.

(b) The state superintendent may upon his own motion rescind or revoke any such order of annexation or consolidation, if it shall satisfactorily appear, that such order of annexation has created hardship because of the difficulties of geographical conditions, problems of transportation or other considerations, or where any such order of annexation has not resulted in financial saving to the taxpayers of such school district or increased educational opportunities and benefits to the students therein.

(1m) SPECIAL DISTRICT FOR ISLANDS. A common school district may be established in the following described territory: all islands or parts of islands situated in sections 3, 10, 11, 12, 13, 14 and 15, town of Trenton, Pierce county.

(2) NOTICE OF PROPOSED ACTION. Whenever a petition for such alteration, creation, consolidation or dissolution shall be filed, the municipal board or boards or council or councils shall within 30 days meet and by resolution or joint resolution set a date for hearing within 10 days and give at least 5 days' notice, in writing, to the clerk of each district to be in any way affected thereby of the day, hour and place it will meet to decide upon the proposed changes. Each district clerk shall immediately notify the other members of his board.

(3) JOINT ACTIONS OF BOARD. When the territory to be affected by a proposed order, other than one commenced by the state superintendent upon his own motion, lies in more than one municipality, the municipal boards shall act jointly, and the concurrence of a majority of each board shall be necessary to a valid order. The meeting of the several municipal boards or councils shall be called by the clerk of the municipality with whom the petition is filed and he shall give at least 5 days' notice in writing of the time and place of meeting to each member of each board or council.

(4) ORDER AS EVIDENCE. Such order shall be presumptive evidence of the facts recited therein and of the validity of all proceedings preliminary thereto.

(5) DISTRICT NUMBERED. An order creating a district shall number the district and mention the municipality in which it is situated.

(6) ORDER FILED AND RECORDED. Every order shall be promptly filed and recorded in the office of the clerk of the municipality in which the school districts affected by the order are situated (and if in more than one, a sufficient number of originals shall be executed so that one may be filed with each municipal clerk), and one copy of such order shall be mailed to the county superintendent, and one copy of such order shall be mailed to the state superintendent.

(7) FIRST DISTRICT MEETING. When a common school district is created, the municipal board shall fix the time and place for the first district meeting, and shall give 6 days' notice thereof in the manner provided for giving notice of an annual district meeting, and proof of such notice shall be filed with the municipal clerk. [*Spl. S. 1933 c. 15; 1935 c. 274; 1937 c. 181 s. 3; 1939 c. 228, 464; 1945 c. 493, 586*]

**Note:** The "appeal" which 40.30 (6), Stats. 1939, authorizes to be taken to the circuit court from a decision of the state superintendent in relation to the consolidation of school districts without specifying the nature of the proceedings on such appeal, does not imply a trial de novo with the court occupying the same position and having the same power in respect to a consolidation order as granted to the state superintendent himself by the statute, but the appeal provision is construed to mean that the review on appeal is limited to the questions as to whether the superintendent acted within his jurisdiction and in the exercise of good faith. School Dist. v. Callahan, 237 W 560, 297 NW 407.

The power of the state superintendent under 40.30, Stats. 1939, must be exercised by him in person, but the rule, requiring him as an executive officer to exercise his

own judgment and discretion in making an order of such nature, does not preclude him from utilizing, as a matter of practical administrative procedure, the aid of subordinates directed by him to investigate the facts and their recommendation in relation to the advisability of the order. School Dist. v. Callahan, 237 W 560, 297 NW 407.

Although the power granted to the state superintendent by 40.30 (1), Stats. 1939, is quasi judicial, neither the absence of a provision requiring notice to be given of a hearing before the superintendent nor the absence of such notice renders the statute unconstitutional or the orders of the state superintendent invalid on the ground of a want of due process, since no property rights on the part of the districts affected or the board members or the residents thereof are considered involved in the consolidation of such districts. School Dist. v.

Callahan, 237 W 560, 297 NW 407.

The purpose of 40.30 (1), Stats. 1941, is to establish school districts with sufficient taxable property to produce necessary funds to properly finance a school; and the statute is constitutional. In determining the "valuation" of a school district for the purpose of determining whether the district can be dissolved and attached to a contiguous district by the state superintendent public utility property within the district is not to be included. *Thornapple v. Callahan*, 244 W 266, 12 NW (2d) 23.

The purpose of the amendment (ch. 228, laws of 1939), authorizing the state superintendent, on his own motion, to attach school districts to contiguous districts, was to give the state superintendent authority to attach school districts to contiguous districts on his own motion only when and if the municipality fails or refuses to act. *Oak Park School Dist. v. Callahan*, 246 W 144, 16 NW (2d) 395.

See note to 40.16, citing *State ex rel. Callahan v. Murphy*, 246 W 310, 16 NW (2d) 834.

Consolidated rural school district may be dissolved and territory included therein must be made into new districts or attached to existing districts. 20 Atty. Gen. 303.

Town board may not detach portion of school district within its borders and attach same to joint school district without concurrence of municipal boards of municipalities in which joint district lies. 21 Atty. Gen. 837.

Town board has no power under this section to adjust and distribute assets of dissolved school district. This must be done under 66.03 by boards of districts affected. 23 Atty. Gen. 142.

When village extends its boundary so as to include portion of outlying school district, boundaries of district are not affected, but it becomes joint school district. Man whose property lies in that part of district annexed

to village pays his taxes to village treasurer, who turns school taxes on such property over to clerk of district in which property lies. 24 Atty. Gen. 173.

One whose property, by reason of change in school district's boundary, is now situated in another district with bonded indebtedness is liable for taxes levied on such property to new district in which he is located, although he has paid taxes on bonded indebtedness in first district. 24 Atty. Gen. 199.

Boundaries of city school districts of cities of second, third and fourth classes may be altered under provisions of this section. 30 Atty. Gen. 402.

In case of school consolidation where absorbing district is not insured in state insurance fund and absorbed district is so insured, insurance in force on property of absorbed district remains in force until expiration. Liability of state insurance fund under policies in force at time of consolidation would remain in effect until such policies expire according to their terms. 32 Atty. Gen. 69.

An order made by the state superintendent pursuant to 40.30 (1), Stats. 1943, dated May 5, 1944, bearing the notation "effective June 30, 1944," is a valid order. Such order which abolished joint school district No. 14, which had an assessed valuation of less than \$100,000 on May 5, 1944, and attached the land comprising said district to joint school district No. 1, was not rendered void or otherwise affected by an order of the town board made pursuant to 40.30 (1) on June 20, 1944, purporting to attach certain parcels of land located in joint district No. 1 (as it existed prior to the superintendent's order) and another district to joint district No. 14 so that the assessed valuation of No. 14 on June 20, 1944, if the order of the town board is given effect, exceeded \$110,000. 33 Atty. Gen. 117.

**40.31 School district; validation; lost records.** (1) When a district has exercised the rights and privileges of a school district for a period of four months, no appeal or other action attacking the legality of the formation of such district, either directly or indirectly, shall be taken.

(2) If the order creating a school district, and the record thereof shall be lost or destroyed, the order may be restored, filed and recorded by the same authority and procedure as an original order of like character would be presently made, filed and recorded and shall be presumptive evidence of the regularity of all prior proceedings pertaining thereto, of the legality of the formation of such district, of the boundaries thereof and of the loss or destruction of the record of its formation. Parties aggrieved by any order made under the provisions of this section may appeal therefrom to the state superintendent within thirty days.

40.32 [Repealed by 1945 c. 121]

**40.33 Dissolution of district by neglect to keep school.** (1) If a district for two or more successive years neglects to furnish schooling for its children as required by law, the town board shall, upon the recommendation of the county superintendent, attach the same, or so much thereof as lies in the town, to other districts in the town.

(2) If the territory of the dissolved district is attached to more than one district, then the assets and liabilities of the dissolved district shall be apportioned by said board to the receiving districts, as provided in section 66.03. [1935 c. 213]

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

**40.34 Transportation, board, lodging.** (1) **SCHOOL TRANSPORTATION.** The school district meeting may authorize the board to provide transportation for all the children of school age residing in the district and enrolled in the elementary grades. The board may provide transportation to and from school for all school children residing in the district and over 2½ miles from the schoolhouse, in case of a common school and 4 miles in case of a union high school, on its own order, by any of the following methods:

- (a) By contract with a common carrier;
- (b) By contract with the parent or guardian of the children to be transported or with other parties;
- (c) By contract with another school district;
- (d) By joint contract between 2 or more school districts and a third party, the third party being either an individual or a common carrier;

(e) By the purchase and operation of a district-owned vehicle operated by a competent driver employed by the school board in the name of the district;

(f) By contract with a taxi company or companies.

And if it fails to provide such transportation the parents may provide suitable transportation for their children, and shall be paid therefor by the district, at the rate of not less than 20 cents per day for the first child and 10 cents per day for each additional child transported.

(1a) STATE AIDS FOR TRANSPORTATION. School districts which furnish transportation to and from school in accordance with subsection (1) shall be entitled to receive state aid on account of such transportation, at the rate of 10 cents per day, per child transported to and from school, whose residence is  $2\frac{1}{2}$  miles and less than 5 miles from the school in the district of residence; and at the rate of 15 cents per day, per child transported to and from school, whose residence is 5 miles or more from the school in the district of residence.

(1m) PHYSICALLY DISABLED CHILDREN. Any district may provide transportation for physically disabled children to any elementary or secondary school regardless of distance, provided the request for such service is approved by the state superintendent before any reimbursement is made for service. State aid for such approved cases will be granted on the same basis as transportation of normal children. The approval of such cases shall be based on whether or not the child can walk to school with safety and comfort and whether he can carry the regular academic course. In the case of a physically disabled child, attendance of 120 days during the school year shall not be necessary in order to receive transportation aid, if the child's absence from school is due to illness or treatment.

(2) SUSPENDED SCHOOL. The board of any district which has suspended school shall pay the tuition of all children of school age residing in the district who attend other district schools and of all children who are of less than one-quarter Indian blood of school age residing in the district who attend federal schools within this state, the courses of study of which have been approved by the state superintendent of public instruction and over which the state superintendent and the county superintendent are granted joint supervision and diploma granting powers with the federal supervisors during such suspension, and shall provide transportation to and from school for all children residing more than 2 miles from the nearest district school or federal school which they may attend, and the district shall receive the regular state and county aids which the district would be entitled to if it were in operation and the regular state aid on account of such transportation.

(3) CONTRACTS FOR TRANSPORTATION. The board, when authorized or required to provide transportation, shall have power to purchase busses, or otherwise provide means of transporting school pupils to and from school in accordance with the provisions of this section. The commissioner of the motor vehicle department shall adopt and enforce rules and regulations to cover the design, construction, inspection and operation of all vehicles used for the transportation of school children, and such rules and regulations shall by reference be made a part of any contract for transportation of school children. All drivers or operators of school busses shall be under written contract with the school district for which such drivers or operators transport pupils. The form of contract shall be prescribed by the state superintendent of public instruction and shall provide that any party to such contract shall be at all times subject to any rules the commissioner of the motor vehicle department and the school board may adopt for the protection of the children or to govern the conduct of the person in charge of the conveyance. All transportation vehicles purchased or contracted for shall meet the specifications prescribed by the commissioner of the motor vehicle department.

(4) BOARD AND LODGING. If, in the judgment of the board and the parent or guardian, it is to the advantage of the district and also to the advantage of the child to provide board and lodging in lieu of transportation for all or part of the time for children of the district, residing more than two and one-half miles from the school, other than a suspended school, the board and parent or guardian shall enter into a written contract under which such children shall be properly boarded and lodged not more than one mile from the school, and the board shall pay for such board and lodging from the general fund not to exceed two dollars per week. This provision applies to physically disabled children attending high school who live too far from the school to be transported daily. The district shall be reimbursed by the state at the rate of one dollar per week of five days for each child so boarded and lodged. It shall also be the privilege of the parent or guardian to select the home in which the child be boarded and lodged. If the parent or guardian prefers to transport his child or children he shall be compensated and the district reimbursed as provided by subsection (1) of this section. The board may, if in its judgment it is to the interest of the district, in lieu of furnishing transportation or board and lodging, pay the tuition of such children in a school in another district which such children can conveniently attend without transportation.

(5) **TRANSPORTATION AND LODGING; RECORDS AND REPORT; STATE ALLOWANCE.** The school clerk shall give the teacher at the opening of the school the names of all children of school age in the district, residing more than two miles from the school, and the teacher shall inquire of every such child when enrolled, whether he is to be transported, and the manner of transportation, and shall keep a record that will show every day each child is transported and, at the close of the term, the teacher shall file a special report of such attendance with the clerk, who shall include such report with his annual report, to the county superintendent, giving the names of the parents, the names and ages of the children, the distance transported, the number of days transported, the amount due for each child, and the total sum paid by the district. The parent shall keep a daily record of such attendance and present such record with his bill for transportation. A similar report and record shall be kept and made for all children who are boarded and lodged. The county superintendent shall make personal inspection of the transportation and lodging furnished, and shall report his findings thereon to the state superintendent at the close of the school year. If the state superintendent shall be satisfied that the law and the contracts for the transportation and board and lodging of pupils have been substantially complied with, he shall certify to the secretary of state the sum due each district under the provisions of this section. In case of differences concerning the character and sufficiency of the transportation or board and lodging, the state superintendent shall have power to determine such matter and his decision thereon shall be final.

(5a) **RENT HOUSE FOR FAMILY.** Whenever in the judgment of the board it is to the interest of the district in lieu of transportation to rent a house for the family of children required to be transported, it may enter into a written lease for such house and pay as rental therefor not more than the amount which would have to be paid for transportation pursuant to subsection (3).

(6) **LIMITATION.** This section does not apply to children who reside in cities; except that where a city determines to furnish transportation for such school children, the same state aid shall be allowed as is provided by this section.

(7) **APPROPRIATION PRORATED.** If in any year the total of the claims for state aid under this section shall exceed the amount appropriated in subsection (2) of section 20.25, the state superintendent shall equitably prorate the amount available among the several school districts entitled to share in this state aid. [1933 c. 140 s. 5; 1933 c. 154 s. 2; 1933 c. 494 s. 13; 1933 c. 495; 1935 c. 86, 115; 1937 c. 110, 111; 1939 c. 181, 231; 1941 c. 231, 255; 1943 c. 487, 526]

**Note:** Provisions of this section do not in any way modify 40.21 (6); upon failure of home district to furnish transportation or board and lodging to school children entitled to such transportation or board and lodging home district may not escape its obligation to pay tuition fees of such children in another district. 19 Atty. Gen. 26.

Any child of school age residing more than four miles from the school of his district may attend school of another district, notwithstanding his home district offers him transportation; in such case the home district shall pay the tuition of such child. 19 Atty. Gen. 30.

All children of school age residing in the common school district are entitled to transportation provided for in this section. The section does not apply to children who reside in cities. 19 Atty. Gen. 120.

Reimbursement for transportation furnished by county agricultural school is not authorized. 19 Atty. Gen. 572.

"Home in which the child be boarded and lodged," under (4) must be home of some third person, who furnishes board and lodging to child. 20 Atty. Gen. 1215.

It is duty of common school district to furnish transportation for school children living over two miles from schoolhouse, but failure so to do does not excuse the parent for not sending children to school. 21 Atty. Gen. 43.

Children living more than two miles from schoolhouse in home district and attending school in another district one and one-half miles nearer may be transported to and from school by parent at expense of home district, where such district fails to furnish transportation to home school. 21 Atty. Gen. 325.

School board may not contract for transportation under (2) prior to annual meeting at which question as to whether local school will be closed for ensuing year is determined. 21 Atty. Gen. 326.

School district board may require person contracting to furnish transportation for school children to carry liability insurance as one of conditions of contract. 21 Atty. Gen. 932.

In case of suspended school, voters of district rather than school board may provide transportation for children residing over one mile limit. 22 Atty. Gen. 477.

Where common school district has no high school, school board has no authority to provide transportation to high school. 22 Atty. Gen. 774.

School district has not suspended school under (2) where it operates a school to which pupils may go and school board need not furnish transportation to school of another district. 22 Atty. Gen. 791.

This section authorizes payment of tuition if child is sent to public high school but not if he is sent to private high school. Resolution passed by annual meeting of union free high school district that said district will relieve union free high school board of all responsibility in paying tuition to private high school is invalid. 23 Atty. Gen. 468.

Parents of white children residing on Indian reservation must either send their children to available schools on reservation or pay tuition to schools off reservation. 24 Atty. Gen. 379.

School district does not pay for transportation beyond its boundaries except when its own school is closed and all children are transported to school in another district. School board must carry out resolution of district meeting providing transportation. 24 Atty. Gen. 578.

Mandamus will not lie to compel district to provide transportation for children living more than two and one-half miles from school, there being adequate provision made by statute for their transportation when district fails to provide it. 24 Atty. Gen. 652.

Under (1) school district is not authorized to furnish transportation for children at-

tending extra-curricular activities carried on with neighboring schools. 27 Atty. Gen. 203.

Under subsection (2), when school district votes to suspend its school, parents residing in district may send their children to any school they choose but school district which has closed its school is under no obligation to furnish transportation unless (1) nearest school which child may attend is

more than two miles from place of residence of said child and (2) child attends that nearest school. 31 Atty. Gen. 318.

Subsecs. (1) and (2) contemplate complete suspension of school work within district in so far as reference is there made to payment of state aids to district by reason of attendance of children of school age residing in that district at school in another district. 31 Atty. Gen. 372.

**40.344 High school transportations; requirements.** (1) The board of any school district which offers work beyond the eighth grade, and the county board of any county which operates a county school of agriculture, may provide transportation to and from school for high school pupils residing either within or without the district boundaries.

(2) The commissioner of the motor vehicle department shall prescribe specifications for conveyances used in the transportation provided for in this section and shall furnish copies of the same to the school boards mentioned in this section.

(3) Said commissioner shall prescribe rules and regulations for the safe operation of transportation provided for in this section. All transportation routes provided for in this section shall be approved by the state superintendent of public instruction.

(4) Boards of school districts designated in subsection (1) of this section may purchase with district funds and operate conveyances which meet the specifications prescribed by the commissioner of the motor vehicle department and to be used in furnishing such transportation.

(5) School boards of such districts may contract for transportation as provided for in this section. All conveyances used under such contracts shall comply with the specifications prescribed by the state superintendent of public instruction.

(6) Such school boards shall upon order of the state superintendent of public instruction discontinue the use of vehicles used in transportation.

(7) When the transportation routes established under this section pass through suspended common school districts, contracts may be entered into with the boards of the suspended districts for the transportation of the elementary pupils who reside in the suspended districts. The school board of any school district or the county board of any county as specified in subsection (1) hereof may utilize the vehicles owned or under written contract for the transportation of school children and teachers to and from all school activities in which the schools under their jurisdiction may participate.

(8) The cost of transportation provided for under this section may be borne or paid in accordance with such agreement as may be effected between the school district furnishing the transportation and either or all of the following: the parent or guardian of the pupil, and the municipality or school district of residence of such pupil, and such agreement may provide that any of the contracting parties may pay a part or all of such transportation. The electors of any town, at the annual town meeting, or the governing body of any school district, village or city may provide for the cost of the transportation of high school pupils provided for by this section.

(9) All drivers or operators of school busses shall be under written contract to the school district for which such drivers or operators transport pupils. The form of contract shall be prescribed by the state superintendent of public instruction and shall provide that any party to such contract shall be at all times subject to any rules said commissioner or the school board may adopt for the protection of the children or to govern the conduct of the person in charge of the conveyance. In case of differences concerning the character and sufficiency of the transportation or the routing of transportation the said superintendent shall determine such matter and his decision thereon shall be final.

(10) Persons, partnerships, firms or corporations independently engaged in the transportation of high school pupils shall be subject to the joint control of the commissioner of the motor vehicle department and of the state superintendent of public instruction. [1939 c. 508]

**Note:** This section controls and limits the use of school busses, and must be strictly complied with in order to bring a particular transportation of pupils within the statute, so far as the imposition, on a city, of tort liability for such transportation as a "municipal business" is concerned. *Huetner v. Eau Claire*, 243 W 80, 9 NW (2d) 533.

**40.345 Compulsory insurance on school busses; penalty.** (1) No motor vehicle owned by a school district or to be used under contract by a school district or for compensation to transport school children as provided by law, except when the contract is made with, or compensation is paid to, the parents of the children to be transported, shall be used, unless a policy of insurance in an insurance carrier authorized to do business in this state, covering liability or loss arising by reason of the ownership, maintenance or use of such motor vehicle is first secured and filed with the board of the school district in which the children for whom transportation provision is made reside. Such policy of

insurance shall provide for at least five thousand dollars of property damage insurance and for injuries to persons, including passengers, in at least the following amounts:

(a) Not exceeding ten thousand dollars to any one person or thirty thousand dollars for any one accident for each motor vehicle having a seating capacity of seven passengers or less;

(b) Not exceeding ten thousand dollars to any one person or forty thousand dollars for any one accident for each motor vehicle having a seating capacity of more than seven and less than sixteen passengers;

(c) Not exceeding ten thousand dollars to any one person or fifty thousand dollars for any one accident for each motor vehicle having a seating capacity of more than fifteen and less than twenty-five passengers; and

(d) Not exceeding ten thousand dollars to any one person or seventy-five thousand dollars for any one accident for each motor vehicle having a seating capacity of twenty-five passengers or more.

(e) This section shall not apply to taxicabs.

(2) The school district in which the children reside for whom a motor vehicle is provided for such transportation shall be liable for and pay the premiums or cost of such insurance, agreement of indemnity or corporate bond covering such motor vehicle. [1937 c. 290; 1939 c. 290]

**Note:** This section has no application to local vocational agriculture teachers who are required to do supervised practice work out in farm communities and who are paid a flat allowance for use of their cars and who occasionally transport pupils enrolled in their classes to visit the farm projects. 28 Atty. Gen. 376.

**40.347 Color of school busses.** (1) All motor vehicles known, denominated or used as school busses, designed and constructed especially for the transportation of school children, or owned by any political subdivision and used for the purpose of transporting school children to and from school except busses which may be jointly used in regular urban service shall be painted as follows: all visible parts of the chassis and two-fifths of the body shall be painted red; the middle fifth of the body painted white and upper two-fifths of the body and top painted blue.

(2) The school district meeting or other governing body of the district or political subdivision whose duty it is to let contracts for the transportation of school children shall provide in each contract that the color scheme of the motor vehicle doing the transportation shall be as provided in subsection (1) of this section. In the event of contracts existing at the effective date of this section, the trustees or other governing body shall appropriate sufficient money to the holders of said contracts so that the motor vehicles being used may be repainted in accordance with said subsection (1).

(3) The provisions of this section do not apply to automobiles regularly purchased for private or family use which may be used for the transportation of school children. [1939 c. 287]

**Cross Reference:** See 85.355 for penalty for painting other vehicles like school busses.

**40.348 Term of transportation contracts.** Any governing body having authority to enter into a contract for the transportation of school children may enter such contract for a term not to exceed 3 years. [1945 c. 369]

**40.35 Consolidation of schools by referendum.** (1) This section shall not apply to a school district, any part of which is within a city. When fifteen per cent of the electors, in each of two or more contiguous common school districts, shall petition therefor, the school boards shall meet at a time and place designated by the school board of the most populous district, to fix a time for an election to determine whether the district shall be consolidated, which election shall be not less than two, nor more than four weeks from the date of their meeting. Such election shall be called for eight o'clock in the afternoon, at the regular places for holding the district meeting. The district clerk of the respective districts shall give notice of the election as notices of annual school district meetings are given. The elections shall be conducted by the school officers of the respective districts, and the vote shall be by ballot. They shall, within three days, report the result of the elections in their respective districts to the clerk of the district in which the meeting to fix the time of the election was held. The several school boards, one week after the election, shall meet at said place and shall canvass the returns.

(2) If a majority of the votes cast in each district is in favor of consolidation, the school districts shall thereby be consolidated into a single school district, and the school boards, at the time of canvassing the returns, shall name and number the new district, and shall appoint a time and place for the first district meeting, and they shall give notice thereof as notices of annual meetings of common school districts are given.

(3) When a consolidated school district shall be organized, the school districts out of which it shall have been formed shall cease to exist, and the title to all property and the



assets of every nature of such several school districts shall thereupon become vested in the consolidated school district, and claims and obligations and contracts of said several school districts shall become the claims and obligations and contracts of such consolidated district. The consolidated district shall conduct the schools theretofore maintained and conducted by the several districts until such time as the consolidated district shall have made new provisions therefor. [1931 c. 67 s. 55; 1933 c. 140 s. 2]

40.355 [Renumbered section 40.29 by 1927 c. 425 s. 68]

40.36 Rural schools named; mail facilities. (1) The county superintendent of schools shall name each rural schoolhouse in his district, and notify the district clerk thereof.

(2) The board shall provide and maintain a mail box for each school located on or near a rural mail route.

(3) The district clerk shall, within five days after receipt of notification from the county superintendent of such name, notify the proper postmaster of the name and location of the school, and the number of the district.

(4) In case a school is not located on any mail route, the district clerk shall furnish the local postmaster with the names of persons to whom the mail for the school may be delivered. The school board may rent a lock box at district expense for each school not on a mail route.

(5) The district clerk shall notify the postmaster of school vacations, and shall direct what disposition shall be made of the school mail during vacations.

40.37 Graded schools; special state aid. The school board of any school district maintaining a graded school but no free high school, union free high schools excepted, may receive special state aid provided upon full compliance with the following conditions:

(1) CLASSES. There shall be two classes of state graded schools in Wisconsin, known respectively as first class and second class; all state graded schools of three or more departments shall be in the first class, and all graded schools of two departments shall be in the second class.

(2) SCHOOL YEAR. School shall be maintained in a district receiving such aid, at least nine school months, including legal holidays, in each and every department. Not more than forty-five pupils shall be in average daily attendance in any one department of a state graded school.

(4) EQUIPMENT, MAINTENANCE. The schoolhouse, the outhouses and the grounds, the furniture and equipment, shall be maintained in good condition and kept free from any insanitary feature.

(5) SCHOOL EQUIPMENT. Sufficient equipment, including globes, maps, blackboards, library and other essentials for the proper work of the school, shall be provided by the school district.

(6) APPLICATION FOR AID. When the school board of any school district desires to secure state aid for its graded school said school board shall make written application for the same to the state superintendent. No graded school shall be entitled to be placed upon the list of state graded schools, and to receive special state aid until said school shall have been duly inspected by the state superintendent, or some member of his staff, and found to be fully complying with all the conditions of this section.

(7) TIME. In order that any graded school may receive special state aid as herein provided, application shall be made to the state superintendent by the school board before the first day of September preceding the school year for which said special state aid is requested.

(8) INSPECTION. The state superintendent shall inspect and supervise the state graded schools, and give information and needed assistance to localities in organizing such schools.

(9) COURSE OF STUDY. The state superintendent shall prepare a course of study suitable to be pursued in graded schools, publish the same, and furnish to school boards upon application. This course of study shall be followed by all state graded schools as one condition of securing special state aid. Said state superintendent shall furnish suitable blanks for annual and special reports for all such state graded schools, which reports shall call for such information as he may deem necessary. The refusal or neglect of the school board or any of its officers to file these reports with the state superintendent when called for, shall be deemed sufficient ground for refusing special state aid, as provided for in this section.

(10) NUMBER IN VILLAGES. No more than one such graded school in any village shall receive state aid as herein provided, nor shall any graded school in any incorporated city participate in said state aid.

(11) HIGH SCHOOL PRINCIPAL AS GRADE SUPERVISOR. Nothing in this section shall be construed to prevent the principal of a union free high school from supervising grades of a state graded school. [1937 c. 58; 1945 c. 33, 370]

40.38 **School property for public meetings, rents.** Except in cities of the first class the school board of any school district which holds an annual district meeting, after being first so authorized so to do by the electors of any such meeting, and the school board or board of education of any other school district, in its discretion, is hereby empowered to grant the use of school buildings and school grounds to any responsible organization for public meetings to which an admission price is demanded, and to charge for such grant or use such sums as may be fixed by the school board or the board of education by a majority vote of the board members taken at a regular or special board meeting, all sums so received to be accounted for and paid into the school treasury to constitute part of the general fund and to be used for the benefit of the schools. [1935 c. 325]

40.385 [Renumbered section 38.22 by 1941 c. 213 s. 25]

40.39 **State aid to graded, junior and senior high schools.** (1) State aid shall be paid annually to state graded schools not offering high school work and junior high schools which, in the judgment of the state superintendent, have been maintained as prescribed in sections 40.37 and 40.46, respectively, upon the following basis:

- (a) For a graded school of the first class, three hundred dollars;
- (b) For a graded school of the second class, two hundred dollars;
- (c) For a junior high school, one-half the cost of instruction, not to exceed five hundred dollars;
- (d) For a graded school of either class or a junior high school in which special instruction in agriculture and other industrial subjects, as may be prescribed by the state superintendent, shall have been offered and presented in an efficient manner by a competent teacher and approved by the state superintendent, an additional one hundred dollars;
- (e) A district receiving aid on account of a junior high school may also receive aid for a state graded school if such school shall have been maintained in accordance with the provisions of the statutes and the requirements of the state superintendent;
- (f) If the aggregate of the amounts payable, determined as provided in the preceding paragraphs, shall exceed the appropriation made by subsection (2) of section 20.26, the amounts to each district shall be reduced pro rata so that the aggregate will equal the appropriation made for this aid.

(2) State aid shall be paid annually, on or before March 15 in each year, to school districts of all classes maintaining one or more 4-year free high schools and one or more junior high schools offering less than 4-year courses and to state graded schools offering high school work on the basis and subject to the conditions set forth in this section.

(b) The appropriation provided by section 20.27 shall be apportioned in accordance with the number of pupils (including tuition pupils) in average daily attendance during the preceding school year in the ninth, tenth, eleventh and twelfth grades in school districts of all classes on the following basis: \$90 per pupil in average daily attendance and 10 cents per day for each of such pupils who resides 4 miles or more from the school and for whom transportation is provided in accordance with the provisions of sections 40.344 and 40.475.

(d) Such aid shall be paid to the school or city treasurer or to the treasurer of the municipality of residence of pupils attending out of state schools as provided for by subsection (4) of section 40.47 to be used for high school aid only, excepting that in cities of the first class such aid shall be paid to the city treasurer for immediate deposit in the city school fund for school purposes.

(3) On or before August 1, the city superintendent or the district clerk in districts where there is no city superintendent, and the clerk of the municipality of residence of children attending out of state schools as provided for by subsection (4) of section 40.47, shall report to the state superintendent, under oath and in such form as the state superintendent may require, the average daily attendance in the ninth, tenth, eleventh and twelfth grades of free high and junior high schools, union free high schools and consolidated high schools and state graded schools offering high school work in the preceding school year, and such other items as the state superintendent may require.

(4) Upon receipt of such report, the state superintendent shall, in accordance with the provisions of this section, determine and certify to the secretary of state the amounts accruing to such district (including union free high school districts) or city.

(5) No state aid shall be paid for or on account of any school unless the employer, as defined in section 42.20, has complied with the provisions of sections 42.39 to 42.43; but this subsection shall not apply to cities of the first class.

(6) The state superintendent may refuse to certify state aid for any school in which the scope and character of the work are not maintained in such manner as to meet his approval.

(7) Whenever any officer shall fail to make within the time prescribed any statement or report required to be made to the state superintendent, the latter shall notify such officer.

of such omission, but the failure to give such notice shall not in any manner affect the consequences of such omission.

(8) Any district or city or municipality of residence of children attending out of state schools as provided for by subsection (4) of section 40.47, excluded from any state aid because of some mistake or omission by some officer may, at any time within two years after such state aid first becomes payable, furnish proof to the state superintendent of the facts of such mistake or omission and that the same has been corrected or remedied. If such proof be satisfactory to the state superintendent he shall certify such facts to the secretary of state with the amount due such district or city because of such mistake or omission and the secretary of state shall thereupon draw his warrant for such amount in favor of such district or city.

(9) Commencing with the school year 1945-1946 no state aid shall be paid for or on account of any high school or high school district, except for or on account of a high school or high school district in a city of the first class, for any year during which such high school or high school district shall employ any teacher, administrator, principal or supervisor not under a contract providing for leave of absence of the teacher, administrator, principal or supervisor by reason of personal sickness, without deduction of salary of such teacher, administrator, principal or supervisor at the rate of at least 5 days per year and for accumulation of at least 30 days of unused sick leave from year to year. [1931 c. 67 s. 55; 1937 c. 181 s. 2; 1937 c. 309; 1939 c. 109, 238, 272, 464; 1941 c. 300; 1943 c. 525; 1945 c. 122]

**40.40 High school district meetings and elections; call, notice, conduct.** (1) Except as provided otherwise in this chapter, the high school district meetings and elections shall be noticed, called and conducted as common school district meetings are, and the first meeting shall be deemed an annual meeting.

(2) The annual meeting of high school districts shall be on the last Monday in June at eight o'clock in the afternoon, unless another hour be fixed by a previous annual meeting.

(3) The district officers shall be elected by ballot and the polls of the election shall be open from one to eight o'clock in the afternoon of the annual meeting day; except that if the previous annual meeting shall have so determined, such election shall be held at the time of the annual meeting and after the presentation of the officers' reports. The time and place of the election and annual meeting shall be specified in the notice. A plurality shall elect.

(4) Special district meetings may be called by the high school district board, and shall be called by the clerk upon the written request of fifteen electors.

**40.41 Powers of high school district meetings.** (1) The annual high school district meeting shall have power to elect a high school board. When the territory which constitutes a common school district is identical with that which supports a high school, the common school district board shall also be the high school board.

(2) To vote a tax to purchase or lease a site for the high school; to build, hire or purchase a schoolhouse; to repair, equip and furnish the same and to provide for the maintenance of the high school.

(3) To vote to consolidate schools or to discontinue a school where more than one high school is operated by the district.

(4) To authorize the school board to purchase textbooks to be furnished to the pupils of the high schools under such conditions as may be prescribed by the meeting or by regulation of the board.

(5) To determine the length of time the high school shall be taught during the year, which shall not be less than nine months.

(6) To establish and maintain, with the approval of the state superintendent, seventh and eighth grades in connection with the high school.

(7) To exercise all the powers relative to the high school district which are conferred by statute upon the meetings of common school districts, relative to the affairs of such district.

**40.42 High school board; election, terms, powers.** (1) The officers of high school districts (except city districts) shall be a director, a treasurer and a clerk, and they shall constitute the school board. The term of each shall be three years and until his successor shall have qualified. They shall be elected and notified and shall qualify in the same manner and time as the officers of common school districts. At the first election, the clerk shall be chosen for one year, the treasurer for two years and the director for three years, and the time preceding the next annual meeting shall be counted as a year in determining their terms of office.

(2) The high school board shall conduct the affairs of the district on the general plan provided for common school districts, and shall possess, with respect to such high school district, all the powers exercised by and be charged with all the duties and liabilities con-

ferred and imposed on the officers and board of the common school district. The treasurer shall give a like bond to be approved by the director and filed with the clerk. The clerk shall report to the state and county superintendent the facts required by section 40.13, excepting paragraph (a) of subsection (1) thereof.

**40.43 City school superintendent.** In all school districts which embrace all of the territory of any city, however organized, and including joint districts but not union free high school districts, the district board, board of education or other board in charge may employ a superintendent to supervise and manage the schools of said city under the direction of such employing board. [1939 c. 53]

**40.44 Vocational training in high schools.** (1) Any high school board may establish and maintain, in connection with the school, courses in manual training, domestic economy, agriculture, or commercial subjects.

(2) The state superintendent shall establish a standard of qualification for teachers for such courses, and may grant special certificates to qualified applicants, which certificates shall be in such form and for such time as he may prescribe, and shall qualify the holders to teach the courses or subjects named in the certificates.

40.445 [Renumbered section 40.61 by 1927 c. 425 s. 88]

40.45 [Repealed by 1939 c. 145]

**40.46 Junior high school; senior high school.** (1) A school in which only the seventh to ninth, or seventh to tenth grades, inclusive, are taught is denominated a junior high school, and one in which only grades ten, eleven and twelve are taught is denominated a senior high school.

(2) Any district maintaining a high school, or a graded school in which five teachers are employed may maintain a junior high school; provided, the aggregate enrollment in the seventh and eighth grades the preceding year was forty or more. The laws relating to district high schools shall govern in the establishment and maintenance of junior high schools so far as such laws are applicable except as hereinafter provided.

(3) A junior high school in a district maintaining a high school, shall include only grades seven, eight and nine.

(4) A junior high school shall employ at least three teachers, one of whom shall be qualified to teach manual training or agriculture and one qualified to teach domestic science. [1933 c. 140 s. 1]

**40.47 High schools; admittance; tuition.** (1) **COURSE OF STUDY.** The high school board shall determine, with the advice and consent of the state superintendent the course of study and the minimum standard of qualifications for admission.

(2) **ENTRANCE REQUIREMENT.** (a) A certificate or common school diploma issued by the county superintendent that the holder thereof has completed the course of study in the school district in which he resides, or one at least equivalent to the course of study provided by the state superintendent for the common schools, shall be evidence of the completion of the course of study required by this section. Such certificate or diploma, or a certified copy thereof, shall be filed with the school district clerk upon admission of the holder to the high school, and shall be attached to the claim for tuition.

(b) A certificate or diploma, issued by the superintendent of a parochial school system or of a private school, that the holder thereof has completed the course of study prescribed by such parochial school system or private school, which shall be substantially equal to the course of study provided by the state superintendent for the common schools, shall be evidence of the completion of the course of study required by this section and shall entitle the holder thereof to admission to a high school, provided that such school system or private school shall meet the requirements of paragraph (c) of this subsection. Such certificate or diploma, or a certified copy thereof, shall be filed with the school district clerk or clerk or secretary of a city board of education, upon admission of the holder to the high school and shall be attached to the claim for tuition. Such tuition shall be collected from the municipality where such pupil resides as provided in subsections (5) and (6) of this section.

(c) When the superintendent of such parochial school system or head of such private school shall have filed with the state superintendent of public instruction the course of study mentioned in paragraph (b) of this subsection, pupils from any such school system or school shall be admitted to any high school in the state in accordance with the provisions of paragraph (b) of this subsection.

(3) **NONRESIDENTS.** The board shall admit to the high school, when facilities will warrant, any person of school age who resides in the state, but not within any high school district, and who shall have complied with the entrance requirements of subsection (2). Nonresidents so admitted shall be entitled to the same privileges and be subject to the same rules and regulations as resident pupils.

(4) TUITION. Every high school shall be free to all persons of school age resident in the district. The board may charge a tuition for each nonresident pupil, excepting a nonresident pupil having a legal settlement as defined in section 49.10 in the high school district, and this provision for tuition shall be available to a public high school without this state; provided, its course of study is equivalent to Wisconsin's, and provided it is at least one and one-half miles nearer the pupil's home than is any Wisconsin high school. The provisions of this subsection existing prior to the effective date hereof shall apply to pupils then enrolled in high school and until such pupils complete the prescribed courses for graduation therefrom.

(4a) OTHER TUITION. The board of any school district which operates a high school may contract with the university extension division of the university of Wisconsin for extension courses for pupils enrolled in such high schools. The cost of such contract shall be paid out of school district funds and shall be included in the cost of operation and maintenance of the high school districts which enter into such contract for the purpose of computing tuition costs.

(4b) FLIGHT INSTRUCTION. The board of any school district which operates a high school may contract with flight operator schools approved by the civil aeronautics administration for courses in flight instruction approved by the state superintendent. The cost of such contract shall be paid out of school district funds and shall be included in the cost of operation and maintenance of the high schools districts which enter into such contract for the purpose of computing tuition costs.

(5) CLAIM FOR TUITION. (a) The tuition for any given year for nonresident pupils who have pursued high school work shall be determined as follows: From the sum total of money expended by the school district in operating and maintaining the high school, including an item for building and equipment costs equal to 2 per cent of the original expenditures by the districts for buildings and equipment thereof as certified by the state superintendent of public instruction, such charge not to apply for a greater period of time than 50 years in the case of a new building or for the unexpired portion of 50 years of life of an old building, excluding land costs, and not to exceed 30 cents per week per pupil, there shall be subtracted an amount equal to the sum of the state and federal aids, the cost of transportation and money expended for the payment of principal and interest of bonded indebtedness or other building loans, and the difference so determined shall be divided by the average daily attendance for the given year, but in no case shall the amount of the claim per week exceed the difference between the amount of state aid per week and \$3 per week, except that for the duration of the present war between the United States and her enemies and for one full school year thereafter the amount of the claim per week shall not exceed the difference between the amount of state aid per week and \$4 per week.

(b) Before August 15 in each year the school clerk shall file with the clerk of each municipality from which any tuition pupil was admitted, except pupils defined by section 40.21 (2) and (2a), the claim for which indigent pupils shall be filed as provided for under those subsections, a sworn statement of claim against the municipality setting forth the residence, name, age, date of entrance and the number of weeks' attendance, during the preceding school year, of each person admitted from such municipality, the average daily attendance of the high school for the year, the statement of the cost of operation and maintenance of the high school as computed in accordance with the provisions of this section, the amount of tuition which the district is entitled to for each pupil, and the aggregate sum for tuition due the district from the municipality. This statement shall be rendered on a form prescribed by the state superintendent of public instruction.

(c) The school district clerk shall file certified copies of all tuition bills with the state superintendent of public instruction before August 15 of each year.

(6) TUITION TAX. The municipal clerk shall enter upon the next tax roll such sums as may be due for such tuition from his municipality and the amount so entered shall be collected when and as other taxes are collected. If a portion of such municipality forms a part of a high school district, the taxable property in that portion shall be exempt from such tuition tax. The municipal clerk shall file with the state superintendent of public instruction a certified statement of tuition entered upon the tax roll prior to January of each year. Failure of the municipal clerk to comply with the provisions of this section shall render that officer and his bondsmen liable for the amount of the tuition statements rendered to him by the school clerks and shall constitute cause for removal from office for failure to perform the duties of said office as provided by sections 17.13 and 17.16. When collecting the tuitions as provided for under this section the municipal treasurer shall be considered to be the agent of the school district to which the tuitions are due and shall pay the same by personal certified check or cash to the school district treasurer, and shall file a certified statement of tuitions paid with the state superintendent of public instruction prior to May of each year. Failure to comply with the provisions of this section shall

render the municipal treasurer and his bondsmen liable for the amount due the school districts as tuition and shall constitute cause for removal from office for failure to perform the duties of said office as provided by sections 17.13 and 17.16. When the amount of taxes collected by any tuition paying municipality is insufficient to meet the tuition claims filed with the municipal clerk, the difference between the amount collected and the amount of said claims shall be certified to the state superintendent of public instruction by the municipal treasurer responsible for the collection of such claims. Immediately upon determining the correctness of said certification the state superintendent of public instruction shall certify to the secretary of state and to the state treasurer the amount thereof which each school district is to receive. Upon receipt of such certification by the state superintendent of public instruction the secretary of state shall draw his warrants covering the amounts due the school districts and the state treasurer shall pay to the school district treasurers the amounts due. The state treasurer shall file a statement of tuition so paid with the state superintendent of public instruction and with the county treasurer of the county wherein the school district concerned lies. When delinquent taxes are collected by the county treasurer (or other local treasurer) he shall remit to the state treasurer the portion thereof that was levied for such nonresident tuition so as to reimburse the general fund for such payments to school districts from the appropriation provided by section 20.29.

(7) STATE GRADED SCHOOL; NONRESIDENT TUITION. The school board of any district which maintains grades above the eighth shall admit nonresident pupils of school age to these grades whenever the facilities will warrant; providing such pupils shall satisfy the conditions of subsection (2). The school board shall fix the tuition of said nonresident pupils. And such tuition shall be collected and paid in the same manner as tuition is collected by and paid to high school districts for the attendance of nonresident pupils.

(8) CONDITION OF TUITION. No district shall collect tuition as provided in subsection (7) unless the work done in said grades shall have been approved by the state superintendent, and unless the work done in the first eight grades shall have been up to the required standard.

(9) UNIVERSITY HIGH SCHOOL. The proper authorities of any town, village or city, the whole or a portion of which is not within a free high school district, may authorize residents of such town, village or city who do not live within a free high school district to attend the high school maintained by the University of Wisconsin. The tuition shall be the same as required of other students.

(10) TUITION AT UNIVERSITY HIGH SCHOOL. The clerk of the town, city or village shall file with the bursar of the university a copy of the resolution authorizing attendance at the university high school, and the bursar shall on or before the first day of July of each year make a sworn statement to the clerk of such town, city or village showing the amount of tuition due as required by subsection (4) of this section. Upon receipt of such statement taxes shall be levied for payment of the tuition, and the tuition shall be paid the university in the same manner as taxes are levied and moneys paid for tuition for attendance at free high schools. Nothing in subsections (9) and (10) shall be construed to require the university to admit persons to the high school, and it shall be the sole judge of its capacity for seating and instruction and the qualifications of the applicant for admission.

(11) FEDERAL SCHOOLS. (a) When the superintendent of a federal school shall have filed with the state superintendent of public instruction a course of study approved by said state superintendent, pupils from such federal school systems shall be admitted to any high school in the state when holding elementary school diplomas signed by the superintendent of the federal school and by the county superintendent of schools.

(b) Residents of Wisconsin who are graduates of federal schools within this state and who hold common school diplomas signed by the superintendent of a federal school and by the county superintendent of the county in which the federal school is located, shall upon application be admitted to any high school or federal school in this state. Tuition bills for attendance of qualified pupils at federal high schools shall be computed, filed, allowed, the tax levy for payment of same made, the tax for payment of same collected, and payment made in the same manner as provided in this section except that payment shall be made to the superintendents of the federal high schools. Tuition claims for attendance at federal high schools shall not be allowed for pupils who are of one-quarter or more Indian blood. [1931 c. 285; 1935 c. 430; 1939 c. 238; 1939 c. 517 s. 10b; 1941 c. 231; 1943 c. 88, 275 s. 13; 1943 c. 525; 1943 c. 553 s. 4; 1943 c. 570; 1945 c. 255, 371, 588; 43.08 (2)]

**Note:** A town treasurer when he collects taxes for a school district for high school tuition acts as the agent of the school district and the money so collected belongs to the school district. Failure to pay the money to the school district upon due demand renders the town treasurer and his bondsmen liable for the taxes so collected. The practice of issuing town orders to cover moneys so collected by the town treasurer is without

authority in the law and such town orders are void. But where such orders are issued to the school district and the school district discounts them at a bank and uses the proceeds for district purposes, the district is liable to the bank and the district may reimburse itself by collecting from the town, if the money is still in its treasury, and if not, by proceeding against the town treasurer and his bondsmen. *First Nat. Bank v. York*, 212 W 264, 249 NW 513; *Chalupnik v. Savall*, 219 W 442, 263 NW 352.

Pupil residing in school district offering ten grades who has completed eighth grade, may not have his tuition in high school district paid by school district where such pupil resides. 20 Atty. Gen. 556.

Children of school age may, for school purposes, have residence apart from that of their parents. Municipality in which they so reside must pay tuition to district high school which children attend, where such high school is outside district in which children reside. 21 Atty. Gen. 117.

High school district and common school district may not contract for payment by common school district to high school district of tuition in excess of three dollars per week. 21 Atty. Gen. 874.

Child placed in foster home under 48.07 where no compensation charge is made upon county has residence where located, for school purposes. Such child may attend high school in district where located free of charge but where he attends high school out of district where located tuition is chargeable as for any other nonresident pupil. 22 Atty. Gen. 191.

Boy eighteen years of age who graduated from high school may return to same high school for work in different subjects from those he has taken previously and his home town must pay his tuition. 23 Atty. Gen. 218.

If high school district overcharges tuition and town treasurer pays same, district may be compelled to refund overcharge under 74.78. There is no limitation as to time for recovery. 24 Atty. Gen. 170.

School district within municipality offering two years of high school work is entitled to one-half exemption allowed by (6). 24 Atty. Gen. 516.

"Enrolled" pupils under (4) are those actually in attendance during previous year. 25 Atty. Gen. 7.

Child placed in home by board of control from state public school at Sparta has residence for school purposes in municipality where home is located, even prior to expiration of usual probationary period. 25 Atty. Gen. 410.

Clerk of school district, although irregularly elected, is de facto clerk and proper holder of office until removed by judicial proceedings instituted by one showing superior right to office. 25 Atty. Gen. 672.

Under facts stated high school district tuition claim cannot be placed on next tax roll in order to collect deficiency arising from failure of collections based on previous tax roll. 25 Atty. Gen. 682.

Where pupil is of school age, town is required to pay nonresident tuition for graduate work in high school, even though student has completed four year high school course in such school and town has paid tuition therefor under (4). 26 Atty. Gen. 584.

State superintendent of public instruction should not certify for payment to school districts under 40.47 (6) tuition claims for payment of which sufficient taxes have been collected but which remain unpaid because municipal treasurer has failed to observe priorities accorded by 74.15 (2), Stats. 1939, or 74.03 (9), Stats. 1941. 31 Atty. Gen. 115.

40.21 (2), Stats. 1939, relating to recovery of tuition for indigent pupils is limited to instances where such pupils reside in district making claim. Where nonresident indigent pupils are admitted to high school such district must file its claim for tuition under 40.47 (5), Stats. 1939, with clerk of municipality from which such pupils were admitted, regardless of fact that their legal settlement is elsewhere. Statutes make no provision for reimbursement to municipality of residence. 32 Atty. Gen. 43.

**40.475 Transportation of nonresident high school pupils.** (1) HIGH SCHOOLS MAY UNDERTAKE. Upon the approval of state superintendent of public instruction, any high school which maintains school building facilities, teaching equipment, course of study and quality of instruction to a satisfactory standard as set by the state superintendent of public instruction may engage in the transportation of high school pupils who are residents of territory not included in any high school district.

(2) SUPERINTENDENT MUST APPROVE. Any high school which has been so approved may purchase, maintain and operate transportation equipment and establish routes and schedules for the transportation of nonresident pupils. The location and extent of all such routes shall be approved by the state superintendent of public instruction.

(3) MUNICIPALITIES MAY TRANSPORT. Any town, at the annual town meeting, or the governing body of any school district, village or city, may provide transportation for all high school students, residing more than two and one-half miles from a high school. Such transportation may be provided by a town, school district, village or city transportation system or by contract with parents or guardians, or otherwise. [1939 c. 334, 439, 503]

**40.48 High school taxes.** (1) High school district taxes shall, except as herein otherwise provided, be levied and collected, and all money belonging to a high school district shall be paid out on orders drawn and countersigned in the manner prescribed for levying and collecting taxes, and making payments in common school districts.

(2) The school clerk shall certify all taxes levied for high school purposes to the municipal clerk. If any high school district is joint, the clerk of the high school board shall certify to the clerk of each municipality the amount to be raised by each. The apportionment shall be determined and shall be equalized in the manner provided in section 40.11 (9).

(3) The high school district taxes shall be entered on the next tax rolls of the municipalities and collected and returned as other taxes are, and shall be paid to the high school district treasurer.

(4) If any high school district meeting shall not have voted a tax sufficient to operate its high school at least nine months during the current year, the high school board shall, before the third Monday of November, determine the sum necessary to be raised to so maintain such high school and to furnish additional necessary equipment, and the clerk

shall forthwith certify to the proper municipal clerk the amount so fixed and it shall be collected as provided in this section. [1945 c. 121]

**40.49 Free lectures.** (1) Any school board may provide free lectures on educational subjects, in the school buildings, in public library buildings or in other suitable places, and provide for the further education of the adult residents of the district.

(2) The board may purchase books, stationery, charts and other things necessary and expedient to successfully conduct said lectures and may designate some person to manage such lectures.

**40.50 City school plan.** (1) Sections 40.50 to 40.60 provide a plan or system of school administration for each city of the fourth class whose territory constitutes an entire school district, except as herein provided, and each city of the second or third class, to the end that city schools shall be as nearly uniform as practicable. A fourth class city with not more than ten per cent of its territory in another school district may adopt the plan or system of school administration provided by such sections 40.50 to 40.60, but in such event such territory lying within the other school district shall not pay school tax in such fourth class city. Such territory lying within the other school district shall continue to vote on school matters within said district and shall not vote on any matter relating to the city school plan within said city. All general school statutes govern city schools as far as applicable, and as they are in harmony with this plan. This plan shall become effective on July 1, 1928, except that the members of school boards shall be elected the first Tuesday of the preceding April.

(2) (a) Any fourth class city whose territory now or any time hereafter, constitutes all or part of one school district and which has at least eighty per cent of the entire population of such school district may proceed under section 40.52 or 66.01 to adopt the plan of school administration provided by sections 40.50 to 40.60, or may operate or continue to operate under the common school district plan. No action taken by the school board of any such city nor any act of such school district in the levying of taxes, borrowing of money, issuance of bonds, execution of contracts or other corporate acts shall be invalidated by failure to comply with sections 40.50 to 40.60.

(b) Any territory in the same school district but outside of such city adopting the city school plan is hereby attached to such city as provided by section 40.51.

(3) Whenever any city shall operate under the city school plan as provided by sections 40.50 to 40.60, all of the area within the corporate limits of such city shall automatically be included under such city school plan and be a part of such city school district. The provisions of this subsection shall not affect or change the plan or territorial limits of any school system now operating in any city of the fourth class under a special charter heretofore granted to such city. [1933 c. 103, 217; 1937 c. 183; 1941 c. 139]

**Note:** The term "school district" as used in city school plan implies a system rather than a municipal entity. The board of education of a city of the second class is merely an arm of the city government and cannot coerce the common council to issue bonds for the erection of school buildings, nor may the school board use funds in the treasury for the erection of buildings unless approved by the common council. State ex rel. Board of Education v. Racine, 205 W 389, 236 NW 553.

City school plan does not apply to fourth class city constituting only a portion of a school district. School district, comprising a fourth class city and other territory, is a separate municipal entity, entitled to sue out a writ of certiorari for review of proceedings to detach territory therefrom. School board had no power to file petition for certiorari to review detachment of territory without authority conferred at district meeting. State ex rel. Geneva School Dist. v. Mitchell, 210 W 381, 245 NW 640.

Chapter 425, Laws 1927, revising and codifying the statutes relating to public schools, and providing for a city school plan in 40.50 to 40.60, is construed as imposing a uniform system of school government upon all cities of the third class, and as impliedly repealing private and local laws creating a school district which included a city of the third class. State ex rel. Thompson v. Beloit City School Dist., 215 W 409, 253 NW 598.

Where the superintendent of a school district which was a separate entity from the city but whose territory was coextensive with the city's, and the school district discharged him before the expiration of his contract and before the effective date of the city school plan, (40.50 to 40.60, as enacted by ch. 425, Laws 1927) but such city school

plan was effective as to such city when the plaintiff made claim and commenced his action for breach of the contract, the school district was then no longer in existence as a separate entity, and the city, as its successor, was liable for the plaintiff's claim, if any he had. He could present to the city school board an unitemized and unverified claim for breach of his contract of employment, and it was the duty of the board to allow or disallow the claim in whole or in part, and its failure to pass on the claim within sixty days operated as a disallowance, but, the claim being legally one against the city and the city alone being responsible for payment thereof and being the only entity subject to suit thereon, such presentation of the claim to the school board did not excuse his failure to file with the city clerk an itemized and verified claim as required by 62.12 (8) (a), 62.25 (1) (a), as condition precedent to the commencement of an action against a city, and hence, not having so filed, his complaint was properly dismissed. Seifert v. School District, 235 W 489, 292 NW 286.

In a city operating under the city school plan prescribed by 40.50 to 40.60, the members of the city school board are officers of the city and the board is an arm of the city government, so that whatever the board does pursuant to statutory authority it does for the city, and the board's employes in doing what is thus authorized are employes of the city, and any liability arising under 40.344 from their acts is a liability of the city. Huetner v. Eau Claire, 243 W 80, 9 NW (2d) 583.

School funds of city of Ripon, city of fourth class whose territory comprises entire school district, must be disbursed in ac-



cordance with provisions of 40.57. 19 Atty. Gen. 110.

City of fourth class whose territory consists of more than one school district, part of which is outside of city limits, is not subject to 40.50 to 40.60. 20 Atty. Gen. 1038, 1179.

Joint school district comprising entire territory of two cities of fourth class and other territory is not subject to provisions of 40.50 to 40.60 and may continue to operate as joint school district. 21 Atty. Gen. 951.

School districts coterminous with boundaries of city of fourth class which continued at all times to act as common school district as if sec. 40.50 to 40.60 Stats, 1927, had never been enacted are now such school districts de jure by virtue of amendment to 40.50 by ch. 217, Laws 1933. 24 Atty. Gen. 596.

City school district in city of fourth class

operating under city school plan has no right to any portion of utility taxes paid to city under 76.28. 24 Atty. Gen. 728.

City under city school plan is "city school district" and not "common school district" nor "high school district." Neither 40.30 nor 40.68, Stats, 1937, authorizes alteration of such "city school district." 20 Atty. Gen. 707; 27 Atty. Gen. 591.

School district whose territory is coterminous with that of city of fourth class organized as common school district and operating under that plan is separate municipal unit under 40.50 (2) (a) and bonds issued by such district are not "in the same line" as bonds of city for purpose of determining whether bank may purchase them. 27 Atty. Gen. 607.

**40.51 City is a school district.** (1) Each city, affected by this plan, is a single and separate school district; and any territory outside of the city which is joined with city territory in the formation of a school district, when this plan becomes effective, is hereby attached to the city for school purposes.

(2) The electors residing in such attached territory shall have the right to vote on all school matters which are submitted to or are voted on by the city electors, and may exercise such right at the city polling place nearest to their respective residences, without being required to register.

**40.515** [Renumbered section 40.68 by 1927 c. 425 s. 95]

**40.52 City school board.** (1) **ELECTION, TERM, OATH, CHANGES.** The school affairs of each city referred to in section 40.50 shall be managed by a board of education consisting of the same number of members and selected in the same manner as such board was constituted and selected at the time of the taking effect of this subsection. Such board shall continue to be so constituted and selected until and unless changed by referendum vote of the electors of such city as herein provided. Any such city desiring to change the number of members of such board or the manner of selecting them, or both, may do so either by an ordinance adopted by the council and approved by a referendum vote of the electors or by an initiated ordinance under the provisions of section 10.43. Either of the following two plans may be adopted and the provisions thereof shall be set forth in the ordinance:

(a) A board chosen from the city at large at the regular city election for the term of three years from the first day of July following. One-third of the members of the board (as nearly as may be) shall be elected annually. The number of members shall be not less than five nor more than seven. Of the members first elected, in case of a board of five members, the member receiving the highest vote shall serve for three years, the two members receiving the next highest vote shall serve for two years, and the two lowest for one year; in case of a board of six members, the two members receiving the highest vote shall serve for three years, the two next highest for two years and the two lowest for one year; in case of a board of seven members, the three members receiving the highest vote shall serve for three years, the two next highest for two years and the two lowest for one year. Thereafter members shall be elected for a term of three years. The members of such board are city officials, shall be nominated and elected as are other city officials and shall take and file the official oath.

(b) A board consisting of not less than five nor more than seven members, to be appointed by the mayor and confirmed by the council, or elected by the council, whichever method is provided for in the ordinance. In cities of the fourth class the board may consist solely of three commissioners at large. The first commissioners shall be divided by the council into three classes, one of the commissioners at large being in each class, one class to hold office for three years, one for two years and one for one year. Thereafter all commissioners shall be selected for a term of three years. The commissioners shall take and file the official oath.

(2) **MEETINGS.** The board shall hold regular monthly meetings at such times as it shall by rule prescribe; special meetings may be held under such standing rules as the board may adopt. All said meetings shall be open to the public, except that in cases where the board resolves itself into a committee of the whole the public shall be excluded from such committee meeting if the committee so desires and except that hearings before the board on charges against an employe shall be closed to the public if requested by the employe against whom the charges were preferred.

(3) **ORGANIZATION.** The board shall elect one of its members president and another vice president; and shall elect a secretary (the city clerk or other competent person being eligible). The city treasurer shall be the treasurer of the school board. [1941 c. 156]

**Note:** Subsection (1), enacted by chapter 256, Laws 1929, and providing that the school affairs of each city should be managed by a board of education constituted and selected as before the enactment of (1), until changed by referendum vote of the electors, continued the school board of a city school district, dissolved by operation of chapter 425, Laws 1927, as the school board of the new city district, until such referendum. State ex rel. Thompson v. Beloit City School Dist., 215 W 409, 253 NW 598.

Term of board of education member under city school plan expires July 1. Vacancy is

to be filled by appointment by mayor, subject to confirmation by council. 21 Atty. Gen. 344.

Change in number of commissioners governing schools in city of fourth class are made by following provisions of 10.43. 21 Atty. Gen. 540.

Member of nonsalaried city school board may act as its secretary and receive compensation therefor. 25 Atty. Gen. 167.

In referendum vote on change from district school plan to city school plan question should contain concise statement of nature thereof. 26 Atty. Gen. 37.

**40.53 City school board, powers and duties.** (1) The school board shall have the powers and be charged with the duties of common school district boards as far as the same are not otherwise provided for or limited by statute.

(2) The school board shall have power to establish and organize such high schools, elementary schools, night schools, and kindergartens as it shall deem expedient and it may also provide for, establish and maintain nursery schools for children under 4 years of age under such rules and regulations as it may prescribe. The school board shall be authorized to accept and receive federal funds for the operation of such nursery schools and to expend such funds in conformity with the purposes and requirements thereof. The school board may require and charge a reasonable fee for attendance in such nursery schools in order to sustain the project but may waive such charge or fee or any portion thereof to any person who is unable to make such payment. The school district shall not be entitled to additional state aid for the operation and maintenance of a nursery school.

(3) To establish or consolidate, from time to time, subschool districts.

(4) To employ a city superintendent but for not longer than three years at a time; and to employ assistant superintendents, school principals and teachers.

(5) To grade the schools and prescribe the courses to be pursued therein, subject to the authority vested in the state superintendent.

(6) To select and acquire sites and adopt plans for school buildings, but deeds and leases taken shall be in the name of the city, and the title to all school property shall vest in the city.

(7) To purchase and preserve necessary school equipment and apparatus.

(8) To contract for the necessary fuel, light, water and supplies for the schools.

(9) To employ janitors and engineers and other needed help to care for the school buildings and other property.

(10) To fix the compensation and prescribe the duties of all persons employed or appointed by the board.

(11) To estimate the expenses of the city schools and prepare a budget, which shall be submitted to the common council for its approval. Approval of the council shall also be necessary before the board may purchase any site for a school building or other school uses, or construct school buildings or additions thereto.

(12) To furnish lunches to pupils, at cost; provided, they may be furnished to needy pupils at such prices and on such conditions as the board may prescribe, but the fact that such lunches are furnished to some at less than cost shall not be disclosed to others.

(13) To pay the membership fee of the board in an organization of high school boards in this state, and the actual and necessary expenses of its representatives in annually attending a meeting of such organization.

(14) To determine what textbooks shall be used in the schools, a list of which books shall be kept in its office and posted in each school building, but shall not change such textbooks within three years of adoption, unless the city furnishes free textbooks.

(15) To purchase such textbooks and fix the terms and conditions upon which they shall be furnished to pupils, but no book shall be used or permitted which tends to teach sectarian ideas.

(16) To adopt rules for its own meetings and deliberations; and for the government of the schools, the faculty, and other employes of the board. [1943 c. 138]

**Note:** Funds collected for school purposes under the city school plan of 40.50 to 40.60 are the property of the city and not of the board of education and the city is entitled to retain interest received thereon. Board of Education v. Racine, 205 W 489, 238 NW 413; State ex rel. Board of Education v. Eisenhut, 205 W 493, 238 NW 414.

A provision in a teacher's contract for termination of the contract by either the city school board or the teacher on sixty days' notice is valid. Kuebler v. Two Rivers, 216 W 428, 257 NW 591.

Since title to all the school property in a city governed by the city school plan vested

in the city under (6), and since the razing of the school building was ordered by the common council as well as by the legally constituted board of education, the city acted within its power in proceeding with the razing of the building. Ross v. Crandon, 234 W 114, 290 NW 587.

Common council, with or without request from board of education, may order informative referendum election on school site and building plans. In city operating under city school plan site for school must be selected by board of education but purchase must have approval of council. Plans for school building must be adopted by board of educa-

tion, but construction work should be supervised by board of public works. Common council may refuse to appropriate money for school building. Such refused appropriations may be forced to mandatory referendum election upon petition. City may purchase land outside city limits but adjacent thereto, for school site. 25 Atty. Gen. 617.

Under 40.54, board of education has authority to let contracts for school construction and to supervise work. Opinion in 25 Atty. Gen. 617 is erroneous in requiring that contracts be let by the board of public works. 27 Atty. Gen. 97.

Under this section city school board has power to hire employes and prescribe terms of employment. This power may not be divested by city ordinance. 27 Atty. Gen. 207.

Regulation of city school board requiring vaccination of all teachers and other employes is invalid as unreasonable exercise of rule-making power of school board. 27 Atty. Gen. 446.

Mayor of city is without authority to demand that athletic association of local high school deposit its receipts with city treasurer and render financial statements to mayor respecting same. 27 Atty. Gen. 744.

**40.535 Tuition in schools above eighth grade.** (1) The school board or board of education of any city maintaining a graded system of schools of at least twelve grades, but no free high school, the four upper grades of which contain substantially the same amount of work as adopted and offered in free high schools established under section 40.62, the board of any district maintaining a free high school, and the board of any state graded school offering an approved course of instruction in the ninth or in the ninth and tenth grades shall be entitled to charge nonresident pupils as tuition an amount to be determined by or agreed upon by one of the methods provided in subsection (2).

(2) Such tuition shall be computed, the claims for same rendered, tax levies for same certified, collection of tax levies made and payments to the school district treasurers made in accordance with the provisions of subsections (5) and (6) of section 40.47. [1939 c. 238]

**Note:** Fact that widow and child live in former residence when health permits, does not constitute child resident of Milwaukee for school purposes. 26 Atty. Gen. 579.

**40.54 City school funds; construction work.** (1) All money appropriated for school purposes shall be under the direction of and shall be expended by the school board.

(2) (a) The erection of buildings shall be let by the school board to the lowest responsible bidder, as provided in section 62.15, and the school board shall, for that purpose, possess the powers conferred by that section on the board of public works.

(b) The alteration or repair of buildings or other construction work (the estimated cost of which exceeds \$1,000) may be let by the school board to the lowest responsible bidder, as provided in section 62.15, and the school board shall, for that purpose, possess the powers conferred by that section on the board of public works, or it may be done directly by said school board without submitting the same to bids upon the passage of an ordinance as provided for in said section. [1943 c. 236]

**Note:** See note to 40.53, citing 27 Atty. Gen. 97.

**40.55 City school building sinking fund; school budget and tax.** (1) City school districts are authorized to create and establish sinking funds for the purpose of financing the construction of school buildings. All money raised through taxation pursuant to this authorization shall be deposited by the city treasurer in a separate fund to be designated as a sinking fund to be used for the financing of the construction of school buildings, and such money shall not be used for any other purpose or be transferred to any other fund except by authorization of a three-fourths majority vote of the members of the board of education and the adoption of a resolution by the city council approving the resolution of authorization adopted by the board of education.

(2) The school board shall annually, before October, make an estimate of the expenses of the public schools for the ensuing year, and of the amount which it will be necessary to raise by city taxation, and certify the same to the city clerk who shall lay the same before the common council at its next meeting. It shall be the duty of the common council to consider such estimate, and by resolution determine and levy the amount to be raised by city taxation for school purposes for the ensuing year, which amount shall be included in the annual city budget and be called the "City School Tax." [1945 c. 202; 43.08 (2)]

**40.56 Taxation of attached territory.** (1) All property attached to a city for school purposes shall be taxed for such purposes the same as property within the city.

(2) Each year the city clerk shall ascertain the total of taxes levied by the city for school purposes, and shall apportion to such outside property its pro rata share thereof, based upon the full value of all property subject to such taxes, within and without the city; and such portion or share shall be certified to the clerk of the municipality in which such attached territory lies, be entered on the tax roll, collected and returned as provided in section 40.48.

(3) The full value of the property within and without the city shall be ascertained from the report filed pursuant to section 39.03 (1) (g). [1945 c. 121]

**40.57 Disbursements of city school funds.** The city clerk (or comptroller where applicable) shall keep separate accounts of all moneys raised and apportioned for city school purposes. Said moneys shall be paid out as follows: The school board shall present to the city clerk a certified bill, voucher or schedule signed by its president and secretary, giving the names of the claimants and the amount and nature of each claim. The city clerk shall issue proper orders upon such certification, to the city treasurer, who shall pay them from the proper funds in the manner provided by subsection (8) of section 66.04. [1941 c. 129]

**Note:** Moneys once raised and apportioned for city school purposes can be expended only by city school board, regardless of whether fiscal year has expired. 22 Atty. Gen. 40.

After approving budget and providing money for school board, city council has no power over expenditure of money by school board. Council may impose reasonable regulations on city treasurer's paying out school moneys and has legal power to audit accounts of school board. 24 Atty. Gen. 71.

City school funds are to be disbursed by checks drawn on school fund and signed by city clerk pursuant to certified bill, voucher or schedule signed by president and secretary of school board, giving names of claim-

ants and amount and nature of each claim. When official is charged by law with duty of drawing and issuing checks, he may delegate to assistants ministerial work connected therewith if done under his direction. 26 Atty. Gen. 130.

Board of education in city operating under city school plan may use part of general school fund for construction purposes if such construction was approved by city council. 26 Atty. Gen. 139.

City treasurer who fails to keep separate accounts of school funds as required by 40.57, Stats. 1939, may be punished for malfeasance under 348.28 but state aid may not be withheld because of violation of 40.57. 27 Atty. Gen. 82.

**40.571** [Renumbered section 14.57 by 1927 c. 425 s. 1]

**40.575** [Repealed by 1927 c. 425 s. 109]

**40.58 City superintendent of schools; powers, duties, eligibility.** (1) The city superintendent of schools shall have general supervision of the professional work of the schools, and the promotion of pupils.

(2) He shall make written recommendations to the school board relative to teachers, courses of study, discipline and such other matters as he may deem for the best interests of the schools; and shall perform such other duties as the board may require.

(3) He shall not be a member of the school board. He shall not engage in any pursuit which shall interfere with the proper discharge of his duties, but he is eligible to act as principal or teacher in any school under his supervision, and he shall possess the legal qualifications required for the principalship of a high school.

(4) He shall make the report required by section 39.11, directly to the state superintendent.

(5) He shall attend annually one convention called by the state superintendent for the purpose of consultation upon matters pertaining to the supervision and management of city schools. He shall be reimbursed his actual and necessary expenses incurred for travel, board and lodging because of attendance upon such convention, such bills to be audited and allowed by the school board upon presentation of an itemized statement of expense accompanied by a certificate of attendance signed by the state superintendent. [1939 c. 53]

**40.59 City technical schools.** Any city may, by ordinance, establish a technical school or college as a part of its public school system; provided, the ordinance establishing such school or college shall be submitted to the electors of the city in substantially the same manner as other city ordinances are submitted to the electors. The ordinance shall provide for the organization of such school or college, and may confer the management and control on the existing school board or on a special board created thereby. The ordinance may be amended or repealed by an ordinance submitted and adopted in the same manner.

**40.595** [Repealed by 1927 c. 425 s. 94]

**40.60 City school board proceedings; publication.** The proceedings of city school boards, except in cities of the first class, including a statement of all receipts and expenditures, shall be printed and published within thirty days in a newspaper printed in the city, if there be one, and if there be none, in such manner as the board shall direct. [1935 c. 177]

**Note:** Proceedings of school board must be published in full. 24 Atty. Gen. 646.

**40.605** [Renumbered section 40.69 by 1927 c. 425 s. 96]

**40.605 Power of cities to provide salaries for board members.** The governing body of any city may, before the annual city budget is prepared, provide for and fix the amount of compensation of city school board members for the ensuing year. Such amount shall be included in the annual city budget as part of the city school tax. [1939 c. 163]

**Note:** Salaries of school board members limitations contained in 62.09 (6) (b). 28 fixed pursuant to 40.605 are not subject to Atty. Gen. 698.

**40.606** [Renumbered section 40.69 by 1927 c. 425 s. 96]

**40.61 County high schools.** (1) The county board of any county having a population of not more than twelve thousand may establish a free high school in such county to be known as the "County High School."

(2) The property of any existing high school district in any such county shall not be subject to any tax for the construction or operation of any county high school, until and unless it dissolves and becomes a part of the county high school district.

(3) Territory included within a county high school district may withdraw therefrom and organize a separate high school district, in which event the property of such new high school district shall be subject to a tax only for its proportionate share of the indebtedness of the county high school district which existed at the time of such withdrawal.

(4) Pupils residing in such new high school district attending the county free high school shall be subject to the payment of tuition, as provided for in section 40.47, and the provisions of said section shall be applicable to said county high school.

(5) All of the county except as above provided shall be a part of said county high school district and constitute a county high school district, and the said high school shall be free to all pupils resident in said district.

(6) Upon receiving written notice of the action of the county board, the state superintendent shall issue a certificate of establishment of a county free high school in such county.

(7) The county board shall select and purchase the site for the high school building and shall supervise the construction thereof.

(8) The county board shall elect a school board of three members, which shall have charge of the administration of such school. The county board shall designate the terms of the members of the school board, fill vacancies therein and discharge any member therefrom, and fix the compensation of such members.

(9) A county high school shall possess all the rights and privileges and shall be subject to all the liabilities of other high schools.

(10) Any person eligible to attend such county high school, but who lives nearer to some other high school, may attend such other high school, and in such case shall be entitled to have his tuition paid by the county high school district.

**40.62 High school; how established in common school district.** (1) Any common school district having an assessed valuation of one million two hundred fifty thousand dollars or more may establish a high school, except that if such district irrespective of valuation has a junior high school, the state superintendent may, after an investigation, permit the establishment of a high school, if he is satisfied that the district, together with the aid provided by law, and prospective tuition, can maintain such high school without exacting an undue hardship upon the taxpayers of the district.

(1a) The state superintendent may, after investigation, discontinue any high school if he is satisfied that such discontinuation is for the best interests of the taxpayers of the district and of the students of such high school.

(2) The question of establishing such a school may, and upon the written petition of one-tenth of the electors shall, be submitted by the school board to an annual or a special meeting, upon written resolution therefor proposed for adoption.

(3) Notice of such proposal, embodying the resolution, shall be given by the district clerk in the manner provided for giving notice of a district meeting.

(4) The vote on such proposal shall be taken by ballot. The ballots shall be "For High School" and "Against High School." If the resolution be adopted, the clerk shall report the resolution and the action thereon to the state superintendent for his approval. If he approve it, he shall issue a certificate of establishment of a high school, otherwise he shall veto the proposal.

(5) In all school districts wherein a high school shall have been established, pursuant to this section, the district board shall be the high school board.

(6) No such high school shall be established unless at least twenty-five persons of school age, residents of the district, give evidence, satisfactory to the state superintendent, that they are prepared and desire to attend a high school.

(7) An election for the establishment of a high school shall become void unless such school functions within two years from the date of the election.

(8) A common school district which maintains a high school may discontinue such school by submitting the proposal therefor to the electors in the manner that the establishment of such school was submitted, but a two-thirds vote shall be necessary to effect a discontinuance. [1937 c. 116]

**Note:** Statutory requirements concerning establishment of high school by common school district cannot be avoided by adoption of twelve-grade course of study. 23 Atty. Gen. 393. Power of state superintendent of public instruction under (1), as amended by chapter 116, Laws 1937, extends to all school districts maintaining junior high schools. 26 Atty. Gen. 336.

**40.63 Joint high school district; established by common districts.** (1) In case two or more common school districts propose to jointly establish a high school, action shall be taken by each district as in the case of the establishment of such school by a single district.

(2) Within six days after the proposal is voted on, the school boards of the districts shall meet in joint session and canvass the returns and certify the results to the state superintendent. If the proposal be adopted by each district, and such action meets the approval of the state superintendent, he shall issue a certificate of establishment of a high school district, and thereupon the territory of said common school districts shall constitute a high school district; otherwise the proposal shall stand rejected.

(3) If a high school district is created, all procedure subsequent to the issuance of said certificate shall be governed by section 40.64; and the officers of the high school district and their election and term of office shall be as provided in that section.

**40.635** [Renumbered section 40.46 by 1927 c. 425 s. 83]

**40.64 Union high school district; established.** (1) A high school district may be established in any contiguous compact territory with an assessed valuation of \$1,250,000 or more. A high school district or a consolidated free high school district may also be established in any township comprising only island territory.

(2) In case the territory is entirely in one municipality, the question of establishing such district shall be submitted to the voters of such territory, whenever a petition, signed by one-tenth of the electors of the territory, is filed with the municipal clerk praying for the submission of such question. The clerk shall, at once, set a time for the special election, and shall give ten days' notice thereof by posting the notice in six different places in such territory, or by publishing such notice in a newspaper published therein, once each week for two successive weeks immediately prior to the election. The election shall be conducted and the votes canvassed as in the case of local elections. A majority of all the votes cast shall determine the result.

(3) In case the territory lies in more than one municipality the petition may be presented to any municipal clerk and he shall, within five days after receipt of said petition, notify the other clerks of the receipt of such petition, and shall set a date and place for a meeting with them to fix the time and place for holding the election. Said clerks shall meet accordingly and fix the time and place for holding such election and shall give notice thereof. Unless a village is included, the election shall be noticed for the entire territory proposed to be included in the district, and shall be conducted by the town board of the town in which the election is held.

(4) (a) In case the proposed district contains a village or villages, a city or cities, the election for the village or villages, a city or cities shall be in the village or villages, city or cities. The election for the town territory may be held in the village or villages, city or cities or at any other convenient place. The election for the village or villages, city or cities shall be conducted, and the votes canvassed in the manner provided for village or city elections; and the election for the town territory shall be conducted and the votes canvassed in the manner provided for town elections. If the outlying territory is in more than one town, the election for the part in each town shall be conducted separately.

(b) The ballots shall be provided by the clerks and shall be so printed as to plainly indicate how the electors may vote. The proposal shall not be deemed adopted unless a majority of the electors voting in the territory outside of the village or villages, city or cities and a majority of the electors voting in the village or villages, city or cities shall vote for the high school district.

(c) The result of the election shall be certified at once by the election officers to the clerk or clerks of the village or villages, city or cities; and if the proposal be adopted, the result shall be so certified to the state superintendent by the village clerk or village clerks, city clerk or city clerks, within 6 days after the election. If the proposal meets the approval of the state superintendent, he shall issue a certificate of establishment of a high school district in said territory.

(5) If an existing high school district is included in the new high school district territory, the establishment of a high school district, as herein provided, shall annul such existing high school district, and the property and liabilities thereof shall become the property and liability of the new district.

(6) The tuition of pupils who reside in territory comprising a newly created union free high school district and outside of districts operating high schools shall continue to be the liability of the municipality or municipalities of their residences as provided in section 40.47 until such time as the newly created district shall have provided adequate building facilities for its needs.

(7) The territory comprising a newly created union free high school district shall continue to furnish high school opportunity on the same basis and under the same

conditions as prevailed prior to the creation of such district until such time as adequate building facilities are provided by the new high school district. The boards of the newly created high school districts shall perform all of the duties pertaining to the negotiation of loans for buildings, letting of contracts for construction of new buildings, noticing and conducting meetings of the district for the purpose of securing authorization of loans for building purposes and all other necessary powers and duties delegated by statute to union free high school district boards. [1931 c. 178; 1939 c. 196; 1943 c. 347; 1945 c. 485]

**Note:** Officer of union high school district may be elected at first or subsequent meeting provided there is compliance with statutory requirements relating to notice of election. Lands which corner one with another are not "contiguous" within this section. 24 Atty. Gen. 227.

Subsection (5) applies only to high school districts and is not retroactive beyond its effective date. 27 Atty. Gen. 410.

Where it is proposed to consolidate terri-

tory of three municipalities into one union high school district, under this section, petition for submitting question need be signed by only one-tenth of electors of entire territory involved, and it is not necessary that petition show signatures of one-tenth of electors in each of affected municipalities. One election for entire territory is sufficient and it is not necessary that there be majority vote in each particular municipality involved. 30 Atty. Gen. 177.

40.645 [See 1927 c. 425 s. 87]

**40.65 Joint ownership of school building.** The electors of any high school district, outside of cities, and the electors of any common school district, included within the high school district, may authorize and direct their respective school boards to join in the erection and maintenance of a school building for housing the high school and the common school. Where such agreement shall have been entered into, the principal of the high school shall be the administrative head of both schools.

**40.66 Alteration of union high school districts.** (1) A petition signed by one-tenth of the voters of a high school district organized under section 40.64, asking for an alteration of the district, may be presented to the chairman of the town, or the president of the village, or the mayor of the city, in which the high school building is situated. Such officer shall fix a time and place for meeting of the boards of the municipalities in which the district lies, which shall not be less than ten nor more than twenty days from the time the petition was received. He shall give written notice of the time and place of the meeting to each member of the municipal boards, at least five days prior to the meeting. Such meeting shall be held at the high school building, unless some other convenient place shall be designated in the notice.

(2) Said boards shall jointly act upon the petition, but it shall not be granted except by a majority of each of the boards. Their decision shall be in the form of an order, and such order shall be subject to appeal to the state superintendent within thirty days.

(3) In case the officer to whom such petition shall have been presented, shall neglect or refuse to arrange such meeting, or in case the board or council of any municipality in which any part of such district shall be located, shall neglect or refuse to be present at such meeting, or shall refuse or neglect to vote upon the petition, the petition shall be deemed denied, and an appeal may be taken as provided in subsection (2).

(4) The area of such a high school district shall not be reduced below thirty-six square miles, or rendered noncontiguous by detaching territory therefrom. No order annexing territory, under this section, shall be effective without the consent of a majority of the electors residing therein, expressed at an election held upon petition signed by at least one-tenth of them, and conducted in the manner provided for the establishment of a high school in territory lying wholly in towns.

(5) Orders altering high school districts and copies of such orders shall be filed in the manner and places provided by law for filing the orders and copies thereof creating such districts.

**Note:** High school district created in 1917 section. State superintendent has no jurisdiction on appeal. 24 Atty. Gen. 704.

40.665 [Renumbered section 40.60 by 1927 c. 425 s. 87]

40.67 [Renumbered section 40.53 by 1927 c. 425 s. 87]

40.675 [Renumbered section 40.53 by 1927 c. 425 s. 87]

**40.68 Annexation to high school district.** (1) Territory not in but adjoining a high school district may be annexed thereto, upon a petition therefor presented to the board of such high school district signed by ten per cent of the electors in such adjacent territory.

(2) If the high school board approve the petition, the matter shall be submitted to a meeting of the electors of said territory, fairly called, noticed and conducted, and if approved by a majority of the voters present and by the owners of at least fifty per cent of the property by assessed value in the territory proposed to be annexed, it shall thereby be annexed.

40.685 [Renumbered section 38.21 (2) by 1941 c. 213 s. 24]

**40.69 High school districts, dissolution.** (1) Any high school district (except a city district) may be dissolved as in this section provided.

(2) A petition signed by one-tenth of the electors in such district shall be filed with the clerk, requesting that an election be called to vote on the question of dissolution.

(3) Said clerk shall, within five days after receipt of such petition, fix the date and give ten days' notice of the time and place of holding such election, by posting copies thereof in at least eight public places in such district. The election shall be held in the high school building, if possible.

(4) The clerk shall prepare a sufficient number of ballots on which shall be printed "For Dissolution

and "Against Dissolution .

(5) The polls at such election shall be open at one and close at seven o'clock in the afternoon, and the officers of such election shall be the district clerk and two other persons to be selected by the school board.

(6) The election shall be conducted and the votes counted and canvassed as in the case of town elections.

(7) If two-thirds of the votes cast at such election shall be for dissolution, the results shall be at once certified to the clerk of each municipality concerned, and the state superintendent and such district shall be dissolved as of July first, following such election.

(8) Such dissolution shall have the effect of transferring the property, assets and liabilities of the high school district to the common school districts which were, in whole or in part, embraced in the high school district; and shall be awarded, apportioned and distributed subject to and in the manner provided by section 66.03, as far as the same is applicable.

40.695 [Renumbered section 40.52 by 1927 c. 425 s. 87]

**40.70 Compulsory school attendance.** (1) GENERAL PROVISIONS. (a) Any person having under his control a child between the ages of seven and fourteen years, or a child between the ages of fourteen and sixteen years not regularly and lawfully and usefully employed, shall cause such child to attend some school regularly to the end of the school term, quarter, semester or other division of the school year in which he is sixteen years of age (unless the child has a legal excuse) during the full period and hours (religious holidays excepted) that the public, parochial or private school in which such child should be enrolled may be in session.

(b) This subsection does not apply to any child not in proper physical or mental condition to attend school (the certificate of a reputable physician in general practice to that effect shall be sufficient proof thereof), nor to any child who lives in the country and more than two and one-half miles from the schoolhouse in his district, and for whom no transportation is furnished by the district, nor to any child who shall have completed the most advanced course of study offered in the public schools of the school district (including a union free high school district), or city of his residence, or the equivalent of such course in any other school. Provided that any child who has completed the course of study for the common schools, or the first eight grades of school work or the equivalent thereof, who resides in a district which maintains a vocational and adult education school may at his option attend such vocational and adult education school full time in lieu of attendance at any other school.

(c) Instruction during the required period elsewhere than at school may be substituted for school attendance; provided, that such instruction be substantially equivalent to instruction given to children of like ages in the public, parochial or private schools where such children reside.

(2) VOCATIONAL AND ADULT EDUCATION SCHOOLS. Any person who is not indentured as an apprentice, who has not completed the equivalent of 4 years of high school work, who resides or is employed in a district which maintains a vocational and adult education school, who is not physically incapacitated, and who is not required by subsection (1) to attend school full time, must attend in the daytime, for at least 8 months in the year and for such additional months or parts thereof as the full-time public schools in the district are in session in excess of 8 months during the regular school year, some public, private, parochial or vocational and adult education school, half time from the end of the period of full time compulsory education to the end of the school term, quarter, semester or other division of the school year in which he is 16 years of age, and after that for at least 8 hours a week if regularly, lawfully and gainfully employed, half time if employed at home, and full time if unemployed, until he is 18 years of age; and the parents of such minors shall compel such school attendance. In cases where there are no parents or not more than one parent living at home in which there is at least one child, and it is necessary for one of the children who is over 16 and under 18 years of age to be employed at home in order to maintain the household, such child, for the purpose of school attendance under the provisions of this subsection, shall be deemed to be regularly, lawfully and gainfully employed.



(3) **PENALTY.** Any violation of the provisions of this section shall be punished by a fine of not less than five dollars nor more than fifty dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment. In a prosecution under this section, if the defendant proves that he is unable to comply with the law because of the disobedience of the child in question, it shall be a good defense and such child shall be proceeded against as delinquent, and in case of commitment, if the parents desire it, he shall be committed to a school or association controlled by persons of his religious faith, which is willing and able to receive and maintain him without compensation from the public treasury. Every violation of this section may be prosecuted in the manner and in the courts specified in chapter 48. [1933 c. 143 s. 3; 1935 c. 161; 1937 c. 40; 1937 c. 349; 1939 c. 193, 493; 1945 c. 120]

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

Children of school age who are inmates of child welfare agency home may not be excluded from public schools of district in which such institution is located. 20 Atty. Gen. 666.

Words "regularly, lawfully and usefully employed" and "nor to any child who lives in the country and more than two miles from the schoolhouse in his district," as used in (1), are construed. 27 Atty. Gen. 534.

**40.71 Indian reservation schools.** (1) **COMPULSORY ATTENDANCE.** When the United States shall maintain, within this state, schools for general educational purposes, and the expense of tuition, lodging, food and clothing of the pupils enrolled therein, is borne wholly or in part by the United States or the state of Wisconsin, every parent within the state having control of a child between the ages of five and eighteen years, eligible to attend such school shall cause such child to attend such school nine months in each year; provided, that any child shall be excused from attendance thereat by the principal or superintendent of the school upon its being satisfactorily shown that the physical or mental condition of such child renders attendance at school inadvisable, or that the child is taught in some other school or at home in the branches usually taught in the public schools of the state, or is necessarily compelled to labor for the support of the parent, or that such child resides more than ten miles from said school and free transportation is not provided.

(2) **REFUSAL OR NEGLECT.** In case of refusal or neglect on the part of the parent to comply with the provisions of this section, the principal or superintendent of the school shall cause to be served upon the parents a written demand for the attendance of such child, giving the name of the child and designating the school upon which attendance is required. If the parents claim that the child should be excused, the principal or superintendent shall make immediate investigation of the matter and make written findings in the case. If the child is legally bound to attend such school, and the parents shall fail or refuse to send him within ten days after service of a written notice, requiring attendance, the principal or superintendent shall make complaint against such parents.

(3) **PENALTY.** Any parent or guardian failing to comply with the provisions of this section shall be punished by a fine of not less than five dollars nor more than twenty-five dollars, or by imprisonment in the county jail not less than five days nor more than thirty days, and in case of conviction for a second or any subsequent offense, shall be punished by both such fine and imprisonment.

**40.72 School census and reports.** (1) Every officer, whose duty it is to take the school census (except in cities of the first class), shall make three copies of such census on blanks furnished by the state superintendent, and shall send one to the proper superintendent, before the fifteenth day of July, and, at the opening of the school in his district, shall deliver a copy to the teacher or the principal in charge of each schoolhouse in the district.

(2) In case the school district extends into two or more counties, the clerk of such district shall make separate census reports for the part in each county and forward the same to the proper superintendents.

(3) The superintendent may require the principals of all public schools to report to him the name of the school and its location, the name and address of the teachers, the number of months of school maintained during the year, the opening and closing dates, the names and ages of all children enrolled between the ages of seven and eighteen, the names and post-office addresses and places of residence of the parents of such children, the number of the district and the distance such children reside from the schoolhouse, the number of days each child was present during each month, and any other information requested by him, said reports to be made on blanks to be furnished by the superintendent.

(4) All teachers of private and parochial schools shall keep a record embodying the data enumerated in this section, and such record shall be open to the inspection of truant officers at all reasonable times, and when called upon by any truant officer, such teachers shall furnish, on blanks supplied by the truant officer, the above mentioned data in regard to children between the ages of seven and eighteen, who claim, or who are claimed to be in attendance at such schools, and every school teacher shall promptly notify the proper

truant officer of any child whose attendance is habitually and inexcusably irregular.

(5) Any officer or teacher who shall fail or neglect to make the reports, or who shall fail to keep the records, required by this section, shall be subject to a forfeiture of not less than five nor more than twenty-five dollars for each such failure or neglect.

**40.73 Truancy.** (1) **OFFICERS, DUTIES.** In cities of the first class, the school board shall appoint welfare workers or attendance officers who, when employed, shall have and possess the legal authority and powers of truant officers. To qualify for employment such welfare workers shall possess the legal qualifications required for teachers in such cities and, when employed, shall have all the rights and privileges of teachers; in other cities such board shall appoint one or more truant officers. In cities of the fourth class, the police officers may be appointed truant officers, and in all towns and villages the sheriff, his undersheriff and deputies shall be the truant officers.

(2) **POWERS OF OFFICERS.** Any truant officer shall have power to visit factories, workshops, mercantile establishments and other places of employment in his locality, and ascertain whether any minors are employed therein contrary to law. He may require that the school certificates and lists of minors who are there employed shall be produced for inspection, and he shall report all cases of illegal employment to the proper school authorities and to the industrial commission. When a truant officer believes that any child is unlawfully and habitually absent from school, he shall immediately investigate the facts.

(4) **PURSUIT OF TRUANT.** (a) The truant officer shall, upon receipt of such delinquent report, or other information of delinquencies, give written notice by registered mail or by personal service to the parents of delinquent children, to send such children to some school within five days from the date of the notice. The officer shall at once notify the teacher of such service of notice; and a return of the child to school shall be promptly reported by the teacher to the officer and to the school superintendent.

(b) The notice shall inform the parents that the law requires that all children between the ages of seven and fourteen, and between the ages of fourteen and sixteen, if not regularly employed, are to be in regular attendance at some school, or to receive equivalent instruction at home, unless legally excused therefrom. A copy of section 40.70 shall be printed on the face or back of such notice. It shall be the duty of all truant officers, after having given such notice, to ascertain whether the parents have complied with the notice; and in case of failure to so comply, the officer shall immediately notify the industrial commission of such failure, and within three days the officer shall begin and prosecute criminal proceedings against offending parents.

(c) Truant officers shall have the power to apprehend without warrant any child found violating the provisions of sections 40.70 to 40.73, and cause such child to be placed in some school.

(5) **COMPENSATION OF TRUANT OFFICERS.** (a) Truant officers in cities shall receive such compensation as shall be fixed by the school boards, except that the police officers of cities of the fourth class shall receive no extra or additional compensation for acting as truant officers.

(b) When the sheriff, undersheriff and his deputies are acting as truant officers, they shall be paid the same fees as provided for such officers in criminal actions, and in counties where the sheriff and deputies are paid an annual salary they shall receive their actual and necessary expenses incurred in the performance of their duties as truant officers, but no extra compensation shall be allowed.

(6) **PENALTY.** Any superintendent of schools, or any truant officer who violates any of the provisions of this section, shall be subject to a forfeiture of not less than five nor more than twenty-five dollars for each such offense. [1937 c. 102; 1945 c. 147]

**40.74 Frances Willard Day.** The twenty-eighth day of September is "Frances Willard Day," and when it does not fall upon a school day, the school day nearest such date shall be Frances Willard Day. On Frances Willard Day one and one-half hours may be devoted in the schools to instruction and exercises relative to the life of Frances Willard and to the principles and ideals she fostered.

**40.75 Columbus Day.** The twelfth day of October is "Columbus Day," and when it does not fall upon a school day, the school day nearest such date shall be Columbus Day. On Columbus Day one and one-half hours may be devoted in the schools to instruction and appropriate exercises relative to the life of Christopher Columbus and to the principles and ideals he fostered.

**40.76 Leif Erikson Day.** The ninth day of October is hereby designated as "Leif Erikson Day" and when it does not fall upon a school day, the school day nearest such date is designated as "Leif Erikson Day." On such day one-half hour may be devoted in the schools to instruction and appropriate exercises relative to and in commemoration of the life and history of Leif Erikson and the principles and ideals he fostered.

**40.765 American Creed Day.** The thirteenth day of April is designated and established as "American Creed Day." On such day one-half hour may be devoted in the schools to instruction and appropriate exercises relative to the origin and principles of the American Creed. If the thirteenth day of April falls on a Saturday or a Sunday, such instruction and exercises shall be held on the preceding Friday. [1935 c. 132]

**40.766 Indian Rights Day.** July fourth is designated as "Indian Rights Day," and in conjunction with the celebration of Independence Day, appropriate exercises or celebrations may be held in commemoration of the granting by congress of home rule and a bill of rights to the American Indians. When the fourth of July falls on Sunday, exercises or celebrations of Indian Rights Day may be held on either the third or the fifth. [1935 c. 277]

**40.77 Textbooks censored.** (1) No history or other book shall be adopted for use or be used in any district school, city school, vocational school or high school which falsifies the facts regarding the war of independence, or the war of 1812, or which defames our nation's founders, or misrepresents the ideals and causes for which they struggled and sacrificed, or which contains propaganda favorable to any foreign government.

(2) Upon complaint of any five citizens filed with the state superintendent of public instruction that any history or other book which is being used in any such school contains any matter prohibited by this section, the state superintendent shall fix a time for a public hearing upon such complaint, which shall be not more than thirty days from the date of filing said complaint, and such hearing shall be conducted either by the state superintendent or the assistant state superintendent, or by one of the state inspectors of schools, to be designated by the state superintendent, which hearing shall be held at the county seat of the county where the complainants reside. Notice of such hearing shall be given at least ten days prior to the date thereof through the public press and by registered mail to the complainants, the school board interested and to the publishers of such book.

(3) Within ten days after such hearing the state superintendent shall make a finding upon such complaint. If he finds that the book in question contains matter prohibited by this section, he shall make note of such finding in the list of textbooks which he is required annually to publish. Such book shall not thereafter be placed on the list of textbooks which may be adopted, sold or exchanged in this state.

(4) Every school board, board of education, board of vocational education, or county board of education, which has control over the textbooks used in any school, shall cause every book which the state superintendent has found contains matter prohibited by this section to be withdrawn from use in such school prior to the opening of the school year following the publication of such finding of the state superintendent. No state aid shall be paid for the support of any such school during any year in which any such textbook is used in such school after such finding of the state superintendent.

**40.775 Race, religious, political discrimination as to teachers prohibited.** (1) No discrimination shall be practiced in the employment of teachers in public schools because of their race, nationality or political or religious affiliations, and no questions of any nature or form shall be asked applicants for teaching positions in the public schools relative to their race, nationality or political or religious affiliations, either by public school officials or employes or by teachers' agencies and placement bureaus.

(2) Any person who shall violate the provisions of this section shall be punished by a fine of not less than twenty-five dollars nor more than fifty dollars, or by imprisonment in the county jail not less than five days nor more than thirty days. Violation of this section shall be cause for the removal of any superintendent, member of a board of education or school board, or other public school official. [1933 c. 12]

**40.78 Superior school board election.** Whenever any city of the second class shall have by referendum as provided for in this chapter, voted to adopt the elective system of selecting and appointing members of the board of education, a special election for members of such board shall be held within thirty days at a date to be determined by the city council at a regular or special meeting; provided, that if any such city shall have adopted the elective system prior to the taking effect of this subsection, but shall not yet have elected its board of education, it shall hold such special election within thirty days after the taking effect of this subsection. A call for such special election shall be issued by the council in accordance with the provisions of law. The members of the board of education chosen in such special election, shall take office on the second Monday following such election. The two persons receiving the highest number of votes shall hold office until their successors elected three years after the preceding spring election shall have qualified; and the two persons receiving the next highest number of votes shall hold office until their successors elected two years after the preceding spring election shall have qualified; and the three persons receiving the next highest number of votes shall hold office until their successors elected one year after the preceding spring election shall have qualified.

**40.79 Curative act; pay for benefit received.** (1) Whenever any school district shall have received, prior to July 1, 1926, and shall be enjoying any benefits or improvements furnished under any contract which shall have been or shall hereafter be declared as imposing no legal obligation upon such school district, and which contract was entered into in good faith, and imposes upon such school district a moral obligation, and for which said school district shall at the time be legally able to pay, such school district may upon consideration of such moral obligation, pay the fair and reasonable value of such benefits or improvements upon the conditions hereinafter provided.

(2) The fair and reasonable value of such benefits and improvements shall be determined by the district board of such school district, and shall be by such board submitted to the electors of said school district at any annual meeting or adjournment thereof, or at a special meeting called for the purpose of authorizing and directing the payment for such benefits and improvements. Notice of the proposed action, whether at an annual meeting or adjournment thereof or at a special meeting called for the purpose, shall be given in the same manner as is required for notice of the annual meeting of the electors. Any action taken at any such meeting in respect to such payment shall be final, and shall not be subject to further action by the electors of said school district, and the action shall be determined by a majority vote of the electors present at such meeting.

(3) Any payment authorized under the provisions of this section may be met by levying of taxes or the issuance of bonds therefor, as determined by the electors of said school district; provided, however, that the indebtedness of said school district, including any obligations assumed pursuant to this section, shall not exceed the debt limit now imposed by law.

**40.85** [*Repealed by 1939 c. 342*]

**40.86 Towns made school districts in Milwaukee county.** (1) Each town in counties having a population of two hundred and fifty thousand or more, is declared and constituted a school district, provided, however, that such district shall not be organized and in effect as such until July 1, 1932, or if within six months after the passage of this act a petition shall be filed with the town clerk of such town signed by a number of electors thereof equal to not less than seven per cent of the votes cast therein for governor at the last general election, praying that the question of the creation of such school district be submitted to the electors of such town, in which event the creation of the district shall abide the approval and be determined by a majority vote of the electors voting thereon.

(2) Whenever a referendum shall be petitioned for, as herein provided, and a petition filed therefor, such question shall be voted on at the next regular election and the voting thereupon shall be by ballot. The ballots used shall have printed thereon the words: "Town School District — Yes" or the words: "Town School District — No." A separate ballot box shall be provided for the reception of said ballots, and the votes cast shall be counted, canvassed, and a record made, as in the case of votes cast at any election in said town, and if it should appear that a majority of the ballots cast have thereon the words: "Town School District — Yes," then the provisions of this act creating such district shall become effective as herein provided, otherwise the same shall have no force or effect therein.

(3) (a) If such school district be created as herein provided, and become effective, the town clerk of such town shall, immediately following July 1, 1932, cause notice to be given to the electors of such town of a meeting of the electors for the purpose of electing the school officers of such district. Such notice shall be made by posting five copies thereof in five public places in said town, and by publishing a copy of said notice in a newspaper circulated in such town, such posting and publication to be at least ten days before the holding of such meeting, and the notice thereof to set forth the day and the hour and the place at which such meeting shall be held.

(b) At such first meeting of such school district a board of five members shall be elected, for terms of one, two, three, four and five years, respectively. Thereafter, at each annual meeting a member of such board shall be elected for a term of five years. Said board shall elect a president, clerk and treasurer for such terms as it shall determine.

(4) When such town school district shall be organized and the district board shall have been elected, the school districts out of which it shall have been formed shall cease to exist as school districts, or bodies corporate, and the title to all property, and the assets of every nature of the school districts out of which it was organized, shall thereupon become vested in the town school district, and all valid existing claims and obligations against and contracts of the said several school districts shall continue to be valid claims and obligations against such town school district. All claims and obligations arising after the formation of the town school district shall be against the town school district. The town school district shall maintain and conduct the schools theretofore maintained and conducted by the several districts, and such other school or schools as it may thereafter provide for such school district.

(5) The town school district organized as herein provided shall be a body corporate and possesses the usual powers of a public corporation by the name and style of: "Town School District of the Town of . . .," and shall possess and there is imposed upon such town school district all of the powers now possessed by law by the common schools of the state of Wisconsin, including the powers defined by chapter 40 of the statutes.

(6) All such town school districts shall have the authority to borrow money under the condition specified in chapter 67 of the statutes, and shall be entitled to and shall share in the distribution of the common school fund income, and other school funds, in the same manner as school districts maintaining common and graded schools. In case a high school is maintained, the town district school shall be entitled to share as in the case of union free high schools.

(7) The clerk of the school board of each town school district shall on or before the fifteenth day of July of each year make to the state superintendent of public instruction a report stating the number of departments in the schools, total expense for the previous year, and such other information as the state superintendent of public instruction may require.

(8) Upon the formation of a town school district as in this act provided, if there shall be in such territory any joint school district or districts, the same shall be dissolved upon the creation of the town school district and following the election of the town school district board, and that part of the territory of such joint school district which lies within the town school district shall become a part thereof, and thereupon there shall be an adjustment of the assets and liabilities, in the manner provided in section 66.03 of the statutes, of the assets and liabilities of such joint school district and the town school district.

(9) Nothing in this section shall operate to limit in any way or to prevent the annexation to any city of any territory forming any part of such school district. [1931 c. 180]

**40.87 Common school equalization aid.** To afford all children throughout the state an opportunity to secure an elementary education, there shall be paid state aid to the several common school districts, consolidated school districts and city school districts of the state for the support of the elementary public schools as follows:

(1) Annually, to each school district of the state for which a tax of 2 mills or more on the full valuation thereof of the year previous to the year in which such levy was made, was levied for operation and maintenance and placed on the tax roll of the previous school year, \$250 for each elementary teacher actually employed by such district or city in the preceding school year except that to school districts with less than 10 and more than one pupil enrolled the state aid shall be \$25 per pupil in average daily attendance. Where the tax so levied and placed on the tax roll by such school district is at least one mill but not 2 mills, the aid paid shall be 50 per cent of the foregoing. No state aid shall be paid to any school district, which has not levied and placed on the tax roll for the operation and maintenance a tax of at least one mill. The number of teachers for which any district shall receive aid, however, shall not exceed:

(a) One teacher, if the average daily attendance in such preceding school year was below 25;

(b) Two teachers, if the average daily attendance was from twenty-five to fifty;

(c) Three teachers, if the average daily attendance was from fifty-one to seventy-five;

(d) Four teachers, if the average daily attendance was from seventy-six to one hundred;

(e) Five teachers, if the average daily attendance was from one hundred one to one hundred twenty-five;

(f) Such number of teachers in excess of five, as is obtained by dividing the average daily attendance in excess of one hundred twenty-five by twenty-five, counting fractions as whole numbers.

(g) Any school district which employs special teachers pursuant to section 41.01 shall be apportioned aid under section 59.075 for as many teachers as are represented by the sum of the number of elementary teachers for which such district is entitled to aid pursuant to section 40.87 (1) (d), (e) and (f) and the number of special teachers employed pursuant to section 41.01 on condition that the apportionment on account of such special teachers under the provisions of this section shall not exceed the difference between the special aids provided for under section 41.03 and the actual cost of such special classes as limited by section 41.03 (1).

(2) In addition to the amounts provided in subsection (1) there shall be paid to all school districts with 10 pupils or more in average daily attendance in which the assessed valuation back of each pupil is insufficient to properly support an efficient elementary school, an amount to be determined as follows: The full valuation expressed in the nearest thousand dollars of the property in each school district with 10 pupils or more in average daily attendance shall be determined by the department of taxation. A valuation of

\$200,000 for each elementary teacher employed by any school district with 10 pupils or more in average daily attendance in the preceding school year shall be considered as the base for determining the amount of state aid for each school district with 10 pupils or more in average daily attendance. The apportionment shall be made to such school districts with 10 pupils or more in average daily attendance in which the quotient of dividing the full valuation by the number of elementary teachers in the preceding school year is less than such base. Such quotient shall be subtracted from such base and the amounts so obtained multiplied by the local elementary school tax rate for such school district with 10 pupils or more in average daily attendance. The multiplier shall not exceed 4 mills. The amount in turn shall be multiplied by the number of elementary teachers employed by the school district with 10 pupils or more in average daily attendance in the preceding school year, which resulting amount shall be the aid payable to the school district with 10 pupils or more in average daily attendance under this subsection. But in no event shall such apportionment under this subsection exceed \$350 for each such teacher employed in the preceding school year; nor shall such state aid be based upon a greater number of elementary teachers than the number of such teachers for which the district with 10 pupils or more in average daily attendance is entitled to state aid under the provisions of subsection (4).

(3) For the purposes of subsections (3) and (4) an elementary teacher is defined as one who devotes the whole or a portion of his time to teaching, or supervising grades below the ninth. To determine the number of full-time elementary teachers represented by teachers who devote a portion of their time to teaching grades below the ninth, for which aid may be granted, the sum of the percentages of such teachers' time as is devoted to grades below the ninth, shall be reduced to a whole number, and major fractions shall be considered as one teacher. Substitute teachers or part-time teachers teaching continuously for the entire school year beginning in September and ending in June shall be counted in determining the amount to be distributed to school districts.

(4) The right to share in the aids provided for in subsections (1) and (2) is subject to the following conditions:

(a) Whenever any county shall fail to raise for the support of the common schools by taxation, upon the aggregate valuation of the whole county an amount at least equal to \$250 for each public elementary teacher employed in the county, in schools with 10 pupils or more in average daily attendance, as determined in section 59.075 and as certified to the county clerk by the state superintendent and shall fail to apportion to each district with 10 pupils or more in average daily attendance such amount for each elementary teacher employed, and such an amount as herein provided for districts having more than one pupil and less than 10 pupils in average daily attendance the aid for the schools of that county shall be withheld from the next succeeding apportionment except that aid may be apportioned by the state for distribution to all districts which have received a county apportionment for the preceding year.

(am) School districts operating schools with more than one pupil and less than ten pupils in average daily attendance shall be eligible to receive the aids provided for by this section for schools with more than ten pupils in average daily attendance upon the approval of the state superintendent. Any person dissatisfied with the order of approval or disapproval of the state superintendent may, within twenty days after the date of such order, apply for a review of such determination by the state superintendent. If any person is aggrieved after such review, he may commence an action in the circuit court of the county in which the school is located to review the order and in such action new evidence may be presented.

(b) Commencing with the school year 1943-1944, no aid shall be paid to any school district except to a city school district in a city of the first class, for any year during which such district shall not have maintained a common school for at least 9 months taught by a qualified teacher under a contract providing for leave of absence of the teacher by reason of personal sickness, without deduction from the salary of such teacher at the rate of at least 5 days per year and for accumulation of at least 30 days of unused sick leave from year to year and at a salary of not less than \$1,200 per school year, if the certificate of such teacher is based on 4 years or more of professional training with a degree and \$1,000 per school year if such teaching certificate is based on less than 4 years of professional training; unless the state superintendent shall be satisfied that such school was maintained and so taught for at least 3 months, and the failure to maintain and so teach it for 9 months was occasioned by some extraordinary cause not arising from intention or neglect on the part of the responsible officers. Time spent by the teacher or teachers of such districts in attendance upon an institute in the county, shown by due reports to have been allowed by the district board without deduction from such teacher's wages, shall be counted as a part of such 9 months. No aid shall be paid to any city school district of a city of the first class for any year during which such city

school district of a city of the first class shall not have maintained common schools taught by qualified regular teachers at salaries of not less than \$140 a month, and by qualified continuous substitute teachers at salaries of not less than \$6 a day, for the full period during which such schools were in session during such year as provided by the rules and regulations of the board of school directors of such city school district of such city of the first class; unless the state superintendent shall be satisfied that any failure to so maintain such schools and so teach them for such full period was occasioned by some extraordinary cause not arising from intention or neglect on the part of the responsible officers.

(c) No aid shall be paid for or on account of any public school as defined in section 42.20, unless the employer as defined in section 42.20 has complied with the provisions of sections 42.39 to 42.43, inclusive.

(d) No aid shall be paid to any city or for any school district failing to provide for an additional room and an additional teacher whenever so required by section 40.65.

(e) No aid shall be paid to any school district refusing or wilfully neglecting to comply with the provisions of section 40.22 (1) and (2).

(f) Provisions by a school district for the transportation and tuition of its pupils to and their instruction in some other district as prescribed by law shall entitle the former to share in the aid as though such district had maintained a school, and shall be considered as having elementary teachers on the basis of average daily attendance as provided in subsection (1) but no district shall receive more state and county aid than the operating expense of such school.

(5) Immediately upon determining the amount of state aid payable under this section the state superintendent shall certify to the secretary of state and to the state treasurer the amount thereof which each county is entitled to receive, and he shall at the same time certify to each county clerk and county treasurer the amount thereof which each school district in their respective counties is entitled to receive, and a statement of the number of teachers employed in each such school district.

(7) (a) Whenever any officer shall omit to make within the time prescribed any statement or reports required to be made to the state superintendent, the latter shall notify such officer of such omission, but the failure to give such notice shall not in any manner affect the consequences of such omission.

(b) Any school district excluded from any apportionment of the aid under this section because of some mistake or omission by some officer may at any time within 2 years after such apportionment furnish proof to the state superintendent of the facts of such mistake or omission and that the same has been corrected or remedied.

(c) If such proof be satisfactory to the state superintendent he shall certify such facts to the secretary of state, together with a supplemental apportionment to such school district and shall notify the treasurer and clerk of the county of such apportionments. The secretary of state shall thereupon draw his warrant for such supplemental apportionment and the same shall be paid as if originally apportioned.

(8) If in any year the total of the claims for state aid under this section shall exceed the amount appropriated in subsection (3) of section 20.25, the state superintendent shall equitably prorate the amount available among the several towns, cities, and villages entitled to share in this state aid.

(9) All moneys appropriated, allotted and paid to any school district under the provisions of section 20.25 (3) and all moneys appropriated, allotted and paid by any county to any school district from tax revenues derived under the provisions of section 59.075 shall be used, disbursed and expended by the school district receiving such moneys solely for the school purposes and expenses for which apportioned under the provisions of section 40.87. Such moneys, wherever the same may be, shall at all times be exempt from execution, attachment, garnishment or other process in favor of creditors except as to claims for salaries or wages of teachers and other school employes and as to claims for school materials, supplies, fuel and current repairs. [1931 c. 4 s. 1, 3; 1931 c. 67 s. 49; 1933 c. 140 s. 5; 1933 c. 232, 412, 445; 1935 c. 147, 263, 371, 514; 1937 c. 49, 62, 255, 375; 1939 c. 143, 178, 464; 1941 c. 130, 300; 1943 c. 26, 37, 105, 275, 360, 490, 526, 574; 1945 c. 33, 122, 428, 435]

**Note:** Chapter 375, Laws 1937, amending 40.87 (4) (b) takes effect September 1, 1938.

Under 40.87 (4) (a), Stats. 1931, county must apportion necessary amount to each school district which is authorized to be levied by 59.075, whether such taxes are paid in cash or not. Penalty for failure to do so is to have withheld from schools of such county next succeeding apportionment. 19 Atty. Gen. 348; 20 Atty. Gen. 747.

County treasurer may not, on ground that county has claim against municipality, withhold state school aid under 40.87, Stats.

1933, which is due to school district located in such municipality. 22 Atty. Gen. 638, 1016.

State aid given upon statement that county has levied school tax, when in fact it has not but has used public utility taxes exclusively, is improperly obtained. (40.87, Stats. 1933) State superintendent can withhold future aid until error is corrected or amount paid is set off by aid subsequently due. 22 Atty. Gen. 649.

Where school districts were created by town board having jurisdiction and have operated fourteen months, 40.31 (1), Stats. 1933,

prevents state superintendent from refusing state aid under 40.87 on ground that districts did not have required assessed valuation. 23 Atty. Gen. 31.  
 School district which has closed its school and provided for transportation of pupils to another district is entitled to aid under 40.87, Stats. 1937, even though parents of children refuse to send children by transportation means so furnished. 26 Atty. Gen. 402.

**40.88 Aid to counties maintaining institutions having schools.** (1) Any county, which maintains a county home for dependent children or other institution in which children are received for care, and in which institution or institutions the educational facilities required to be provided by a common school district are maintained, shall be entitled to state educational aids granted under section 40.87 as though such institution or institutions constituted a common school district. The educational facilities offered in such institutions shall be under the supervision of the state superintendent of schools.

(3) Such county homes for dependent children or other institutions in which children are received for care, and in which institution or institutions the educational facilities required to be provided by a common school district are maintained upon the basis of a graded school of the first class, may receive the additional state aid to graded, junior and senior high schools provided in section 40.39, which aid is discretionary with the state superintendent of schools. [1939 c. 58; 1941 c. 299; 1943 c. 75]

**40.89 School safety patrols.** Any school district board or city school board or the board of school directors of any city of the first class, is empowered to organize school safety patrols and with the permission of the parents to appoint pupils as members thereof for the purpose of influencing and encouraging the other pupils to refrain from crossing public highways at points other than at regular crossings and for the purpose of directing pupils not to cross highways at times when the presence of traffic would render such crossing unsafe. Nothing herein contained shall be construed to authorize or permit the use of any safety patrol member for the purpose of directing vehicular traffic nor shall any safety patrol member be stationed in that portion of the highway intended for the use of vehicular traffic; except that this section shall not affect any plan in operation at the time this section takes effect under which a junior police patrol directs traffic under the authorization, supervision and control of either the sheriff's department or of the chief of police or traffic department of the police department of any city, town or village. No liability shall attach either to the school district or any individual, director, superintendent, teacher or other school authority by virtue of the organization, maintenance or operation of school safety patrol organized, maintained and operated under authority of this section. [1939 c. 219; 43.08 (2)]

**40.895 Marking school zones.** It shall be the duty of the town, city or village wherein the schoolhouse for any public school or parochial school lies to mark thoroughfares for motor vehicle traffic along the schoolhouse grounds and within 100 yards of the boundary thereof with markings plainly visible to passing motorists as a warning of the presence of school children and the need for the exercise of extraordinary care. Markings shall be contiguous stripes of blue, white and red following in that order from left to right or from top to bottom, as the case may be. Each stripe shall be one foot wide. When permission of the owner of the telephone company can be obtained, markings shall be on and around telephone poles, otherwise on the curb, gutter or other object. When on telephone poles or other uprights the colors shall follow from top to bottom and the lower extremity of the marking shall not be less than 3 feet from the terrace or ground level. When on telephone poles markings shall be on each pole within the zone required to be marked and when on other objects shall be not less than 50 yards apart in such zone. In any case at either extremity of each such marked zone an upright marking shall be so placed as to be conspicuous to motorists and shall plainly bear the wording "Caution—School Zone", the word "Caution" to be in the blue stripe, the word "School" to be in the white stripe and the word "Zone" to be in the red stripe. In addition to such markings all highways at the limits of any city or village shall be posted with a blue, white and red sign in plain view of entering motorists which shall bear the wording "Motorist—Extraordinary care is required in school zones. Observe markings." [1941 c. 168]

**40.90 Senior students entering military service; diplomas and credits.** Any senior student of a high school in this state who, during the school year entered any branch of the military or naval service of the United States and who would have graduated during such school year, shall be granted a diploma of graduation from such school. Such diploma shall have all the rights and privileges of diplomas regularly granted to graduates of such school. Any senior student of a county rural normal school or teachers college in this state who entered during the school year any branch of the military or naval service of the United States shall be given credit for the first semester's work for such school year to the same extent as though he had successfully completed such work. [1941 c. 46]



**40.99 Retirement; election.** Any common school district or high school district, at any annual or special meeting, by a majority vote of the electors present, may elect to be included in, and be subject to, the provisions of the Wisconsin municipal retirement fund established by section 66.90. [1945 c. 156]